SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

GUARDIAN INSURANCE COMPANY **Plaintiff,** **vs.** **JOHN JULIAN GUMBS** **Defendant.**	**CASE NO. ST-15-CV-195**

MEMORANDUM OPINION

Pending before the Court is Plaintiff's Motion for Summary Judgment. Because material facts remain in dispute with respect to the issue of damages, Plaintiff's Motion for Summary Judgment will be granted only in part.

FACTUAL & PROCEDURAL HISTORY

The matter arises out of a Complaint filed on May 5, 2015, in which Plaintiff, Guardian Insurance Company ("Guardian"), alleges Defendant, John Julian Gumbs ("Gumbs"), is liable for negligence, conversion, and embezzlement in connection with the sale of Guardian's insurance policies in the U.S. Virgin Islands by Gumbs' insurance company. According to the Complaint, Gumbs was authorized as an agent of Guardian to sell certain types of insurance policies.[1] Gumbs was to deposit all payments for sales of Guardian's insurance policies into a fiduciary account and then transfer those funds to Guardian as insurance premiums.[2] Guardian alleges Gumbs "received monies from customers in exchange for the purported sale of Guardian Insurance policies, but

[1] Compl. ¶ 7.
[2] Compl. ¶¶ 8-11, 23-24.

never remitted these monies to [Guardian] as premiums."[3] Guardian further alleges that "[Gumbs] issued false and intentionally misleading documentation to [Guardian] to indicate that he was issuing far fewer Guardian Insurance policies, and collecting far less [in] premiums for Guardian Insurance policies, than he was actually issuing and collecting."[4] Guardian contends it "honored the claims of at least 175 customers who had made payments to [Gumbs] for Guardian Insurance policies, even though payments were not forwarded to [Guardian] by [Gumbs]."[5]

These factual allegations, *inter alia*, were raised in the criminal prosecution of Gumbs in *People of the Virgin Islands v. Gumbs*, Case No. ST-08-CR-480, wherein Gumbs was charged under the Criminally Influenced and Corrupt Organizations Act in violation 14 V.I.C. § 605(a) and obtaining money by false pretense in violation of 14 V.I.C. § 834(2).[6] A jury trial commenced on March 1, 2010, and on March 3, 2010, the jury returned a verdict, finding Gumbs guilty of both counts.[7] Gumbs was sentenced to ten (10) years incarceration with three (3) years suspended, assessed a $10,000.00 fine and ordered to pay restitution to all victims, including Guardian, a total amount of $99,129.94, and $75.00 in court costs.[8] Gumbs' convictions were upheld by the Supreme Court of the Virgin Islands on appeal.[9]

In its Complaint, Guardian contends it has yet to receive any restitution payments from Gumbs and seeks an award of damages for the funds Gumbs failed to remit, together with statutory

[3] Compl. ¶ 12.
[4] Compl. ¶ 31.
[5] Compl. ¶ 20.
[6] The Third Amended Information charged the Defendant in Count I with violating 14 V.I.C. § 605(a) of CICO and in Count II with obtaining money by false pretense in violation of 14 V.I.C. § 834(2). J. and Commitment, *People of the Virgin Islands v. Gumbs*, No. ST-08-CR-480 (V.I. Super. Ct. June 15, 2010), *aff'd*, 59 V.I. 784, 786-787 (V.I. 2013).
[7] *See Gumbs v. People of the Virgin Islands*, 59 V.I. 784 (V.I. 2013).
[8] *Id.* at 787.
[9] *Id.* at 785-791.

interest, punitive damages, and costs and legal fees on the grounds that Gumbs wrongfully deprived Guardian of monetary sums and has failed to pay the restitution.[10]

On June 4, 2015, and July 2, 2015, Gumbs filed *pro se* Motions to Dismiss, which this Court denied in a Memorandum Opinion entered on July 29, 2015.[11] Gumbs was directed to answer the Complaint by August 21, 2015.[12] A Scheduling Order was entered on September 14, 2015, and when Gumbs had still failed to answer the Complaint, on September 30, 2015, Guardian filed a Motion for Sanctions against Defendant, seeking, *inter alia*, an entry of default against Gumbs. Finding Gumbs failed to file an Answer in accordance with the Scheduling Order or the time limits imposed by law, the Acting Clerk of the Superior Court entered default against Gumbs on November 9, 2015. Gumbs, still having failed to move, answer or otherwise respond to the Complaint, the Court, by Order entered on December 10, 2015, directed Guardian to file an appropriately supported motion for default judgment or summary judgment, or take other appropriate steps to move the case forward by January 8, 2016.

On January 7, 2016, Guardian filed a Motion for Summary Judgment, along with a Memorandum of Law, Statement of Undisputed Material Facts, and Exhibits, in support thereof. On February 12, 2016, Gumbs filed a *pro se* Opposition to Guardian's Motion for Summary Judgment and Exhibits, to which Guardian replied on February 26, 2016.[13]

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[10] Compl. ¶ 21.
[11] *See* July 29, 2015, Mem. Op. In response to Gumbs' June 4, 2015, Motion to Dismiss, Guardian filed a timely Opposition on June 18, 2016. *See* June 15, 2016, Order. Though Gumbs filed a *pro se* "Renewed Motion to Dismiss" on July 2, 2015, Gumbs did not file a Reply to Guardian's Opposition to his Motion to Dismiss.
[12] *See* July 29, 2015, Order.
[13] Both were filed in accordance with the time limits imposed by the Court. *See* January 21, 2016, Order.

STANDARD

When deciding whether to grant or deny summary judgment under Fed. R. Civ. P. 56,[14] the Supreme Court of the Virgin Islands instructs that the Superior Court is to employ the following standard:

> Because summary judgment is a drastic remedy, it should be granted only when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.[15]
>
> It is a basic principle . . . that trial judges should not weigh the evidence [or] make credibility determinations . . . when ruling upon summary judgment motions because these are the functions of the jury.[16]
>
> When reviewing the record, th[e] Court must view the inferences to be drawn from the underlying facts in the light most favorable to the nonmoving party, and we must take the non-moving party's conflicting allegations as true if supported by proper proofs. To survive summary judgment, the nonmoving party's evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance. Importantly, the nonmoving party may not rest on its

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[14] FED. R. CIV. P. 56 is made applicable to the practice and procedure of the Superior Court through SUPER. CT. R. 7. However, while FED. R. CIV. P. 56, through SUPER. CT. R. 7, provides the procedural mechanism for filing motions for summary judgment in Superior Court proceedings, the standard of review derives from the precedent delineated by the Supreme Court of the Virgin Islands. *See Vanterpool v. Gov't of the Virgin Islands*, 63 V.I. 563, 576 (V.I. 2015) ("[U]ncritical application of the rules of another court to a proceeding in the Superior Court is wholly inconsistent with our admonition that 'the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of the District Court should represent rules of last resort rather than first resort, and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from this Court reveals the absence of any other [applicable] procedure'") (citing *Sweeney v. Ombres*, 60 V.I. 438, 442 (V.I. 2014)). In *Martin v. Martin*, 54 V.I. 379, 386-387 (V.I. 2010), the Supreme Court of the Virgin Islands "adopted the standard contained in a prior version of [FED. R. CIV. P. 56], [which] remains controlling in Virgin Islands courts" and does not include the amendments to FED. R. CIV. P. 56 that went into effect on December 1, 2010. *Vanterpool*, 63 V.I. at 583 n. 10 ("Effective December 1, 2010, Federal Rule of Civil Procedure 56 was rewritten substantially to incorporate some — but not all — aspects of local rules similar to District Court Rule 56.1. Nevertheless, this Court's *Martin* decision, which adopted the standard contained in a prior version of the rule, remains controlling in Virgin Islands courts") (citations omitted); *but see Brodhurst v. Frazier*, 57 V.I. 365, 396 (V.I. 2012) (Swan, J., dissenting) (applying "the modern version of Rule 56(c)(1)," FED. R. CIV. P. 56 as amended in 2010, when reviewing the Superior Court's ruling on a motion for summary judgment).

[15] *Simpson v. Golden Resorts, LLLP*, 56 V.I. 597, 605 (V.I. 2012) (internal quotation marks and citations omitted); *See also Pedro v. Ranger American of the Virgin Islands, Inc.*, 2015 V.I. Supreme LEXIS 19, *3-6 (V.I. 2015) *Bertrand v. Mystic Granite & Marble, Inc.*, 63 V.I. 772, 778 (V.I. 2015).

[16] *Anthony v. FirstBank V.I.*, 58 V.I. 224, 234 (V.I. 2012) (citations omitted); *See also Bertrand*, 63 V.I. at 778 (citations omitted).

> pleadings but must set forth specific facts showing that there is a genuine issue for trial.[17]

Further, the Supreme Court of the Virgin Islands requires this Court to consider the merits of a motion for summary judgment and grant summary judgment only when satisfied that "the evidence in the summary judgment records supports this relief," regardless of whether the non-movant submits a response.[18]

Finally, the Supreme Court of the Virgin Islands has made clear that "it is our policy to give *pro se* litigants greater leeway in dealing with matters of procedure and pleading."[19] However, *pro se* litigants are still expected to comply with the rules of civil procedure, and a *pro se* plaintiff's ignorance of the rules does not provide good cause to excuse failure to fulfill their requirements.[20]

ANALYSIS

Guardian asserts that "summary judgment is appropriate as a matter of law . . . [because] there are no facts from which a reasonable jury could find for [Gumbs] on the claims set forth in [Guardian's] Complaint . . . [since] there are no material facts in dispute, as [Gumbs] is estopped from denying the facts established in *People of the V.I. v. Gumbs*, Case No. ST-08-CR-480, the criminal proceeding in which [Gumbs] was convicted of violating the Criminally Influenced and Corrupt Organizations Act, a conviction arising from the same facts as the instant proceeding."[21] In opposition, Gumbs argues Guardian's Motion for Summary Judgment should be denied "because it is redundant and violates the double jeopardy clause of the United States

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[17] *Simpson*, 56 V.I. at 605.
[18] *Vanterpool*, 63 V.I. at 583 (citing *Martin*, 54 V.I. at 389).
[19] *Appleton v. Harrigan*, 61 V.I. 262, 267 (V.I. 2014) (citing *Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (V.I. 2011)).
[20] *Sykes v. Blockbuster Video*, 205 Fed. Appx. 961, 963 (3d Cir. 2006) (unpublished) (*pro se* plaintiff failed to show good cause for failure to timely serve).
[21] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., p. 1.

Constitution[,]" an argument the Court already rejected in denying Gumbs' Motions to Dismiss.[22] Gumbs further argues that genuine issues of material fact remain as to the amount of funds owed to Guardian.[23]

A. Estoppel under 14 V.I.C. § 607.

The stated purpose of the Criminally Influenced and Corrupt Organizations Act ("CICO"), set forth in 14 V.I.C. 600 *et seq.*, is to "curtail criminal activity and lessen its economic and political power in the Territory of the Virgin Islands by establishing new penal prohibitions and providing to law enforcement and the victims of criminal activity new civil sanctions and remedies."[24] The Virgin Islands Legislature instructs that that the provisions of CICO "shall be liberally construed to achieve its remedial purpose."[25] Section 607(g) of CICO provides:

> A final judgment or decree rendered against the defendant in any civil or criminal proceeding or action under this section [governing civil remedies] or section 606 [governing] [Criminal penalties] shall estop the defendant in any subsequent civil proceeding or action brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding or action.[26]

Here, Guardian submitted a copy of the June 15, 2010, Judgment and Commitment in *People of the Virgin Islands. v. Gumbs*, Case No. ST-08-CR-480, convicting Gumbs of violating Section 605(a) of CICO and obtaining money by false pretense in violation of 14 V.I.C. § 834(2), as well as a copy of the Supreme Court of the Virgin Islands' opinion upholding the convictions on appeal.[27] Additionally, Guardian submits a copy of Gumbs' *pro se* Motion to Dismiss, in which

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[22] *See* July 29, 2015, Mem. Op., p. 8 n. 38.
[23] *See* Def.'s Opp'n to Pl.'s Mot. for Summary J., pp. 2-3.
[24] 14 V.I.C. § 601.
[25] 14 V.I.C. § 602.
[26] 14 V.I.C. § 607(g).
[27] *See* Pl.'s Mot. for Summary J. (Exhibit 2, *Gumbs v. People of the Virgin Islands*, 59 V.I. 784, 791 (V.I. 2013), & Exhibit 3, J. and Commitment, *People of the Virgin Islands v. Gumbs*, No. ST-08-CR-480 (V.I. Super. Ct. June 15, 2010)).

Gumbs concedes that he "was tried and convicted for matters pertaining to this suit" and "sanctioned by this court for the same amount in question."[28]

"[I]t is well established that in a criminal case, the written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication constitutes a final judgment."[29] The court records submitted by Guardian establish that there is no genuine issue of material fact that a final judgment was rendered against Gumbs in a criminal proceeding under Section 606 of CICO.[30] Consequently, Section 607(g) applies and Gumbs is estopped "as to all matters as to which the judgment . . . would be an estoppel . . . between . . . parties."

Guardian's argument that Gumbs "is estopped from relitigating the facts established by his prior criminal conviction arising from the same course of conduct at issue" in this case sounds in the principle of collateral estoppel.[31] According to the Supreme Court of the Virgin Islands, "[c]ollateral estoppel 'means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.'"[32]

Applying the precepts of collateral estoppel here, the Court finds that Gumbs is estopped from relitigating certain facts established in the criminal proceedings against him.[33] In upholding Gumb's convictions on appeal, the Supreme Court of the Virgin Islands explained that "the jury convicted Gumbs for violating CICO based on his actions between January 2003 and August 2005

Pl.'s Statement of Undisputed Material Facts, ¶¶ 15-17 (citing Exhibits 2 & 3).

[28] Pl.'s Statement of Undisputed Material Facts, ¶ 19 (citing Exhibit 4, Gumbs' June 4, 2016, *pro se* Motion to Dismiss, p. 1).

[29] *Hightree v. People of the Virgin Islands*, 60 V.I. 514, 519-520 (V.I. 2014) (citing *Williams v. People of the Virgin Islands*, 58 V.I. 341, 345 (V.I. 2013)).

[30] *See Gumbs*, 59 V.I. at 788-790.

[31] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., p. 4.

[32] *Gilbert v. People of the Virgin Islands*, 52 V.I. 350, 364 (V.I. 2009) (citing *Ashe v. Swenson*, 397 U.S. 426, 443 (1970)).

[33] *See* Pl.'s Statement of Undisputed Material Facts, ¶¶ 15-18 (citing Exhibits 2 & 3).

. . . while serving as the owner of the John Gumbs Insurance Agency[,]"[34] stating, in pertinent part, that:

> At trial, the People presented evidence that, between January 2003 and August 2005, Gumbs, as an insurance agent for John Gumbs Insurance Agency, took approximately $88,560.84 in premiums from 175 individuals in exchange for various types of insurance from Guardian Insurance, but never transmitted the premiums to Guardian Insurance, as required.[35]

The Superior Court's Judgment and Commitment, which was affirmed on appeal, assessed a $10,000.00 fine against Gumbs, and ordered Gumbs pay $75.00 in court costs and a total of $99,129.94 in restitution to the victims, whose claims were established at the criminal trial, such as Guardian.[36] These facts are also supported by the affidavit of Maureen Hedrington, Guardian's Assistant Vice President of Operations, submitted by Guardian in support of its Motion for Summary Judgment.[37] Additionally, a review of court records indicates that the Superior Court, in determining the amount of restitution owed by Gumbs at the sentencing hearing, accepted the total amount of $99,129.94 requested by the People, which was established on the record to be comprised of the $88,560.84 owed to Guardian, as well as $6,020.98 and $4,548.12 owed to other victims.[38]

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[34] *Gumbs*, 59 V.I. at 790 n. 3.
[35] *Gumbs*, 59 V.I. at 786.
[36] *See* Pl.'s Statement of Undisputed Material Facts, ¶¶ 15-18 (citing Exhibits 2 & 3).
[37] *See* Pl.'s Exhibit 1, Aff. of Maureen Hedrington.
[38] J.A. Vol. 4 at 304, 359-362, *Gumbs*, 59 V.I. 784 (V.I. 2013) (No. 2010-0034) (Transcript of June 2, 2010, Sentencing Hearing at 26, 81-84, *Gumbs v. People of the Virgin Islands*, No. ST-08-CR-480 (V.I. Super. Ct. 2010)). Though not cited by the parties, the Court may take judicial notice of these court records. *See Rodriguez v. Rodriguez-Ramos*, 2016 V.I. Supreme LEXIS 9, *17 (V.I. 2016) ("[T]he Superior Court may take judicial notice of a fact if it represents general knowledge in the territory or it is capable of being readily determined accurately by relying on sources whose accuracy cannot be questioned reasonably") (citing *Marcelle v. People*, 55 V.I. 536, 546 & n. 3 (V.I. 2011)); *Gov't of the Virgin Islands v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 2016 V.I. Supreme LEXIS 2, *10-11 n. 2 (V.I. 2016) ("Although the parties did not include the District Court record in their joint appendix, this Court may take judicial notice of its existence and its contents") (citing *Farrell v. People*, 54 V.I. 600, 615-16 (V.I. 2011)).

Gumbs argues that genuine issues of material fact remain as to the amount of restitution owed to Guardian because the jury in the criminal trial did not state "the amount of money Gumbs allegedly stole" in its verdict and "the Government had 30 days to verified [sic] [the amount but] . . . never did" and "the amount in question does not take into consideration [Gumbs'] 15% commission."[39] In Gumbs' *pro se* Opposition to Guardian's Motion for Summary Judgment, Gumbs does not elaborate on his claim for "15% commission," but in his *pro se* Motion to Dismiss, Gumbs argued the $88,560.81 purportedly owed to Guardian constitutes the "gross amount of premium [sic]" but that "the Broker agreement between [Gumbs and Guardian] allowed for [Gumbs] to take 15% commission" and that Gumbs actually owes Guardian only $75,276.69.[40]

Gumbs' arguments with respect to these purported genuine issues of material fact are without merit because Gumbs is estopped from relitigating the facts established in the criminal proceeding, and, therefore, it is undisputed for summary judgment purposes that Gumbs wrongfully took "$88,560.84 in premiums from 175 individuals in exchange for various types of insurance from Guardian Insurance, but never transmitted the premiums to Guardian Insurance, as required" and was ordered to pay a total of $99,129.94 in restitution to the victims, $88,560.84 of which is owed to Guardian.[41]

Further, the Court lacks authority to reduce the amount of restitution ordered by the Superior Court in the Judgment and Commitment. The Judgment and Commitment constitutes a final, appealable judgment.[42] It is axiomatic that this Court may not alter a judgment, whether final

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[39] Def.'s Opp'n to Pl.'s Mot. for Summary J., pp. 2-3.
[40] *See* Pl's Exhibit 4, p. 1.
[41] *See Gumbs*, 59 V.I. at 786-787; Pl.'s Statement of Undisputed Material Facts, ¶¶ 15-18 (citing Exhibits 2 & 3).
[42] *Gumbs*, 59 V.I. at 787 ("[W]e possess jurisdiction to hear this appeal . . . [because t]he written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication constitutes a final judgment") (citing *Jackson-Flavius v. People*, 57 V.I. 716, 721 (V.I. 2012)); *See* Pl.'s Exhibit 2 at 4.

or interlocutory, in a criminal matter that was never within its control.[43] Moreover, the Supreme Court of the Virgin Islands has made clear that "restitution, when ordered as part of a criminal case, is part of the defendant's sentence"[44] and "the Superior Court's authority to reduce a sentence after it is announced is constrained by Superior Court Rule 136."[45] Unless a sentence is illegal, once the deadlines for reducing a sentence under Superior Court Rule 136 have passed, "the Superior Court lacks plenary authority to revisit [the sentence], at any time."[46] Superior Court 136 provides, in pertinent part, that "[t]he court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after any order or other mandate issued upon affirmance of the judgment . . . , received by the court has become final by reason of the expiration of the time limited for further appeal or review."[47]

Here, Gumbs filed a Motion for Reduction of Sentence under Superior Court Rule 136 in the criminal proceedings before the Superior Court, which was denied.[48] In so doing, Gumbs only moved "to change his sentence from incarceration to a grant of probation, community service and/or weekend sentence" and did not seek a reduction of the amount of restitution ordered,

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[43] *See People of the Virgin Islands v. Armstrong*, 2016 V.I. Supreme LEXIS 14, *12-13 (V.I. 2016) (citing *United States v. Jerry*, 487 F.2d 600, 604 (3d Cir. 1973) ("At common law, the general rule, in criminal as well as civil cases, was that judgments, decrees, and orders were within the control of the court during the term at which they were made, and they could be modified, vacated, or set aside by that court").

[44] *Hightree*, 60 V.I. at 530 (citing *Ward v. People*, 58 V.I. 277, 288 (V.I. 2013) ("Fixing the specific amount of restitution — like setting the term of incarceration — is a judicial act under Virgin Islands law") (citing 34 V.I.C. § 203(d)(3)).

[45] *Williams v. People of the Virgin Islands*, 58 V.I. 341, 353 (V.I. 2013).

[46] *Williams*, 58 V.I. at 354.

[47] SUPER. CT. R. 136. Superior Court Rule 136 provides in full that "[t]he court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after any order or other mandate issued upon affirmance of the judgment or dismissal of the appeal, received by the court has become final by reason of the expiration of the time limited for further appeal or review." SUPER. CT. R. 136.

[48] On June 20, 2010, Gumbs filed his Motion for Reduction of Sentence, the People of the Virgin Islands filed an Opposition on July 6, 2010, and the Court denied Gumbs' motion by Order entered on July 14, 2010. Mot. for Reduction of Sentence & Order, *People of the Virgin Islands v. Gumbs*, No. ST-08-CR-480 (V.I. Super. Ct. 2010). Though not cited by the parties, the Court may take judicial notice of these court records. *supra* n. 38.

arguing instead that he "assumes responsibility and would like to opportunity to start paying his restitution, fine and court costs . . . ."[49] Further, the Supreme Court of the Virgin Islands affirmed the Judgment and Commitment on September 20, 2013.[50] Consequently, the deadline for reducing Gumbs' sentence through a reduction of the amount of restitution ordered has long passed.

The Court recognizes that the Judgment and Commitment states that the $99,129.94 in restitution "shall be verified within thirty (30) days."[51] However, Gumbs fails to note that the Judgment and Commitment also states that "to [the] extent the amount is greater than . . . $99,129.94[ ] or additional victims are located, recovery of those premiums will have to be accomplished through a civil proceeding."[52] The issues raised by Gumbs, namely whether the restitution amount was verified and the impact that may have on the restitution ordered in the Judgment and Commitment, are not properly before this Court, given that the Supreme Court of the Virgin Islands affirmed the Judgment and Commitment and Gumbs did not raise the issues on appeal or in the criminal proceedings before the Superior Court.

Accordingly, Guardian has satisfied its initial burden of showing there are no genuine issues of material fact that Gumbs took $88,560.84 from Guardian, which Gumbs was ordered to pay in restitution to Guardian. Since Gumbs is estopped from relitigating these facts and has failed to set forth specific facts showing that there is a genuine issue for trial on that issue, summary judgment is warranted with respect to these facts. As a result, Guardian is entitled to a judgment as a matter of law that Gumbs took $88,560.84 from Guardian and was ordered to pay this amount to Guardian in restitution.

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[49] Mot. for Reduction of Sentence & Order, *People of the Virgin Islands v. Gumbs*, No. ST-08-CR-480 (V.I. Super. Ct. 2010).
[50] *Gumbs*, 59 V.I. at 792 ("[W]e affirm the June 15, 2010 Judgment and Commitment").
[51] Pl.'s Mot. for Summary J., Exhibit 3 at 6.
[52] *Id.*

The Court recognizes that Gumbs also asserts that "Plaintiff [sic] is under the jurisdiction of this court because he is on parole which still [sic] a form of incarceration . . . So it is very interesting that the Plaintiff took this action now. What happened to June 2, 2010 when Defendant was sentenced to prison?" The Court finds this argument unclear and nonsensical, but to the extent it can be construed as raising a statute of limitations defense, Gumbs' argument lacks merit because Gumbs did not assert the statute of limitations defense in his June 4, 2015, Motion to Dismiss,[53] nor has Gumbs filed an Answer to the Complaint. "[I]t is well established that the statute of limitations is an affirmative defense that must be specifically pleaded at the first opportunity or else is waived."[54]

B. The Undisputed Facts Entitle Guardian to Summary Judgment as a Matter of Law With Respect to Gumbs' Tort Liability.

a. Negligence (Count I).

In Count I of the Complaint, Guardian asserts a claim of negligence against Gumbs.[55] To prove negligence, a plaintiff must establish that: (1) defendant owed plaintiff a legal duty of care; (2) defendant breached that duty; and (3) defendant's breach constituted the factual and legal cause of (4) damages to the plaintiff.[56]

Guardian contends that that Gumbs owed it duties of care under 22 V.I.C. § 2 to "preserv[e] inviolate the integrity of insurance" and 22 V.I.C. § 785(b) "to hold a fiduciary account for the

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[53] *See* Pl's Exhibit 4.
[54] *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 536 (V.I. 2015) (citations omitted).
[55] Compl. ¶¶ 22-28.
[56] *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014) (adopting the basic elements of negligence after agreeing with the analysis performed by the Superior Court pursuant to *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967, 981-84 (V.I. 2011)).

deposit of funds" in accordance with Gumbs' agreement with Guardian.[57] As the Court explained in its July 29, 2015, Memorandum Opinion, 22 V.I.C. § 2 provides:

> The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance.[58]

On the other hand, 22 V.I.C. § 785(b) provides that "[a]ll funds representing premiums, less commissions, or return premiums received by an agent, solicitor or broker, shall be so received in his fiduciary capacity, unless there is a separate agreement between him and the insurer."

The criminal proceedings against Gumbs establish that in selling Guardian insurance policies as an insurance agent for John Gumbs Insurance Agency between January 2003 and August 2005,[59] Gumbs owed to Guardian duties of care under 22 V.I.C. §§ 2 and 785(b). Though Section 785(b) potentially does not apply if there was a separate agreement between Guardian and Gumbs, Guardian submits evidence that demonstrates no such agreement existed. Specifically, in her affidavit, Hedrington attests that Gumbs "held a fiduciary account as required by his agreement with Guardian" and "was responsible for depositing into the fiduciary account all monies collected from customers for Guardian Insurance policies."[60] Notably, Gumbs fails to submit any evidence that casts doubt on or refutes Hedrington's sworn attestations.

Guardian argues there are no genuine issues of material fact that Gumbs breached its duties under 22 V.I.C. §§ 2 and 785(b) by "conducting 'a wide pattern of insurance fraud,' [by, *inter*

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[57] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., pp. 6-7.
[58] 22 V.I.C. § 5 broadly defines "insurance transactions" to include virtually all activities from the beginning to the end of the insurance relationship, including, *inter alia,* (1) solicitation, (2) negotiations preliminary to execution of an insurance contract, (3) execution of an insurance contract, (4) transaction of matters subsequent to execution of the contract and arising out of it, and (5) insuring; *See Charleswell v. Chase Manhattan Bank, N.A.*, 308 F. Supp. 2d 545, 565-566 (D.V.I. 2004).
[59] *Gumbs*, 59 V.I. at 786.
[60] Pl.'s Statement of Undisputed Material Facts, ¶ 5 (citing Exhibits 1 ¶ 9); Pl.'s Exhibit 1 ¶¶ 10-13.

alia,] failing to transmit premiums collected to Guardian Insurance, . . . and causing individuals to believe that they had obtained insurance coverage when they had not[,]" which was the proximate cause of Guardian's damages.[61] As the Supreme Court of the Virgin Islands made clear, the criminal proceeding established that "Gumbs took approximately $88,560.84 in premiums from 175 individuals in exchange for various types of insurance from Guardian Insurance, but never transmitted the premiums to Guardian Insurance, as required."[62] These facts clearly demonstrate that Gumbs breached the duties he owed to Guardian under 22 V.I.C. §§ 2 and 785(b). Gumbs submits no argument or evidence to the contrary.

With respect to the negligence requirements that Gumbs' breach of duty proximately caused damages to Guardian, in the affidavit of Hedrington submitted by Guardian, Hedrington attests that Guardian "honored the claims of at least 175 customers who made payments to [Gumbs] for Guardian Insurance policies, even though the payments were not forwarded to Guardian."[63] According to the opinion of the Supreme Court of the Virgin Islands with respect to Gumbs' appeal in the criminal proceeding, submitted by Guardian in support of its summary judgment motion, Hedrington also testified to these facts at the criminal trial.[64] In her affidavit, Hedrington also attests that "[t]o date, Guardian . . . has received no payment whatsoever from [Gumbs], despite the Superior Court's order to make restitution."[65] This supporting documentation demonstrates that Gumbs' breach of duty proximately caused damages to Guardian.

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[61] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., p. 7.
[62] *Gumbs*, 59 V.I. at 786.
[63] Pl.'s Exhibit 1 ¶¶ 13-14, 19-20.
[64] *Gumbs*, 59 V.I. at 795 (Swan, J., dissenting) ("Maureen Hedrington, of Guardian, testified that Guardian terminated its contract with Gumbs because he violated the contract by not having transmittals, applications, and payments forwarded to Guardian . . . She further testified that Guardian honored the claims of 175 customers who had made payments totaling approximately $88,000 to Gumbs even though the funds were not forwarded to Guardian") (citing Trial Trans. Vol. II, P. 273, 276-277); Pl.'s Exhibit 2, pp. 4-5.
[65] Pl.'s Exhibit 1 ¶ 20.

The foregoing makes clear that Guardian has met its initial burden to show an absence of a genuine issue of material fact with respect to its negligence claim, "and the burden of persuasion now shifts to the Defendant[ ] to show the existence of some genuine issue of material fact."[66] Gumbs contends that a genuine issue of material fact exists as to whether Guardian "honored and paid claims for 175 claimants" because "[t]his was never mentioned by them [sic] in court in the criminal trial."[67] However, Gumbs fails to submit proper proofs to substantiate this conflicting allegation. Though Gumbs submits receipts that indicate Gumbs has paid $150.00 towards the fine and court costs assessed by the Superior Court in the Judgment and Commitment,[68] that payment is irrelevant to the repayment of the funds taken from Guardian and the damages sustained by Guardian in terms of its negligence claim. Gumbs also submits unsworn medical records in support of his contentions that he is in poor health and is "unable to find decent employment because of his criminal record."[69] Notwithstanding issues inherent in the admissibility of unsworn medical records in a summary judgment proceeding, the medical records are also completely irrelevant to Guardian's negligence claim. Consequently, even when viewing the record in a light most favorable to Gumbs, the Court finds that Gumbs has failed to set forth specific facts showing that there is a genuine issue for trial on Guardian's negligence claim.

Accordingly, Guardian is entitled to judgment as a matter of law with respect to its negligence claim against Gumbs, and the Court will grant Guardian's Motion for Summary Judgment as to Count I of the Complaint for negligence.

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[66] *Isaac v. Crichlow*, 2015 V.I. LEXIS 15, *27-28 (V.I. Super. Ct. Feb. 10, 2015).
[67] Def.'s Opp'n to Pl.'s Mot. for Summary J., pp. 2-3.
[68] Defs.' Opp'n to Pl.'s Mot. for Summary J., Exhibit 2, "Receipt [sic] of Payment Towards Court Fine and Cost [sic]."
[69] Defs.' Opp'n to Pl.'s Mot. for Summary J., pp. 1-2, Exhibit 1, "Defendant's Discharge Records from Roy L. Schneider Hospital."

b. Conversion and Embezzlement (Count II).

Guardian also contends that summary judgment is warranted on its claim for conversion and embezzlement, as set forth in Count II of the Complaint, because "[t]he undisputed facts clearly demonstrate that . . . the elements of this claim were conclusively established by [Gumbs'] underlying criminal conviction."[70] This Court has previously adopted the provisions of the Restatement (Second) of Torts § 222A as the soundest rule for the Virgin Islands with regard to claims alleging the tort of conversion, which is defined as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel."[71] "Money, which is personal property, may be the subject of a conversion[,][72] as can "the cash proceeds of the sale of real property."[73]

With respect to the criminal proceeding, "[i]n the Information, the People identified embezzlement or obtaining money by false pretenses as the offenses constituting Gumbs's pattern of criminal activity."[74] Under the Virgin Islands Code, "[e]mbezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted[,]"[75] while a person obtains money by false pretense when he or she "knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property . . . ."[76] In upholding Gumbs' convictions on appeal, the Supreme Court of the Virgin Islands noted that "the People's

[70] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., p. 8.
[71] *Isaac*, 2015 V.I. LEXIS 15, at *25-27 (conducting *Banks* analysis on the tort of conversion); *Accord Big Bear Construction, Inc. v. Holford*, 2016 V.I. LEXIS 2, *18 (V.I. Super. Ct. Jan. 15, 2016).
[72] *Isaac*, 2015 V.I. LEXIS 15, at *27 (citing *Chase Manhattan Bank, N.A. v. Power Prods.*, 27 V.I. 126, 129 (V.I. Terr. Ct. 1992)).
[73] *Id.* (citing *In re Verestar, Inc.*, 343 B.R. 444, 467 (Bankr. S.D.N.Y. 2006)).
[74] *Gumbs*, 59 V.I. at 789.
[75] 14 V.I.C. § 1087.
[76] 14 V.I.C. § 834.

proof established the elements of both predicate offenses[,embezzlement and obtaining money by false pretenses] beyond a reasonable doubt[,]"[77] finding that "the People introduced more than sufficient evidence to establish a pattern of criminal activity under CICO."[78] Specifically, the Supreme Court of the Virgin Islands referred to the fact that:

> At trial, the People presented overwhelming evidence that, on multiple occasions, Gumbs collected monies greatly in excess of $100 and never transmitted the funds to the pertinent insurance companies, including, but not limited to, (1) collecting premiums of $1,480.80, $1,585.46, and $1,286.67 for three car insurance policies, on three separate occasions, from Deep Life Christian Ministries; (2) collecting $579.42 from Living Word Ministries for car insurance . . . .[79]

Notably, the funds collected by Gumbs from Deep Life Christian Ministries and Living World Ministries were for Guardian insurance policies.[80]

Given the foregoing facts established in the criminal proceeding, that Gumbs is estopped from relitigating, and considering the attestations of Hedrington in her affidavit, the Court finds Guardian has satisfied its initial burden of showing that there are no genuine issues of material fact with respect to its claim against Gumbs for conversion. The facts established in the criminal proceeding demonstrate that Gumbs intentionally exercised dominion or control over funds owed to Guardian for insurance policies since embezzlement and obtaining money by false pretense were proven beyond a reasonable doubt with respect to funds received by Gumbs for Guardian insurance policies, which Gumbs "never transmitted . . . to Guardian Insurance, as required."[81] As

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[77] *Gumbs*, 59 V.I. at 790 n. 2.
[78] *Gumbs*, 59 V.I. at 790.
[79] *Gumbs*, 59 V.I. at 789-790.
[80] *Gumbs*, 59 V.I. at 786 ("The People presented specific evidence that during this time period Deep Life Christian Ministries paid Gumbs premiums of $1,480.80, $1,585.46, and $1,286.67 respectively for three car insurance policies on three separate occasions, but that Gumbs never transmitted the premiums to Guardian Insurance and Deep Life Christian Ministries never obtained insurance. Similarly, the People presented evidence that Gumbs had collected at least $579.42 in premiums from Living Word Ministries for car insurance, but that he had failed to transmit these funds to Guardian Insurance") (internal citations omitted).
[81] *Gumbs*, 59 V.I. at 786, 789-790 & n. 2.

discussed, Guardian has also shown that there are no genuine issues of material fact that Gumbs failed to remit to Guardian $88,560.84 in premium payments, that Guardian honored the claims of 175 claimants who made payments to Gumbs for Guardian insurance policies, even though the payments were not forwarded to Guardian by Gumbs, and that Gumbs was ordered to pay Guardian restitution for these funds, but has yet to do so.[82] This demonstrates that Gumbs' seriously interfered with Guardian's right to the claimants' payments such that Gumbs may justly be required to pay their full value to Guardian. Indeed, Gumbs has already been ordered to pay Guardian restitution of the $88,560.84 Gumbs wrongfully took from Guardian.[83]

Gumbs failed to submit any evidence demonstrating the existence of genuine issues of material fact that would precluding the granting of summary judgment on Guardian's claim for conversion. As with Guardian's negligence claim, the receipts and unsworn medical records submitted by Gumbs are irrelevant to Guardian's claim for conversion against Gumbs.[84] Gumbs has not identified specific facts showing there is a genuine issue for trial on Guardian's conversion claim and this Court, when reviewing the record in the light most favorable to Gumbs, has found none. Therefore, the Court will grant summary judgment as to Count II of the Complaint for conversion and embezzlement, and Guardian is entitled to the payments paid by claimants' to Gumbs for Guardian insurance policies, but never transmitted to Guardian.

C. Punitive Damages.

Guardian also moves for summary judgment on its request for punitive damages.[85] In describing punitive damages under Virgin Islands law, this Court has held that:

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[82] *See* Pl.'s Exhibit 1 ¶¶ 13-14, 19-20; *Gumbs*, 59 V.I. at 786 & 792-795 (Swan, J., dissenting).
[83] *See Gumbs*, 59 V.I. at 786-787, 792; *See* Pl.'s Exhibits 1-3.
[84] *See* Defs.' Opp'n to Pl.'s Exhibits 1-2.
[85] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., pp. 9-10.

> A plaintiff seeking punitive damages must demonstrate "conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." The primary purpose behind punitive damages, compared to nominal or compensatory damages, is to punish the tortfeasor for "outrageous conduct" and to further deter him and others like him from similar conduct in the future. Punitive damages are an additional award that should only be granted in exceptional circumstances.[86]

"[P]unitive damages are not a stand-alone claim . . . Rather, like any other type of damages — whether nominal, compensatory, liquidated, or exemplary — punitive damages are just one element of a cause of action."[87] Therefore, punitive damages may only be awarded in connection with an independent cause of action for a particular tort for which the defendant is found liable,[88] but the "existence of negligence alone is not sufficient" to support an award of punitive damages.[89]

Here, Guardian requests punitive damages in connection with its tort claim for conversion.[90] Guardian contends that Gumbs' pattern of criminal activity, namely Gumbs' repeated failure to transmit to Guardian premiums paid to him for Guardian insurance policies, constitutes outrageous conduct that "clearly evidences 'a reckless indifference to the rights of others,' particularly where [Gumbs'] actions caused numerous individuals 'to falsely believe they had obtained insurance coverage, when in fact they had not' . . . in violation of the public interest as set forth in 22 V.I.C. § 2."[91] Gumbs does not address this issue in his Opposition to Guardian's Motion for Summary Judgment, though Gumbs does complain that his sentence is unjust in

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[86] *Adams v. North West Co., Inc.*, 2015 V.I. LEXIS 123, *14-15 (V.I. Super. Ct. 2015) (internal quotation marks omitted) (internal and other citations omitted).
[87] *Der Weer v. Hess Oil Virgin Island Corp.*, 2014 V.I. LEXIS 109, *21-22 (V.I. Super. Ct. 2014) (citing *Anthony*, 58 V.I. at 227 n.4) (other citations omitted).
[88] *Adams*, 2015 V.I. LEXIS 123, at *16 ("A request for punitive damages is not an independent cause of action . . . but is a claim incidental to another cause of action") (citing *Molloy v. Independence Blue Cross*, 56 V.I. 155, 176 n.5 (V.I. 2012) (other citation omitted).
[89] *Hartzog v. United Corp.*, 2011 V.I. LEXIS 77, *6-7 (V.I. Super. Ct. Sept. 8, 2011) (citing *David v. Pueblo Supermarkets of St. Thomas, Inc.*, 740 F.2d 230, 237 (3d Cir. 1984)).
[90] *See* Compl. ¶ 35.
[91] Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., p. 10 (citing Pl.'s Exhibit 2 at 7).

comparison to that of the former Governor of the Virgin Islands, who "was given a slap on the wrist for defrauding the People of the Virgin Islands for five times the amount that Gumbs was allegedly convicted for with no jail time."[92] Nevertheless, the Court may only grant summary judgment when satisfied that "the evidence in the summary judgment records supports this relief," regardless of whether the non-movant submits a response.[93]

Though Guardian has referenced the underlying facts upon which Gumbs was convicted in the criminal proceedings, this does not demonstrate that there are no genuine issues of material fact regarding the imposition of punitive damages against Gumbs in this action. Notably, Guardian has demanded that this case be tried by a jury.[94] "A jury's assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation."[95] In assessing whether to impose punitive damages, "the trier of fact can properly consider the character of the defendant's act [and] the nature and extent of the harm . . . ."[96]

Whether Gumbs acted with "evil motive" or whether Gumbs' acts or omissions rose to the level of being reckless, so as to warrant an imposition of punitive damages for outrageous conduct, are factual questions that inherently involve credibility determinations and the weighing of evidence, which "are inappropriate to the legal conclusions necessary to a ruling on summary judgment[,]" as they are functions left to the sound discretion of the jury.[97] Indeed, "to permit[ ] a

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[92] Defs.' Opp'n to Pl.'s Mot. for Summary J., p. 4.
[93] *Vanterpool*, 63 V.I. at 583 (citing *Martin*, 54 V.I. at 389).
[94] *See* Compl. 5 V.I.C. § 321 ("The right of trial by jury as declared by the Seventh Amendment to the Constitution of the United States shall apply in civil actions in the District Court of the Virgin Islands, except as otherwise provided by law").
[95] *Hartzog*, 2011 V.I. LEXIS 77, at *6-7 (citing *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 432, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001)).
[96] *Id.* at *6 (citing RESTATEMENT (SECOND) OF TORTS § 902(2) (1979)).
[97] *Id.* at *9-10 (citations omitted); *See Anthony*, 58 V.I. at 234 and *Bertrand*, 63 V.I. at 778.

judge to substitute his view of the evidence for that of the jury" when determining a discretionary damages award is against this jurisdiction's "strong policy preference for civil cases to be adjudicated by a jury rather than a judge."[98]

As a result, genuine issues of material fact exist with respect to Guardian's request for punitive damages, which must be resolved by the fact finder at trial. Therefore, Guardian's Motion for Summary Judgment will be denied on the issue of punitive damages.

D. An Evidentiary Proceeding Must be Held on the Issue of Damages.

Despite that default has been entered against Gumbs, the amount of damages for which genuine issues of material fact remain "must be established in an evidentiary proceeding [where] the defendant is afforded the opportunity to contest the amount claimed."[99] An evidentiary proceeding to determine damages "is not required '[w]hen the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain,'"[100] but "damages are a 'sum certain' only in 'actions where the damages sought can be determined without resort to extrinsic proof.'"[101]

In ruling on Guardian's Motion for Summary Judgment, the Court has determined that Guardian is entitled, as a matter of law, to $88,560.84 in compensatory damages, as this amount was established in the criminal proceeding against Gumbs and ordered as restitution in the

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[98] *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, *61 (V.I. 2016) (citations omitted); *See id.* at *53, 61-62 (in declining to recognize remittitur, the Supreme Court of the Virgin Islands stated that "remittitur is wholly inconsistent with this Court's long-standing jurisprudence that questions of fact should be resolved by a jury, that a jury's factual determinations should be respected so long as there is a sufficient evidentiary basis, and that it is not the role of a judge to weigh the evidence when it has been submitted to a jury for a determination . . . in many cases the remittitur procedure will result in a judge having the final word on damages rather than a jury, not because the damages award was legally insufficient or contrary to due process, but 'simply because the court thinks that the verdict is too large'") (internal and other citations omitted).
[99] *Appleton*, 61 V.I. at 269 (citing *Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012) (internal quotation marks and citations omitted).
[100] *Id.* at 270 (citing SUPER. CT. R. 48(a)(1)).
[101] *Id.* (citing *Interstate Food Processing Corp. v. Pellerito Foods, Inc.*, 622 A.2d 1189, 1193 (Me. 1993)).

Judgment and Commitment. Thus, "as in 'actions on money judgments and negotiable instruments,'" these damages are certain and an evidentiary proceeding on the damages amounting to $88,560.84 is not necessary.[102] Therefore, Guardian is entitled to a civil judgment against Gumbs in the amount of $88,560.84 so that Guardian may collect the amount of restitution owed to it by Gumbs, as ordered in the Judgment and Commitment.[103] Gumbs has expressed concern that a civil judgment for the amount of restitution owed would result in double recovery,[104] but this is not the case, as an award of $88,560.84 in this action is for the recovery of the restitution ordered in the criminal proceeding, rather than in addition to it.

Notwithstanding, Guardian also seeks punitive damages, as well as other damages "in an amount to be proven at trial, equal to or exceeding" $88,560.84,[105] the amounts of which are not certain. Therefore, Guardian must prove any damages in excess of $88,560.84 at an evidentiary proceeding on damages.[106] However, as discussed, Guardian has demanded a jury trial. Therefore, as with a determination of Gumbs' liability for punitive damages, the Court cannot try the issue of damages in excess of $88,560.84 in a bench trial unless Guardian submits a waiver of jury trial.

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[102] *Id.* (citations omitted).

[103] *In re FirstBank P.R.*, 2008 V.I. Supreme LEXIS 43, *7 (V.I. 2008) ("Enforcement of judgments, generally, and issuance of writs of execution, specifically, are governed by title 5, chapter 43 of the Virgin Islands Code. Under these provisions, a money judgment creditor may request a writ of execution, and the clerk is required to issue the writ, subject to any provisions of the Virgin Islands Code, the Federal Rules of Civil Procedure and other applicable laws") (citing 5 V.I.C. §§ 471, 473); *See* 5 V.I.C. § 3671(c) ("If the judgment imposes a fine or penalty, whether alone or with any other kind of punishment, the judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil actions").

[104] Def.'s Opp'n to Pl.'s Mot. for Summary J., p. 1.

[105] Guardian requests "damages, in an amount to be proven at trial, together with statutory interest, punitive damages, costs and legal fees incurred in bringing this action, and such other and further relief as this Court deems just in the premises." Compl. at 5. *See* Compl. ¶¶ 26, 33; *See also* Pl.'s Mem. in Support of Pl.'s Mot. for Summary J., p. 11.

[106] The Court cannot address Guardian's request for statutory interest until a final assessment of damages is made, as the Court's discretion to grant or deny a request for prejudgment interest requires an assessment of whether "the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of the money which was legally due[,]" *Isaac*, 2015 V.I. LEXIS 15, at *40 (citations omitted); *See* 11 V.I.C. 951 (governing prejudgment interest), and the Court cannot assess postjudgment interest until rendering a final judgment "for the payment of monies." *See* 5 V.I.C. § 426 (governing postjudgment interest).

As a result, Guardian's Motion for Summary Judgment on the remaining issue of damages will be denied.

CONCLUSION

The foregoing makes clear that there are no genuine issues of material fact with respect to Guardian's claims against Gumbs for negligence and conversion and Guardian's entitlement to recover $88,560.84, the amount of restitution owed to Guardian under the Judgment and Commitment entered against Gumbs in the criminal proceeding. However, disputed material facts remain as to the issue of other damages, including, *inter alia*, the amount of any additional compensatory damages and punitive damages. Accordingly, Guardian's Motion for Summary Judgment will be granted only in part. A jury trial must be held with respect to the remaining issue of damages, unless Guardian submits a waiver of jury trial, in which case the remaining issue of damages may be tried by the Court in a bench trial.

An Order consistent with this Memorandum Opinion shall follow.

Dated: August 22, 2016

ATTEST: Estrella George
Acting Clerk of Court

by: for
Lori Boynes-Tyson
Court Clerk Supervisor 8/25/2016

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

CERTIFIED A TRUE COPY
DATE: Aug. 25, 2016
ESTRELLA H. GEORGE
Acting Clerk of the Court
By: ______
Cameil A. Clarke
Court Clerk II