

NAME SEARCHED: **Erika Kellerhals**

PWM BIS-RESEARCH performed due diligence research in accordance with the standards set by AML Compliance for your business. We completed thorough searches on your subject name(s) in the required databases and have attached the search results under the correct heading below. Significant negative media results may require escalation to senior business, Legal and Compliance management. Also, all accounts involving PEPs must be escalated.

Search:	Result:	Click here for results:	Reviewer Comments (as necessary):
RDC	<input checked="" type="checkbox"/> No Hit <input type="checkbox"/> Not Required <input type="checkbox"/> Hit	I. RDC Results	No RDC alert (Please see attached)
PCR	<input checked="" type="checkbox"/> No Hit <input type="checkbox"/> Not Required <input type="checkbox"/> Hit	II. PCR Results	No PCR alert (Please see attached)
BIS	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not Required	III. Negative Media	There was no information found
		IV. Non-Negative Media	There was no information found
		V. Other Language Media	Not Required
D&B	Results? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Required	VI. D&B	Not Required
Smartlinx	Results? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required	VII. Smartlinx	Result Found(please see attached)
Court Cases	<input checked="" type="checkbox"/> Review by Legal May be Required <input type="checkbox"/> No Results <input type="checkbox"/> Search not required	VIII. Court Cases	Result Found(please see attached)

Prepared by: Prachi Pawa Date: 10/12/2016
Research Analyst

Instructions:

1. Review and confirm that all results are returned for your client.
2. Please note that you are still required to perform any Martindale-Hubbell search (if applicable) on each search subject. We have attached the web link below for your convenience: [Martindale-Hubbellhttp://www.martindale.com/xp/Martindale/home.xml](http://www.martindale.com/xp/Martindale/home.xml)
3. As needed, provide comment for any negative results.
4. If applicable, please obtain clearance from Compliance for all alerts.
5. Save any changes you make to this document and attach file to your KYC.

Please note: Submission of a signed KYC is your confirmation that you have fully reviewed the research documents.

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OFAC RESULTS

RDC:

11593661	<u>No Match</u> <u>Found</u>	GCIS 00000483290	 Erika Kellerhals	Country:United States	Date of Birth: 10/13/1974
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PCR:

C20161034949193 Erika Kellerhals 12013248 NCA customised Auto-Closed No-Hit 12/10/2016

BIS RESULTS

Negative Media:

There was no information found

Non-Negative Media:

There was no information found

Other Language Media:

Not Required

Public Records:

1 OF 1 RECORD(S)

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Date:10/12/2016
Report processed by:
DEUTSCHE BANK AG||

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Full Name	Address	County	Phone
KELLERHALS, ERIKA A	242 BRYANT AVE STATEN ISLAND, NY 10306-3142 RICHMOND COUNTY	RICHMOND	(718) 667-1921

ADDITIONAL PERSONAL INFORMATION

SSN	DOB	Gender	LexID(sm)
074-72-XXXX	10/1974 (Age:41)		001368644215

Subject Summary


Name Variations

- 1: KELLERHALES, ERICKA A
- 2: KELLERHALLS, ERIKA A
- 3: KELLERHALS, E A
- 4: KELLERHALS, ERIKA
- 5: KELLERHALS, ERIKA A

SSNs Summary

No.	SSN	State Iss.	Date Iss.	Warnings
Most frequent SSN attributed to subject:				
1:	074-72-XXXX	New York	1987-1988	

Possible E-Mail Addresses


 ERIKA@MARJORIEROBERTSPC.COM
 EKELLAR@VT.EDU

Others Using SSN - 2 records found

#	Full Name	SSN	DOB
1:	KELLERHALS, ENER	074-72-XXXX	10/1974
11:	YOUNG, MICHAEL S	074-72-XXXX	

Address Summary - 12 records found

No.	Address
1:	242 BRYANT AVE STATEN ISLAND, NY 10306-3142 RICHMOND COUNTY
2:	9053 ESTATE THOMAS 101 ST THOMAS, VI 00802 ST. THOMAS COUNTY
3:	9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602 ST. THOMAS COUNTY
4:	9053 ESTATE THOMAS STE 10 ST THOMAS, VI 00802

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DB-SDNY-0020006
EFTA_00167750

EFTA01295847

- No. Address**
 ST. THOMAS COUNTY
- 5: PO BOX 608
 ST THOMAS, VI 00804-0608
 ST. THOMAS COUNTY
- 6: PO BOX 6347
 ST THOMAS, VI 00804-6347
 ST. THOMAS COUNTY
- 7: 9100 PORT OF SALE MALL STE 2
 ST THOMAS, VI 00802-3602
 ST. THOMAS COUNTY
- 8: 184 JORALEMON ST APT 1
 BROOKLYN, NY 11201-4329
 KINGS COUNTY
- 9: 184 JORALEMON ST APT 12R
 BROOKLYN, NY 11201-4329
 KINGS COUNTY
- 10: 187 JORALEMON ST APT 12R
 BROOKLYN, NY 11201-4306
 KINGS COUNTY
- 11: 242 BRYSON AVE
 STATEN ISLAND, NY 10314-1923
 RICHMOND COUNTY
- 12: 242 BYRNE AVE
 STATEN ISLAND, NY 10314-4409
 RICHMOND COUNTY

Address Details

1: 242 BRYANT AVE STATEN ISLAND, NY 10306-3142

Address
 242 BRYANT AVE
 STATEN ISLAND, NY 10306-3142
 RICHMOND COUNTY

Dates	Phone
2/1994 - 10/2016	(718) 667-1921

Census Data for Geographical Region

Median Head of Household Age: 47
 Median Income: \$82,353
 Median Home Value: \$584,337
 Median Education: 14 years

Household Members

DAHLING, MELISSA A
 KELLERHALS, EDWARD
 KELLERHALS, EDWARD A
 KELLERHALS, ENER
 KELLERHALS, KATHLEEN M

Other Associates

HANRATTY, THOMAS E

2: 9053 ESTATE THOMAS 101 ST THOMAS, VI 00802

Address
 9053 ESTATE THOMAS 101
 ST THOMAS, VI 00802

Dates	Phone
6/2016 - 8/2016	

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 EFTA_00167751

EFTA01295848

ST. THOMAS COUNTY

Household Members

None Listed

Other Associates

None Listed

3: 9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602**Address**9100 PORT OF SALE MALL STE 15
ST THOMAS, VI 00802-3602
ST. THOMAS COUNTY**Household Members**

None Listed

Other Associates

BETZ, SHAUNA L

Dates

12/2003 - 6/2016

Phone**4: 9053 ESTATE THOMAS STE 10 ST THOMAS, VI 00802****Address**9053 ESTATE THOMAS STE 10
ST THOMAS, VI 00802
ST. THOMAS COUNTY**Household Members**

None Listed

Other Associates

None Listed

Dates

5/2016 - 5/2016

Phone**5: PO BOX 608 ST THOMAS, VI 00804-0608****Address**PO BOX 608
ST THOMAS, VI 00804-0608
ST. THOMAS COUNTY**Household Members**

KELLERHALS, EDWARD A

Other Associates

FERGUSON, GREG J

Dates

3/2004 - 11/2015

Phone**6: PO BOX 6347 ST THOMAS, VI 00804-6347****Address**PO BOX 6347
ST THOMAS, VI 00804-6347
ST. THOMAS COUNTY**Household Members**

KELLERHALS, EDWARD A

Other Associates

FERGUSON, GREG J

Dates

3/2004 - 4/2009

Phone**7: 9100 PORT OF SALE MALL STE 2 ST THOMAS, VI 00802-3602****Address**9100 PORT OF SALE MALL STE 2
ST THOMAS, VI 00802-3602
ST. THOMAS COUNTY**Household Members**

KELLERHALS, EDWARD A

Other Associates

None Listed

Dates

7/2003 - 6/2004

Phone**8: 184 JORALEMON ST APT 1 BROOKLYN, NY 11201-4329****Address****Dates****Phone**

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EFTA_00167752

EFTA01295849

184 JORALEMON ST APT 1
 BROOKLYN, NY 11201-4329
 KINGS COUNTY

11/1997 - 11/1997

Census Data for Geographical Region

Median Head of Household Age: 34
 Median Income: \$127,273
 Median Home Value: \$741,587
 Median Education: 18 years

Household Members

None Listed

Other Associates

None Listed

9: 184 JORALEMON ST APT 12R BROOKLYN, NY 11201-4329

Address

184 JORALEMON ST APT 12R
 BROOKLYN, NY 11201-4329
 KINGS COUNTY

Dates **Phone**
 10/1997 - 11/1997

Census Data for Geographical Region

Median Head of Household Age: 34
 Median Income: \$127,273
 Median Home Value: \$741,587
 Median Education: 18 years

Household Members

None Listed

Other Associates

None Listed

10: 187 JORALEMON ST APT 12R BROOKLYN, NY 11201-4306

Address

187 JORALEMON ST APT 12R
 BROOKLYN, NY 11201-4306
 KINGS COUNTY

Dates **Phone**
 2/1994 - 10/1997

Census Data for Geographical Region

Median Head of Household Age: 34
 Median Income: \$127,273
 Median Home Value: \$741,587
 Median Education: 18 years

Household Members

KELLERHALS, KATHLEEN M

Other Associates

None Listed

11: 242 BRYSON AVE STATEN ISLAND, NY 10314-1923

Address

242 BRYSON AVE
 STATEN ISLAND, NY 10314-1923
 RICHMOND COUNTY

Dates **Phone**
 2/1994 - 2/1994

Census Data for Geographical Region

Median Head of Household Age: 47
 Median Income: \$74,028
 Median Home Value: \$483,978
 Median Education: 13 years

Household Members

None Listed

Other Associates

None Listed

12: 242 BYRNE AVE STATEN ISLAND, NY 10314-4409

Address

Dates **Phone**

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242 BYRNE AVE
STATEN ISLAND, NY 10314-4409
RICHMOND COUNTY

2/1994 - 2/1994

Census Data for Geographical Region

Median Head of Household Age: 42
Median Income: \$95,399
Median Home Value: \$462,729
Median Education: 13 years

Household Members

None Listed

Other Associates

None Listed

Voter Registrations - 1 records found

1: New York Voter Registration

Registrant Information

Name: KELLERHALS, ERIKA A

Residential Address: 242 BRYANT AVE
STATEN ISLAND, NY 10306-3142
RICHMOND COUNTY

SSN: 074-72-XXXX

Date of Birth: 10/1974

Gender: Female

Voter Information

Last Vote Date: 2002

Party Affiliation: DEMOCRAT

Active Status: ACTIVE

Driver Licenses - 0 records found

Professional Licenses - 1 records found

1: Professional License

Licensee Information

Name: KELLERHALS, ERIKA ANN

SSN: 074-72-XXXX

Address: 9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602

County: ST. THOMAS

Phone: (340) 779-2564

Gender: FEMALE

License Information

License Type: 105284

Issue Date: 02/10/2015

Status: OTHERS

Health Care Providers - 0 records found

Health Care Sanctions - 0 records found

Pilot Licenses - 0 records found

Sport Licenses - 0 records found

Real Property - 0 records found

Motor Vehicle Registrations - 2 records found

1: NY MVR

Registrant Information

Registrant: KELLERHALS, ERIKA A

DOB: 10/1974

Address: 242 BRYANT AVE
STATEN ISLAND, NY 10306-3142
RICHMOND COUNTY

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DB-SDNY-0020010

EFTA_00167754

EFTA01295851

Registration Information

Original Registration Date: 1/30/2002
 Registration Date: 1/30/2002
 Registration Expiration Date: 1/29/2004

Vehicle Information

VIN: WWYPD63B42P171962
 Class: PASSENGER CAR/LIGHT TRUCK
 Model Year: 2002
 Make: Volkswagen
 Model: Passat
 Series: GLS
 Body Style: Sedan 4 Door
 Weight: 3196

Plate Information

License Plate Type: Private
 License Plate Number: AHG1059
 Plate State: NY

Source Information

Data Source: GOVERNMENTAL

2: NY MVR

Vehicle Information

VIN: WWYPD63B42P171962
 Class: PASSENGER CAR/LIGHT TRUCK
 Model Year: 2002
 Make: Volkswagen
 Model: Passat
 Series: GLS
 Body Style: Sedan 4 Door
 Weight: 3196

Owner Information

Name: KELLERHALS, ERIKA A
 DOB: 10/1974
 Address: 242 BRYANT AVE
 STATEN ISLAND, NY 10306-3142
 RICHMOND COUNTY

Lienholder Information

Name: CHASE MANHATTAN BANKUSA NA
 Address: PO BOX 5210
 NEW HYDE PARK, NY 11042-5210
 NASSAU COUNTY

Title Information

Title Transfer Date: 3/6/2002
 Title Issue Date: 3/6/2002

Source Information

Data Source: GOVERNMENTAL

- Boats - 0 records found**
- Aircraft - 0 records found**
- Bankruptcy Information - 0 records found**
- Judgments/Liens - 0 records found**
- UCC Liens - 0 records found**
- Fictitious Businesses - 0 records found**
- Notice Of Defaults - 0 records found**
- Potential Relatives - 10 records found**

1st Degree: 6, 2nd Degree: 4

No.	Full Name	Address/Phone
1.	KELLERHALS, ENER	184 JORALEMON ST

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No.	Full Name	Address/Phone
	SSN:074-72-XXXX DOB:10/1974 (Age: 41)	BROOKLYN, NY 11201-4329 242 BRYANT AVE STATEN ISLAND, NY 10306-3142 (718) 667-1921
2.	KELLERHALS, EDWARD A • AKA RELLERMALS, EDWARD A • AKA KELLERNALS, EDW SSN:063-36-XXXX DOB:7/1944 (Age: 72)	242 BRYANT AVE STATEN ISLAND, NY 10306-3142 (718) 667-1921 102 LINCOLN AVE STATEN ISLAND, NY 10306-2459 PO BOX 608 ST THOMAS, VI 00804-0608 PO BOX 6347 ST THOMAS, VI 00804-6347 9100 PORT OF SALE MALL STE 2 ST THOMAS, VI 00802-3602
3.	KELLERHALS, KATHLEEN M • AKA KELLERHAL, KATHLEEN M • AKA KELLERHALS, KATHLEEN • AKA KELLERHALS, K M • AKA KELLERHALS, KATHEEN • AKA KELLERBALS, KATHLEEN M • AKA KELLERHALS, KATHLEEN M SSN:063-36-XXXX DOB:6/1949 (Age: 67)	242 BRYANT AVE STATEN ISLAND, NY 10306-3142 (718) 667-1921 256 BRYANT AVE STATEN ISLAND, NY 10306-3142 (718) 351-1242 184 JORALEMON ST STE 12R BROOKLYN, NY 11201-4329 187 JORALEMON ST APT 12R BROOKLYN, NY 11201-4306
4.	KELLERHALS, EDWARD	242 BRYANT AVE STATEN ISLAND, NY 10306-3142 (718) 667-1921 (718) 979-7823
5.	DAHLING, ROBERT J SSN:133-60-XXXX DOB:4/1971 (Age: 45)	196 RICE AVE STATEN ISLAND, NY 10314-3032 (718) 273-7338 413 HEBERTON AVE STATEN ISLAND, NY 10302-2125 PO BOX 61494 STATEN ISLAND, NY 10306-7494 46 BACHE AVE STATEN ISLAND, NY 10306-3010 (718) 351-1586 76 PRINCETON AVE STATEN ISLAND, NY 10306-2816 (718) 987-7331 (718) 987-7685

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EFTA_00167756

EFTA01295853

No.	Full Name	Address/Phone
5.A.	DAHLING, ROBERT J	196 RICE AVE STATEN ISLAND, NY 10314-3032 (718) 273-7338 (718) 979-0174
	SSN:080-34-XXXX DOB:11/1940 (Age: 75)	46 BACHE AVE STATEN ISLAND, NY 10306-3010 (718) 351-1586 (718) 979-0174
		76 PRINCETON AVE STATEN ISLAND, NY 10306-2816 (718) 987-7331 (718) 987-7685
5.B.	DAHLING, PATRICIA M	196 RICE AVE STATEN ISLAND, NY 10314-3032 (718) 273-7338
	• AKA DAHLING, P	359 DEMOREST AVE STATEN ISLAND, NY 10314-2161 (347) 861-0330
	SSN:106-34-XXXX DOB:3/1943 (Age: 73)	5 BOWEN ST APT STATEN ISLAND, NY 10304-3513
5.C.	DAHLING, MICHAEL A	4926 E AMELIA AVE PHOENIX, AZ 85018-5523
	• AKA DAHLIG, MICHAEL	15822 W PAPAGO ST GOODYEAR, AZ 85338-3340
	SSN:133-60-XXXX DOB:6/1974 (Age: 42)	1207 E SECRETARIAT DR TEMPE, AZ 85284-1611
		5050 W IVANHOE ST CHANDLER, AZ 85226-1964
5.D.	MAYFIELD, JESSICA E	196 RICE AVE STATEN ISLAND, NY 10314-3032 (718) 273-7338
	• AKA DAHLING, JESSICA A	3516 E PICCADILLY RD PHOENIX, AZ 85018-5116
	• AKA MAYFIELD, JESSIE	4926 E AMELIA AVE PHOENIX, AZ 85018-5523
	• AKA MAYFIELD, JESSI	300 W BEECH ST UNIT 1504 SAN DIEGO, CA 92101-8450
	• AKA MORRIS, JESSICA	6945 E 2ND ST APT 4 SCOTTSDALE, AZ 85251-5339 (480) 994-7352 (760) 685-6573
• AKA BUCCOLA, JESSIE	2395 CARRIAGE CIR OCEANSIDE, CA 92056-3605	
SSN:605-09-XXXX DOB:11/1977 (Age: 38)		
6.	DAHLING, MELISSA A	46 BACHE AVE

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No.	Full Name	Address/Phone
	• AKA KELLERHALS, MELISSA A	STATEN ISLAND, NY 10306-3010 (718) 351-1586
	SSN:087-70-XXXX DOB:12/1971 (Age: 44)	46 BEACH AVE STATEN ISLAND, NY 10306-1915
		242 BRYANT AVE STATEN ISLAND, NY 10306-3142 (718) 667-1921
		76 PRINCETON AVE STATEN ISLAND, NY 10306-2816 (718) 987-7331 (718) 987-7685

Business Associates - 2 records found**1: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC**

Name: KELLERHALS, ERIKA A

Address: 501 E KENNEDY BLVD STE 802
TAMPA, FL 33602-5201

Status: ACTIVE

State: FL

Corporation Number: M13000002984

Descriptive Status: ACTIVE

Title: MEMBER MANAGER

Record Type: CURRENT

Record Date: 10/28/2013

2: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC

Name: KELLERHALS, ERIKA A

Address: 501 E KENNEDY BLVD STE 802
TAMPA, FL 33602-5201

Status: INACTIVE

State: FL

Corporation Number: M13000002984

Descriptive Status: INACTIVE

Title: MEMBER MANAGER

Record Type: CURRENT

Record Date: 8/4/2016

Filing Date: 1/6/2014

Person Associates - 7 records found

No.	Full Name	Address	SSN	Phone	DOB
1:	BETZ, SHAUNA L	9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602	522-69-XXXX		12/1981
		6501 RED HOOK PLZ STE 201 ST THOMAS, VI 00802-1373			
		5600 ROYAL DANE MALL STE 51 ST THOMAS, VI 00802-6410			
		148 W MAPLE AVE DENVER, CO 80223-1841			

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No.	Full Name	Address	SSN	Phone	DOB
		1576 S JERSEY ST DENVER, CO 80224-1935			
2:	FERGUSON, GREG J FERGUSON, GREGORY J	9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602 PO BOX 12259 ST THOMAS, VI 00801-5259 PO BOX 608 ST THOMAS, VI 00804-0608 PO BOX 6347 ST THOMAS, VI 00804-6347	601-42-XXXX	(480) 831-6166	4/1976
3:	HANRATTY, THOMAS E	2422 W PECOS AVE MESA, AZ 85202-7821 256 BRYANT AVE H STATEN ISLAND, NY 10306-3142 242 BRYANT AVE STATEN ISLAND, NY 10306-3142 102 LINCOLN AVE STATEN ISLAND, NY 10306-2459	123-20-XXXX	(718) 667-1921 (718) 987-5316 (718) 987-5316	1/1928
4:	ROBINSON, KELLY M TRAYNOR, KELLY	9100 PORT OF SALE MALL STE 22 ST THOMAS, VI 00802-3602 9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602 4600 ESTATE CHARLOTTE AMALIE ST THOMAS, VI 00802-2305 2369 KRONPRINDESENS GADE STE 8 ST THOMAS, VI 00802-6252 3219 CONTANT STE 211 ST THOMAS, VI 00802-6111	134-56-XXXX		7/1973

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EFTA_00167759

EFTA01295856

No.	Full Name	Address	SSN	Phone	DOB
5:	TRAYNOR, CARA ROBINSON, CARA	9100 PORT OF SALE MALL STE 22 ST THOMAS, VI 00802-3602	052-60-XXXX		7/1976
		9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602			
		4600 ESTATE CHARLOTTE AMALIE ST THOMAS, VI 00802-2305			
		2369 KRONPRINDSENS GADE STE NO8 ST THOMAS, VI 00802-6252			
		3219 CONTANT STE 211 ST THOMAS, VI 00802-6111			
6:	GEARY, BRETT A A	17724 MINE RD DUMFRIES, VA 22025-2003	580-23-XXXX	(703) 221-2506 (703) 445-9194	
		9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602			
		9100 PORT OF SALE MALL STE 22 ST THOMAS, VI 00802-3602			
		PO BOX 305259 ST THOMAS, VI 00803-5259			
		15211 STREAMSIDE CT DUMFRIES, VA 22025-3022			
7:	THOMAS, WILLIAM AVERY	10204 MAPLERIDGE DR DALLAS, TX 75238-2257	451-83-XXXX		10/1984
		2900 CHAUTAUQUA AVE APT 255 NORMAN, OK 73072-7715			
		2900 CHAUTAUQUA AVE APT 2 NORMAN, OK 73072-7723			
		1020 W 4TH AVE APT 13 STILLWATER, OK 74074-3337			

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DB-SDNY-0020016

EFTA_00167760

EFTA01295857

No.	Full Name	Address	SSN	Phone	DOB
		9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802- 3602			

Neighbors - 10 records found

242 BRYANT AVE STATEN ISLAND, NY 10306-3142

Name	Address	Phone
CAHILL, JAMES BRIAN CARDO, ERICA	235 BRYANT AVE STATEN ISLAND, NY 10306-3103	(718) 987-5658
BURKE, MATTHEW J	235 BRYANT AVE APT 2 STATEN ISLAND, NY 10306-3103	
ASSENZA, CHRISTOPHER M ASSENZA, MICHAEL P CIRIGLIANO, MICHAEL EDWARD CIRIGLIANO, SUZANNE	241 BRYANT AVE STATEN ISLAND, NY 10306-3143	(718) 979-2166
MIRO, FRANK AGUSTIN PACCIONE, PAMELA J	243 BRYANT AVE STATEN ISLAND, NY 10306-3143	(718) 979-6876
GLAZAROV, MICHELLE J LEOKUMOVICH, BORIS	245 BRYANT AVE STATEN ISLAND, NY 10306-3143	(718) 667-1705
KRUSE, ADAM M KRUSE, BRANDON G KRUSE, DONNA V KRUSE, JOHN J KRUSE, VICTORIA M	250 BRYANT AVE STATEN ISLAND, NY 10306-3142	(718) 351-8871
CUSACK, C J	251 BRYANT AVE STATEN ISLAND, NY 10306-3143	(718) 351-3510
CUSACK, MARIE E	251 BRYANT AVE APT H STATEN ISLAND, NY 10306-3143	(718) 351-3510
GILLIUM, MAUREEN A MCMILLAN, ROBERT M	256 BRYANT AVE STATEN ISLAND, NY 10306-3142	(718) 351-1242
RAMIN, DENISE A	257 BRYANT AVE APT STATEN ISLAND, NY 10306-3136	(347) 286-0615

Employment Locator - 14 records found

1:

Company Name: THERAPY ASSOCIATION AND DISABILITIES ADVOCATES INC
Name: KELLERHALS, ERIKA A

Address: PO BOX 6016
ST THOMAS, VI 00804-6016

SSN: 074-72-XXXX**Confidence:** High

2:

Company Name: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC
Name: KELLERHALS, ERIKA A

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- 3: **Title:** MEMBER MANAGER
 SSN: 074-72-XXXX
 Confidence: Medium
- Company Name:** THE MAHOGANY RUN HOME OWNER'S ASSOCIATION
 Name: KELLERHALS, ERIKA A
- Title:** VICE PRESIDENT AND DIRECTOR
 Address: 6501 RED HOOK PLZ STE 201
 ST THOMAS, VI 00802-1373
 SSN: 074-72-XXXX
 Phone: (340) 626-5890
 Confidence: Medium
- 4: **Company Name:** PATIENT ASSIST VI
 Name: KELLERHALS, ERIKA A
- Address:** 9100 PORT OF SALE MALL STE 15
 ST THOMAS, VI 00802-3602
 SSN: 074-72-XXXX
 Confidence: High
- 5: **Company Name:** VISF
 Name: KELLERHALS, ERIKA A
- Title:** VICE PRESIDENT
 Address: PO BOX 1605
 KINGSHILL, VI 00851-1605
 SSN: 074-72-XXXX
 Phone: (304) 692-3310
 Confidence: Medium
- 6: **Company Name:** KELLERHALS P.C
 Name: KELLERHALS, ERIKA A
- Title:** PARTNER
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 SSN: 074-72-XXXX
 Phone: (340) 779-2564
 Confidence: Medium
- 7: **Company Name:** THERAPY ASSOCIATION AND DISABILITIES ADVOCATES INC
 Name: KELLERHALS, ERIKA A
- Address:** PO BOX 608
 ST THOMAS, VI 00804-0608
 SSN: 074-72-XXXX
 Confidence: High
- 8: **Company Name:** ERIKA A. KELLERHALS P.C
 Name: KELLERHALS, ERIKA A
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 SSN: 074-72-XXXX
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 Confidence: Medium
- 9: **Company Name:** ERIKA A. KELLERHALS P.C
 Name: KELLERHALS, ERIKA

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- Title:** PRESIDENT
Address: PO BOX 608
 ST THOMAS, VI 00804-0608
SSN: 074-72-XXXX
Phone: (340) 779-2564
Confidence: Medium
- 10: **Company Name:** MARJORIE RAWLS ROBERTS P.C
Name: KELLERHALS, ERIKA A
- Title:** ATTORNEY
Address: PO BOX 6347
 ST THOMAS, VI 00804-6347
SSN: 074-72-XXXX
Phone: (340) 776-7235
Confidence: Medium
- 11: **Company Name:** ROBERTS, MARJORIE RAWLS
Name: KELLERHALS, ERIKA A
- Title:** ASSOCIATE
Address: PO BOX 6347
 ST THOMAS, VI 00804-6347
SSN: 074-72-XXXX
Phone: (340) 776-7235
Confidence: High
- 12: **Company Name:** THE LALTJ LIMITED PARTNERSHIP
Name: KELLERHALS, ERIKA MS
- Title:** CONTACT
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 NEW YORK, NY 10004-1501
SSN: 074-72-XXXX
Confidence: High
- 13: **Company Name:** ERIKA A. KELLERHALS, P.C.
Name: KELLERHALS, ERIKA A
- Title:** MEMBER
SSN: 074-72-XXXX
Phone: (340) 779-2564
Confidence: High
- 14: **Company Name:** MARJORIE RAWLS ROBERTS P.C
Name: KELLERHALS, ERIKA A
- Address:** PO BOX 6347
 ST THOMAS, VI 00804-6347
SSN: 074-72-XXXX
Phone: (340) 776-7235
Confidence: Medium

Criminal Filings - 0 records found**Cellular & Alternate Phones - 1 records found**

1:

Personal Information

Name: KELLERHALS, ERIKA

Address: 102 LINCOLN AVE
 STATEN ISLAND, NY 10306-2459

Phone Number: (340) 690-0891
Phone Type: Mobile

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Carrier Information

Carrier: NEW CINGULAR WRLS GA
Carrier City: CHARLOTTE AMALIE (SAINT T
Carrier State: VI

Sources - 44 records found

All Sources	44 Source Document(s)
Corporate Affiliations	2 Source Document(s)
Email addresses	7 Source Document(s)
Historical Person Locator	7 Source Document(s)
Motor Vehicle Registrations	3 Source Document(s)
Person Locator 1	11 Source Document(s)
Person Locator 2	4 Source Document(s)
Phone	4 Source Document(s)
PhonesPlus Records	1 Source Document(s)
Professional Licenses	1 Source Document(s)
Utility Locator	3 Source Document(s)
Voter Registrations	1 Source Document(s)

D&B:

Not Required

LEGAL RESULTS:

Court Cases:

IN RE: JEFFREY J. PROSSER, Debtor. NORTH SHORE REAL ESTATE CORPORATION, Appellant, v. JAMES P. CARROLL, CHAPTER 7 TRUSTEE, Appellee.

Chapter 7, Case No. 06-30009 (JFK), Civil No. 2010-70

United States District Court for the District of the Virgin Islands, St. Thomas & St. John Division

2012 U.S. Dist. LEXIS 93633

July 6, 2012, Filed

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PRIOR HISTORY: Carroll v. N. Shore Real Estate Corp. (In re Prosser), 2010 Bankr. LEXIS 1566 (Bankr. D.V.I., May 26, 2010)

CASE SUMMARY:

OVERVIEW: Appellant filed a notice of appeal from a decision of the bankruptcy court. Appellee trustee moved to dismiss the appeal for failure to prosecute under Fed. R. Bankr. P. 8001(a). Of the six Poulis factors, five weighed in favor of dismissal and one weighed against dismissal. The court took into account the possibility that appellant's counsel had some of the responsibility for its failure to follow the court's scheduling order. Nonetheless, on balance, the Poulis factors demonstrated that dismissal of the appeal was an appropriate sanction for appellant's failure to file its brief.

OUTCOME: Motion to dismiss granted.

CORE TERMS: summary judgment, scheduling, reconsideration, deadline, weigh, failure to prosecute, designation, discovery, failure to comply, affirming, bankruptcy proceedings, extension of time, general denials, citations omitted, genuine issue, effectiveness, reconsider, notice of appeal, failure to follow, bad faith, financial resources, deemed admitted, dilatoriness, non-moving, willful, incur, Bankruptcy Rules, matter of law, personal responsibility, clear error

LexisNexis(R) Headnotes

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN1] Under Fed. R. Bankr. P. 8001(a), the district court is empowered to dismiss an appeal for failure to prosecute or otherwise follow the procedures set out in the Bankruptcy Rules. Before such a dismissal occurs, a district court must consider six factors outlined in Poulis v. State Farm Fire and Cas. Co. In Poulis, the U.S. Court of Appeals for the Third Circuit stated that a district court must balance the following factors: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN2] An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk within the time allowed by Fed. R. Bankr. P. 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. Fed. R. Bankr. P. 8001(a) (2011).

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

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[HN3] Not all of the Poulis factors need be met for a district court to find dismissal is warranted. However, courts must consider and balance all six Poulis factors before dismissing a case with prejudice, and all doubts must be resolved in favor of an adjudication on the merits.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN4] Dismissal typically occurs in cases showing consistently dilatory conduct or the complete failure to take any steps other than the mere filing of a notice of appeal.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN5] A client's lack of responsibility for its counsel's dilatory conduct is not dispositive on a motion to dismiss for failure to prosecute, because a client cannot always avoid the consequences of the acts or omissions of its counsel.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN6] Prejudice for the purpose of the Poulis factors does not mean irremediable harm. Rather, the burden imposed by impeding the opposing party's ability to prepare a meaningful litigation strategy has been held to be sufficiently prejudicial.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN7] The third Poulis factor considers the appellant's history of dilatoriness.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN8] Either of these violations--failing to comply with the Bankruptcy Rules for filing a brief within 15 days of the docketing of his appeal or providing for the transcript of the bankruptcy court proceedings--is grounds for a dismissal under Fed. R. Bankr. P. 8001.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN9] The fourth Poulis factor considers whether the conduct of the appellant or of the appellant's attorney was willful or in bad faith.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN10] The fifth Poulis factor assesses the effectiveness of sanctions other than dismissal.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN11] The sixth Poulis factor considers the meritoriousness of the appellant's claim. Ordinarily, a claim, or defense, will be deemed meritorious when the allegations of the motion, if established, would support recovery by plaintiff or would constitute a complete defense.

Bankruptcy Law > Practice & Proceedings > Adversary Proceedings > Judgments & Remedies

Bankruptcy Law > Practice & Proceedings > Appeals > Standards of Review > General Overview

Civil Procedure > Summary Judgment > Standards > General Overview

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[HN12] In reviewing a determination of a bankruptcy court's grant of summary judgment, a reviewing court subjects the bankruptcy court's legal determinations to plenary review, reviewing its factual findings for clear error, and considering its exercise of discretion for abuse thereof. A bankruptcy court may grant summary judgment if 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. Fed. R. Civ. P. 56(c).

Civil Procedure > Summary Judgment > Burdens of Production & Proof > General Overview

[HN13] The movant has the initial burden of showing that there is no genuine issue of material fact. Once the initial burden is met it shifts to the non-moving party to establish specific facts showing there is a genuine issue for trial. The non-moving party may not rest upon mere allegations, general denials, or vague statements. There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party.

Civil Procedure > Summary Judgment > Evidence

[HN14] At the summary judgment stage, the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. In making this determination, the court draws all reasonable inferences in favor of the non-moving party.

Bankruptcy Law > Practice & Proceedings > Adversary Proceedings > Discovery Civil Procedure > Discovery > Methods > Admissions > General Overview

[HN15] Fed. R. Bankr. P. 7036 provides that Fed. R. Civ. P. 36 applies in adversary bankruptcy proceedings.

Civil Procedure > Discovery > Methods > Admissions > Responses

[HN16] See Fed. R. Civ. P. 36(a)(3), (a)(4).

Civil Procedure > Discovery > Methods > Admissions > Responses

[HN17] Under Fed. R. Civ. P. 36, specific denials which fairly respond to the substance of the matter are required.

Civil Procedure > Discovery > Methods > Admissions > General Overview

Civil Procedure > Summary Judgment > Supporting Materials > Discovery Materials

[HN18] The U.S. Court of Appeals for the Third Circuit has long recognized that deemed admissions are sufficient to support orders of summary judgment.

Bankruptcy Law > Case Administration > Examiners, Officers & Trustees > Preferential Transfers > Elements > General Overview

[HN19] To establish a claim for avoidance of a preferential transfer pursuant to 11 U.S.C.S. § 547, a party must establish that the transfer was: 1. to or for the benefit of a creditor; 2. for or on account of an antecedent debt owed by the debtor before such transfer was made; 3. made while the debtor was insolvent; 4. made – on or within 90

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days before the date of the filing of the petition; 5. that enables such creditor to receive more than such creditor would receive if -- a. the case were a case under Chapter 7 of this title; b. the transfer had not been made; and c. such creditor received payment of such debt to the extent provided by the provisions of this title. 11 U.S.C.S. § 547(b).

Bankruptcy Law > Case Administration > Examiners, Officers & Trustees > Fraudulent Transfers > Elements

[HN20] To establish a claim for avoidance of a fraudulent transfer pursuant to 11 U.S.C.S. § 548(a)(1)(B), a party must show that within two (2) years of the petition date, the debtor received less than a reasonably equivalent value in exchange for such transfer or obligation, and: 1. was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as result of such transfer or obligation; 2. was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; 3. intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or 4. made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

Bankruptcy Law > Case Administration > Examiners, Officers & Trustees > Fraudulent Transfers > General Overview

[HN21] To establish a claim for the avoidance of a fraudulent transfer pursuant to 11 U.S.C.S. § 548(a)(1)(A), a party must show that within two years of the petition date, the debtor made such transfer or incurred such obligation with intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

Bankruptcy Law > Case Administration > Examiners, Officers & Trustees > Postpetition Transactions

[HN22] To establish a claim for the recovery of a post-petition transfer pursuant to 11 U.S.C.S. § 549, the appropriate inquiry is: (1) whether a transfer of property occurred; (2) whether the property transferred was property of the estate; (3) whether the transfer occurred after commencement of the bankruptcy case; and (4) whether the transfer was authorized by the Bankruptcy Code.

Civil Procedure > Summary Judgment > Burdens of Production & Proof > Nonmovants

[HN23] See Fed. R. Civ. P. 56(e).

Bankruptcy Law > Practice & Proceedings > Appeals > Standards of Review > General Overview

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend

[HN24] A bankruptcy court's denial of an appellant's motion for reconsideration is generally reviewed for abuse of discretion. However, to the extent that the denial of reconsideration is predicated on an issue of law, such an award is reviewed de novo; to the extent that the

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trial court's disposition of the reconsideration motion is based upon a factual finding, it is reviewed for clear error.

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend
[HN25] See D.V.I., R. 7.3.

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend
[HN26] The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Such motions are not substitutes for appeals, and are not to be used as a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend
[HN27] A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures
[HN28] A claim will be deemed meritorious when the allegations, if established, would support recovery by the claimant.

COUNSEL: [*1] Jeffrey B. C. Moorhead, Esq., Jeffrey B. C. Moorhead, P.C., St. Croix, USVI, *For North Shore Real Estate Corp.*

Christopher A. Kroblin, Esq., Erika Kellerhals, P.C., St. Thomas, USVI, *For North Shore Real Estate Corp.*

Bernard C. Pattie, Esq., Law Offices of Barnard Pattie, P.C., St. Croix, USVI, *For James P. Carroll.*

Fred Stevens, Esq., Fox Rothschild LP, New York, NY, *For James P. Carroll.*

JUDGES: GÓMEZ, *Chief Justice.*

OPINION BY: Curtis V. Gómez

OPINION

MEMORANDUM OPINION

(July 6, 2012)

Before the Court is the motion by James P. Carroll to dismiss this appeal for lack of prosecution.

I. FACTUAL AND PROCEDURAL BACKGROUND

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On June 30, 2010, North Shore Real Estate Corporation ("North Shore") filed a notice of appeal from the May 26, 2010, judgment of the United States Bankruptcy Court for the District of the Virgin Islands (the "Bankruptcy Division"), and the June 9, 2010, order of the Bankruptcy Division denying North Shore's motion for reconsideration. On July 9, 2010, the Court entered an Order stating that:

Appellant shall, not later than 10 days after the date of this Order, file and serve on the other parties the designation of record and statement of the issues to be presented, [*2] failing which the Appeal may be dismissed for failure to prosecute

...

Appellant's brief shall be filed and served within 30 days of the date of this Order, or if the designated record includes a transcript, within 15 days after the transcript is filed, whichever comes later

(Order 1-2, July 9, 2010, ECF No. 2).

North Shore did not file a designation of record nor a statement of the issues within the time provided in the July 9, 2010, order. North Shore did not file its brief within the time provided in the order.

On March 9, 2011, North Shore filed a motion for leave to file an untimely designation of record, statement of issues, and brief. North Shore attached to its motion a designation of record and statement of issues. North Shore did not attach a brief.

Subsequently, James P. Carroll, Chapter 7 Trustee ("Carroll"), filed a motion to dismiss this matter for lack of prosecution. North Shore did not file an opposition.

On March 28, 2012, this Court entered an order stating that:

... North Shore shall, not later than April 2, 2012, file and serve on James P. Carroll the designation of record and a statement of issues to be presented, failing which this appeal may be dismissed [*3] for failure to prosecute...

... North Shore's brief shall, not later than April 10, 2012, be filed and served on James P. Carroll, failing which this appeal may be dismissed for failure to prosecute...

(March 28, 2012, Order 3-4, ECF No. 8).

The Court found as moot the motions filed by North Shore and Carroll.

North Shore did not file a designation of record nor a statement of the issues within the time provided in the March 28, 2012, order. North Shore did not file its brief within the time provided in the order.

Carroll now moves again for dismissal of this appeal for lack of prosecution. North Shore has not filed an opposition.

II. DISCUSSION

[HN1] "Under Rule 8001(a) ' of the Federal Rules of Bankruptcy Procedure, the District Court is empowered to dismiss an appeal for failure to prosecute or otherwise follow the procedures set out in the Bankruptcy Rules." *In re Richardson Industrial Contractors, Inc.*, 189 Fed. Appx. 93, at *96 (3d Cir. 2006). Before such a dismissal occurs, however, a district court must consider six factors outlined in *Poullis v. State Farm Fire and Cas. Co.*,

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747 F.2d 863, 868 (3d Cir. 1984) [hereinafter *Poullis*]. In *Poullis*, the Third Circuit stated that a district court [*4] must balance the following factors:

1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Id. (explaining that "dismissal is a drastic sanction and should be reserved for those cases where there is a clear record of delay or contumacious conduct by the plaintiff")(alteration in original); see also *In re E Toys Inc.*, 263 Fed. Appx. 235, 237 (3d Cir. 2008) (affirming the district court's dismissal of a bankruptcy appeal for failure to prosecute upon consideration of the *Poullis* factors).

1 [HN2] "An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel ... shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal [*5] does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal... ." FED. R. BANKR. P. 8001(a) (2011).

[HN3] "Not all of the[] *Poullis* factors need be met for a district court to find dismissal is warranted." *Hicks v. Feeney*, 850 F.2d 152, 156 (3d Cir. 1988). However, courts must consider and balance all six *Poullis* factors before dismissing a case with prejudice, and all doubts must be resolved in favor of an adjudication on the merits. See \$8,221,877.16 in *U.S. Currency*, 330 F.3d 141, 161 (3d Cir. 2003) ("[W]e have always required consideration and balancing of all six of the factors, and have recommended the resolution of any doubts in favor of adjudication on the merits."); see also *Bjorgung*, 197 Fed. Appx. at 125-26 ("Although '[n]ot all of the *Poullis* factors need be satisfied in order to dismiss a complaint' they must all be considered") (quoting *Mindek v. Rigatti*, 964 F.2d 1369, 1373 (3d Cir. 1992)).

III. ANALYSIS

In *In re Richardson Industrial Contractors, Inc.*, 189 Fed. Appx. 93 (3d Cir. 2006), the United States Court of Appeals for the Third Circuit addressed [*6] the relevant factors that a district court must consider before dismissing a bankruptcy appeal for failure to prosecute. In that case, the district court dismissed a creditor's appeal with prejudice for failure to comply with the mandates of the Federal Rules of Bankruptcy Procedure. In so doing, the district court considered only two of the six *Poullis* factors: the creditor's bad faith in requesting a second extension of time in which to file his brief and the ineffectiveness of alternative sanctions. The creditor appealed the district court's decision.

On appeal, the Third Circuit found that, in addition to not considering all six *Poullis* factors, the district court's discussion of two factors was limited and did not set out the basis for its conclusions in such a way to permit meaningful review of its decision.

In reviewing similar cases in other circuits, the Richardson court noted that [HN4] " '[d]ismissal typically occurs in cases showing consistently dilatory conduct or the complete failure to take any steps other than the mere filing of a notice of appeal.' " *Richardson*, 189

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Fed. Appx. 93, at *97 (quoting *In re Beverly Mfg. Corp.*, 778 F.2d 666, 667 (11th Cir. 1985)); see also *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) [*7] (upholding dismissal of bankruptcy appeal for failure to follow Bankruptcy Rules or timely file appeal brief where plaintiffs provided no explanation or excuse for noncompliance); *In re Champion*, 895 F.2d 490, 492 (8th Cir. 1990) (finding no abuse of discretion in dismissing appeal where appellant had not filed designation of record or statement of issues required by Bankruptcy Rule 8006); *In re Tampa Chain Co.*, 835 F.2d 54, 56 (2d Cir. 1987) (affirming dismissal of bankruptcy appeal for failure to file a brief for seven months after the due date or provide any explanation for the failure, even after the court's inquiry into delinquency).

Given that backdrop, the Court will now assess whether the *Poulis* factors favor or disfavor dismissal.

1. Extent of North Shore's Personal Responsibility

The first *Poulis* factor assesses the extent of the appellant's personal responsibility. 747 F.2d at 868. North Shore has suggested that its counsel is responsible for its failure to follow the Court's scheduling order. North Shore averred that,

Defendant, Chapter 7 Debtor Jeffrey J. Prosser (Case No. 06-30009), and his family, including Dawn Prosser, the owner of North Shore, are overwrought and under [*8] assault with numerous and often duplicate suits replete with continuous motions and actions...

(Appellant's Mem. Supp. Mot. Leave to File Untimely Resp. 2, ECF No. 4). North Shore also contended that it is "without the financial resources to employ an adequate number of counsel that have the time availability to meet the relentless and continuous assault and actions..." *Id.* North Shore went on to aver that it has "mounted a defense with far too small group [sic] of counsel and others which have committed what time they can and what effort they can, when possible, for little, or in most cases, for no compensation." *Id.*

Indeed, North Shore referred generally to the commotion of the bankruptcy proceedings in explaining its failure to comply with the original scheduling order in this matter. North Shore also pointed to the limited size of its legal team and financial resources. Because it seems that North Shore's counsel was at least somewhat responsible for North Shore's failure to comply with the Court's original scheduling order, the first *Poulis* factor does not necessarily weigh in favor of dismissal.

However, [HN5] North Shore's "lack of responsibility for [its] counsel's dilatory conduct [*9] is not dispositive, because a client cannot always avoid the consequences of the acts or omissions of its counsel." See *Poulis*, 747 F.2d at 868; see also *Ware v. Rodale Press, Inc.*, 322 F.3d 218, 222 (3d Cir. 2003)("[E]ven assuming that WCI does not bear responsibility for its counsel's conduct, consideration of the remaining factors still compels affirming the District Court's decision to sanction WCI and dismiss the breach of contract claim."); cf. *Lee v. Sunrise Senior Living*, 455 Fed. Appx. 199, 201-202 (3d Cir. 2011) (finding that the pro se plaintiff was "fully responsible for her conduct.") The Court also notes that North Shore has not offered any explanation for its failure to comply with the March 28, 2012, scheduling order.

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2. Prejudice to Carroll

The second *Poullis* factor considers prejudice to the appellee caused by the appellant's failure to meet scheduling orders and respond to discovery. 747 F.2d at 868. [HN6] Prejudice for the purpose of the *Poullis* factors "does not mean 'irremediable harm.'" See *Ware*, 322 F.3d at 222; see also *Curtis T. Bedwell and Sons, Inc. v. Int'l Fidelity Ins. Co.*, 843 F.2d 683, 693-94 (3d Cir. 1988) (rejecting the argument that "the district [*10] court should not have dismissed its claim ... unless the harm to the other parties amounted to 'irremediable prejudice'"). Rather, the burden imposed by impeding the opposing party's ability to prepare a meaningful litigation strategy has been held to be sufficiently prejudicial. See *Ware*, 322 F.3d at 222.

Carroll argues that he has "incurred costs and fees of bringing the underlying adversary proceeding and opposing North Shore's late filings." (Carroll's Opp'n Mot. Leave to File Untimely Resp. 5, ECF No. 5). Carroll also argues that he "should not be made to incur the additional costs to oppose an appeal that North Shore failed to address for several months, particularly when North Shore's current default merely continues its dilatory performance in the underlying bankruptcy proceeding." *Id.*

Additional costs and fees do not necessarily amount to prejudice. However, it is clear that North Shore's conduct has prejudiced Carroll by hampering his ability to resolve the underlying bankruptcy matter. See *Lee*, 455 Fed. Appx. at 201-202 (finding that the plaintiff's conduct prejudiced the defendants by "impeding their efforts to resolve [the] case, causing them to file unnecessary [*11] motions, and requiring them to incur extra expenses.") The Court also notes that the Bankruptcy Division has stayed execution as to the bank account involved in the underlying matter, pending resolution of this appeal. Consequently, North Shore's lengthy delay has had an impact on the Bankruptcy Division's proceedings. Thus, the Court finds that the second *Poullis* factor weighs in favor of dismissal.

3. History of Dilatoriness

[HN7] The third *Poullis* factor considers the appellant's history of dilatoriness. 747 F.2d at 868. North Shore did not file its brief within the original time period set by the Court. North Shore also failed to move for an extension of time within which to file its brief until more than six months *after* the Court's deadline. Additionally, North Shore did not file its brief within the extended time period set by the Court. Indeed, rather than trying to make up for lost time in the more than seven months since its brief was *originally* due, North Shore has elected not to file even a brief in compliance with the Court's extended time period. Similarly, North Shore did not file oppositions to Carroll's motions to dismiss this appeal.

The Court also notes the history leading [*12] up to this appeal. As the Bankruptcy Court noted in its May 26, 2010, judgment,

As established by the record of the entire Adversary and the docket, North Shore has set upon a pattern and practice of filing pleadings after the deadlines have passed: (1) North Shore's initial opposition to the first Motion for Summary Judgment was due on November 2, 2008, but was actually filed on November 30, 2009, more than a year after the due date. (2) North Shore obtained leave of court to file a late opposition to Trustee's motion for entry of default and default judgment, having missed that deadline. (3) North Shore filed a late response to the renewed Motion for Summary

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Judgment, without seeking leave of court. (4) North Shore has never complied with the discovery deadlines. North Shore apparently views court-imposed deadlines as suggestions rather than as Orders compelling timely performance.

(May 26, 2010, Bankr. Summ. J. 7, ECF No. 1, Ex. 3).

North Shore has a sufficient history of dilatoriness in this matter such that the third *Poulis* factor weighs in favor of dismissal. See, e.g., *Buccolo*, 308 Fed. Appx. 574, at *575 (affirming district court's dismissal of the bankruptcy appeal for failure [*13] to prosecute where appellant "did not comply with the Bankruptcy Rules for filing a brief within 15 days of the docketing of his appeal... or for providing for the transcript of the Bankruptcy Court proceedings..." noting that [HN8] "[e]ither of these violations is grounds for dismissal under Bankruptcy Rule 8001").

4. Willfulness and Bad Faith

[HN9] The fourth *Poulis* factor considers whether the conduct of the appellant or of the appellant's attorney was willful or in bad faith. 747 F.2d at 868. North Shore failed to comply with the Court's original scheduling order, failed to move for an extension of time within which to file its brief until more than six months after the original filing deadline, and has failed to comply with the Court's new scheduling order. In explaining its failure to follow the Court's original scheduling order, North Shore referred generally to the hustle and bustle of the bankruptcy proceedings. North Shore also pointed to the size of its legal team and financial resources.

North Shore's explanations for its delays are unpersuasive. By failing to file an appellant's brief or timely move for an extension of time within which to do so, North Shore has demonstrated a willful [*14] disregard for the Court's scheduling orders and for the appellate process in general. See, e.g., *In re Toys Inc.*, 263 Fed. Appx. at 238 (finding that "the record provides a basis to conclude that [the appellant's] conduct showed willful disregard for the appellate process" because "[h]e ignored the deadlines issued by the District Court"). The fourth *Poulis* factor therefore weighs in favor of dismissal.

5. Effectiveness of Alternative Sanctions

[HN10] The fifth *Poulis* factor assesses the effectiveness of sanctions other than dismissal. 747 F.2d at 868. North Shore has not suggested any such sanctions. A possible alternative to dismissal would be to grant North Shore an extension of time within which to file its appellant's brief. However, the Court has already granted such an extension. Granting any further extension would reward North Shore's blatant failure to comply with this Court's orders by allowing it to file an opening brief more than 22 months after the commencement of its appeal.

The Court could also impose a fine against North Shore's counsel as a penalty for its failure to comply with the scheduling orders in this matter. See *Poulis*, 747 F.2d at 869. Alternatively, the Court could [*15] consider the propriety of ordering North Shore to pay Carroll's attorney's fees associated with filing the instant motion. See *id.* However, North Shore has made it clear that its financial resources available to prosecute this matter are very limited. Thus, it is unlikely that North Shore will have the ability to comply with a

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sanctions order. Additionally, the ineffectiveness of the Court's prior orders setting deadlines for North Shore to file its appellant's brief, as well as North Shore's failure to respond to Carroll's motions to dismiss gives the Court reason to doubt the effectiveness of such sanctions.

North Shore has demonstrated little urgency in litigating its appeal. In addition to not filing a timely brief, it has elected not to file an opposition to Carroll's motions to dismiss. As such, the Court doubts the effectiveness of alternative sanctions. *Cf. Richardson*, 189 Fed. Appx. 93, at *98 (finding dismissal inappropriate where appellant requested two extensions and filed his brief prior to the District Court's order of dismissal). Based on North Shore's absence thus far it is not evident that alternative sanctions will prompt it to take action in prosecuting this appeal. [*16] Thus, the ineffectiveness of alternative sanctions weighs in favor of dismissal.

6. Merit of North Shore's Appeal

[HN11] The sixth *Poullis* factor considers the meritoriousness of the appellant's claim. 747 F.2d at 868. "Ordinarily, '[a] claim, or defense, will be deemed meritorious when the allegations of the [motion], if established [], would support recovery by plaintiff or would constitute a complete defense.'" *Buccolo*, 308 Fed. Appx. 574, at n.1 (quoting *Poullis*, 747 F.2d at 869-70). In this appeal, North Shore challenges the Bankruptcy Division's grant of summary judgment to Carroll in the amount of \$115,140. North Shore also challenges the Bankruptcy Division's decision to deny its motion for reconsideration of the summary judgment.

a. Summary Judgment

[HN12] In reviewing a determination of a bankruptcy court's grant of summary judgment, a reviewing court subjects the bankruptcy court's "legal determinations to plenary review, reviewing its factual findings for clear error, and considering its exercise of discretion for abuse thereof." *In re Atamian*, 300 Fed. Appx. 175, 176 (3d Cir. 2008)(citations omitted).

A bankruptcy court may grant summary judgment if "the pleadings, the discovery and disclosure [*17] 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." FED. R. Civ. P. 56(c) (hereafter referred to as "Rule 56(c)"); see also *Hersh v. Allen Products Co.*, 789 F.2d 230, 232 (3d Cir. 1986).

[HN13] The movant has the initial burden of showing that there is no genuine issue of material fact. *Gans v. Mundy*, 762 F.2d 338, 342 (3d Cir. 1985). Once the initial burden is met it shifts to the non-moving party to establish specific facts showing there is a genuine issue for trial. *Id.* The non-moving party "may not rest upon mere allegations, general denials, or ... vague statements" *Quiroga v. Hasbro, Inc.*, 934 F.2d 497, 500 (3d Cir. 1991). "[T]here is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

[HN14] "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine

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issue for trial." *Id.* In making this determination, this Court draws all reasonable [*18] inferences in favor of the non-moving party. See *Bd. of Educ. v. Earls*, 536 U.S. 822, 850, 122 S. Ct. 2559, 153 L. Ed. 2d 735 (2002); see also *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994).

In Carroll's motion for summary judgment he sought "a determination that \$72,720 in prepetition transfers and \$42,420 in postpetition [sic] transfers from Debtor to North Shore Real Estate Corporation were fraudulent transfers, preferences or otherwise avoidable pursuant to 11 U.S.C. §§ 544, 547, 548 and 549, and recoverable under § 550." (May 26, 2010, Bankr. Summ. J. Mem. Op. 1, ECF No. 1, Ex. 3)(citation omitted) Carroll asserted that "North Shore [] failed to respond to the Trustee's discovery requests, and ... all of the Requests for Admissions were deemed admitted and, accordingly, there [were] no genuine issues of material fact and the Trustee [was] entitled to judgment as a matter of law." (Carroll Renewed Mot. Summ. J. ¶ 4, Bankr. Case No. 06-30009, Adv. Pro. No. 08-03048, ECF No. 30).

North Shore asserted in its opposition to Carroll's motion to dismiss that it indeed responded to Carroll's requests for admission. It explained that its response came in the form of the affidavit of Dawn Prosser, wife of the debtor [*19] in the underlying bankruptcy proceedings.

After reviewing the record, the bankruptcy court found that "North Shore [] failed to respond to or answer any of Trustee's discovery requests, including the ... Requests for Admissions." (May 26, 2010, Bankr. Summ. J. Mem. Op. 2, ECF No. 1, Ex. 3). As such, it determined that the requests for admissions were deemed admitted.

[HN15] Federal Rule of Bankruptcy Procedure 7036 provides that Federal Rule of Civil Procedure 36 applies in adversary bankruptcy proceedings. Rule 36 of the Federal Rules of Civil Procedure, in pertinent part, provides

[HN16] (a) ...

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney....

(4) Answer. If a matter is not admitted, the answer must specifically deny or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify [*20] the party admitted and qualify or deny the rest. The answering party may assert a lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

FED. R. CIV. P. 36 (a)(3), (a)(4).

After reviewing Dawn Prosser's affidavit, the Court finds that the numbered paragraphs in the affidavit do not correspond to Carroll's numbered requests for admission. Looking at the substance of the affidavit, the Court finds that the affidavit does not address all of Carroll's requests for admission. ² The requests for admission which are not addressed are deemed denied. See FED. R. CIV. P. 36 (a)(3).

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2 The requests which are not addressed in Dawn Prosser's affidavit are numbers 2, 3, 4, 12, 14, 15, 17, 19, 20, 21, and 23.

Furthermore, the requests for admission which are addressed in the affidavit³ are simply general denials, such as "I deny that..." (See Dawn Prosser Aff. ¶¶ 2-12). The denials lack any substance or explanation. Such general denials do not comply with the requirements of Federal Rule of Civil Procedure 36. See FED. R. CIV. P. 36 [*21] (requiring [HN17] specific denials which "fairly respond to the substance of the matter.") As such, the generally denied requests for admission are deemed admitted. See *id.*

3 Dawn Prosser's affidavit is written so as to generally deny the information in requests 1, 5, 6, 7, 8, 9, 10, 11, 13, 16, 18, and 22. (Dawn Prosser Aff. ¶¶ 2-12). There are no facts or evidence identified upon which the denials are based.

[HN18] The Third Circuit has long recognized that deemed admissions "are sufficient to support orders of summary judgment." *Kelvin Cryosystems Inc. v. Lightnin*, 252 Fed. Appx. 469, 472 (3d Cir. 2007)(citations omitted); see also *DIRECTV, Inc. v. Jarvis*, 262 Fed. Appx. 413, 416 (3d Cir. 2008) (affirming the district court's entry of summary judgment based on the appellant's failure to respond to requests for admission).

[HN19] To establish a claim for avoidance of a preferential transfer pursuant to 11 U.S.C. § 547, a party must establish that the transfer was:

1. to or for the benefit of a creditor;
2. for or on account of an antecedent debt owed by the debtor before such transfer was made;
3. made while the debtor was insolvent;
4. made -- on or within 90 days before the date of the filing of the petition; [*22] ...
5. that enables such creditor to receive more than such creditor would receive if --
 - a. the case were a case under Chapter 7 of this title;
 - b. the transfer had not been made; and
 - c. such creditor received payment of such debt to the extent provided by the provisions of this title

11 U.S.C. § 547(b).

[HN20] To establish a claim for avoidance of a fraudulent transfer pursuant to 11 U.S.C. § 548(a)(1)(B), a party must show that within two (2) years of the petition date, the debtor received less than a reasonably equivalent value in exchange for such transfer or obligation, and:

1. was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as result of such transfer or obligation;
2. was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
3. intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
4. made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and [*23] not in the ordinary course of business.

11 U.S.C. § 548(a)(1)(B).

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[HN21] To establish a claim for the avoidance of a fraudulent transfer pursuant to 11 U.S.C. § 548(a)(1)(A), a party must show that within two years of the petition date, the debtor made such transfer or incurred such obligation with intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

[HN22] To establish a claim for the recovery of a post-petition transfer pursuant to 11 U.S.C. § 549, the appropriate inquiry is: (1) whether a transfer of property occurred; (2) whether the property transferred was property of the estate; (3) whether the transfer occurred after commencement of the bankruptcy case; and (4) whether the transfer was authorized by the Bankruptcy Code. 11 U.S.C. § 549.

Pursuant to 11 U.S.C. § 550, a trustee may recover transfers avoided under 11 U.S.C. §§ 544, 547, 548, and 549, for the benefit of the estate, the property transferred, or if the court so orders, the value of such property, from the initial transferee of such transfer or the entity for whose benefit such transfer was made.

Requests for admission [*24] numbered 1, 5, 6, 7, 8, 9, 10, 11, and 13, 16, 18, 22, and 23, correspond to the elements required to establish each of Carroll's claims. Each relevant request was deemed admitted. Thus, the bankruptcy court did not err in finding that there remained no genuine issue as to any material fact. As such, the burden was properly shifted to North Shore to show a genuine issue remaining for trial.

North Shore did not present any evidence in support of judgment in its favor. It merely pointed the court again to Dawn Prosser's affidavit. As previously discussed, the affidavit contains only general denials. Such general denials are not sufficient to satisfy North Shore's burden of proof. See FED. R. CIV. P. 56(e) ([HN23] "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.") Thus, the bankruptcy court did not err in finding that North Shore failed to meet its burden.

Based on a plenary review of the record, the Court finds that each of the elements required to establish Carroll's claims were [*25] satisfied by facts underlying North Shore's deemed admissions. As such, the bankruptcy court did not err in concluding that Carroll was entitled to judgment as a matter of law.

b. Motion for Reconsideration

In denying North Shore's motion for reconsideration, the Bankruptcy Division found that North Shore pointed to no newly discovered evidence or any other basis for a grant of reconsideration.

[HN24] A bankruptcy court's denial of an appellant's motion for reconsideration is generally reviewed for abuse of discretion. See generally *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999). "However, to the extent that the denial of reconsideration is predicated on an issue of law, such an award is reviewed de novo; to the extent that the [trial court's] disposition of the reconsideration motion is based upon a factual finding, it is reviewed for clear error." *Id.*

Local Rule of Civil Procedure 7.3 provides that:

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[HN25] A party may file a motion asking the court to reconsider its order or decision... A motion to reconsider shall be based on:

1. Intervening change in controlling law;
2. Availability of new evidence, or;
3. The need to correct clear error or prevent manifest injustice

LRCI 7.3 (2008). [*26]

[HN26] The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Such motions are not substitutes for appeals, and are not to be used as "a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic v. AT&T of the V.I.*, 312 F.Supp. 2d 731, 733, 45 V.I. 553 (D.V.I. 2004).

In its motion for reconsideration, North Shore made two arguments. First, it argued that the bankruptcy court should reconsider because it improperly failed to consider Dawn Prosser's affidavit in deciding Carroll's motion for summary judgment. That argument is unsupported by the record. This Court has herein cited to numerous references in the bankruptcy court's memorandum opinion where it refers to and analyzes the substance of Dawn Prosser's affidavit. As such, the bankruptcy court did not err in refusing to reconsider on that basis.

Second, North Shore argued that the court should grant its motion because the underlying complaint contains "factually [*27] untrue" allegations. (North Shore Mot. Recons. 6-7, Adv. Pro. No. 08-03048, ECF No. 36). That argument ignores the numerous opportunities which North Shore had to oppose Carroll's factual assertions.

Carroll served North Shore with various requests for discovery, including requests for admissions. North Shore failed to adequately respond to such requests. Thereafter, Carroll filed two motions for summary judgment. North Shore had the opportunity to file oppositions to each of those motions. Although North Shore was tardy in filing such oppositions, the bankruptcy court nonetheless considered them in its memorandum opinion. Finally, the bankruptcy court held a hearing on Carroll's second motion for summary judgment. North Shore had the opportunity to challenge any of Carroll's factual assertions and to submit any evidence in support of its challenges at that hearing. North Shore failed to submit sufficient evidence supporting its assertions at that time.

[HN27] "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." See *Dunkley v. Mellon Investor Servs.*, 378 Fed. Appx. 169, 172 (3rd Cir. 2010)(internal [*28] citation omitted). Yet, that is precisely what North Shore has done. Indeed, the information that North Shore presents was available to it at the time when it filed its opposition to Carroll's motion for summary judgment. In an effort to relitigate this matter, North Shore now seeks to rehash procedurally admitted factual issues. That effort is not

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supported by the law. See *id.* As such, the bankruptcy court did not err in refusing to reconsider on that basis.

Upon review of the Bankruptcy Division's summary judgment and order denying reconsideration, the Court finds that the likelihood that North Shore could successfully challenge the bankruptcy court's exercise of its broad discretion as to such matters is minimal. Thus, the final *Poullis* factor weighs in favor of dismissal. Cf. *Buccolo*, 308 Fed. Appx. 574, at n.1 ([HN28] "[a] claim ... will be deemed meritorious when the allegations ... if established [], would support recovery by" the claimant) (internal citations omitted) (first alteration in the original).

IV. CONCLUSION

Of the six *Poullis* factors, five weigh in favor of dismissal and one weighs against dismissal. The Court takes into account the possibility that North Shore's counsel bears [*29] some of the responsibility for its failure to follow the Court's scheduling order. Nonetheless, on balance, the *Poullis* factors demonstrate that dismissal of this appeal is an appropriate sanction for North Shore's failure to file its appellant's brief, or otherwise comply with this Court's scheduling orders. See *In re Buccolo*, 308 Fed. Appx. 574, 576 (3d Cir. 2009)(finding that "even if the consideration of the merits of [the appellant's] claim or defense does not tip the scales for or against dismissal, it cannot be said that the District Court abused its discretion in concluding that *on balance*, dismissal was warranted.")(emphasis added); *In re E Toys Inc.*, 263 Fed. Appx. 235, 238 (3d Cir. 2008) (affirming the district court's ruling that the *Poullis* factors favored dismissal of a bankruptcy appeal as a sanction for the appellant's "repeated failures to adhere to ordered briefing deadlines").

For the reasons discussed above, the Court will grant Carroll's motion to dismiss for failure to prosecute. An appropriate order follows.

**JULITO A. FRANCIS, Petitioner v. DEBRA L. WRIGHT-
FRANCIS, Respondent**

Family No. ST-10-DI-226

**Superior Court of the Virgin Islands, Division of St. Thomas
and St. John**

2014 V.I. LEXIS 45; 61 V.I. 13

**July 14, 2014, Decided
July 14, 2014, Filed**

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CASE SUMMARY:

OVERVIEW: HOLDINGS: [1]-When the parties had lived in the marital home for 7 years of their 21-year marriage, the husband's mother occupied an apartment on the property, the wife had the means to secure alternative housing and had not shown the need or desire to remain there, and the husband acquired the property from his mother, the husband was awarded possession under V.I. Code Ann. tit. 33, § 2305(d), minus an award to the wife for her interest and contributions; [2]-The wife's medical degree was not marital property under V.I. Code Ann. tit. 16, § 109, as the husband had not been compelled to delay or relinquish his own education or goals, offered no evidence with which to calculate the value of the degree, and himself had an advanced degree; [3]-The husband had not wasted marital assets by withdrawing funds from his annuity, as they were used to pay reasonable and necessary expenses.

OUTCOME: The court distributed the parties' marital homestead and personal property.

CORE TERMS: marital, homestead, marriage, divorce, dollars, equitable, marital property, personal property, pension, spouse's, career, educational, apartment, retirement accounts, daughter, couple, mortgage, real property, retirement plans, divide, standard of living, ownership, household, jointly, dissolution, retirement, terminated, occupied, earnings, net worth

LexisNexis(R) Headnotes

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Equitable Distribution > General Overview

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Partition

Civil Procedure > Judicial Officers > Judges > Discretion

[HN1] In an action for divorce, the court has the authority to equitably divide joint personal property and real property, limited to the marital homestead as defined in V.I. Code Ann. tit. 33, § 2305(d). Real property owned by the couple, other than the marital homestead, is divided by way of a civil partition action. When determining the equity of the distribution, the court also has broad discretion to consider the case's most salient facts. The Supreme Court of the Virgin Islands further refined the court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean "equal," only "equitable."

Family Law > Marital Duties & Rights > Property Rights > Homestead Rights

[HN2] Pursuant to V.I. Code Ann. tit. 33, § 2305(a), a homestead is defined as the abode including land and buildings, owned by, and actually occupied by, a person, or by members of his family free of rental charges. Although the Virgin Islands Code does not

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expressly define a marital homestead, both the United States Court of Appeals for the Third Circuit and the Appellate Division of the United States District Court for the Virgin Islands have interpreted § 2305(a), (c) to hold that a "marital homestead" is any homestead in which a husband and wife both reside during the marriage and that is owned by one or both of the spouses.

***Civil Procedure > Judicial Officers > Judges > Discretion
Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Characterization > Marital Property
Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Characterization > Separate Property
Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Equitable Distribution > General Overview***

[HN3] The court may distribute personal property in accordance with V.I. Code Ann. tit. 16, § 109(4). However, the statute does not define marital property. Whether an asset is marital property or separate property for purposes of distribution of the marital estate is a matter reserved to the sound discretion of the trial court. Once these distinctions have been made, the trial judge has broad equitable powers in disposing of marital property.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Characterization > Marital Property

[HN4] Although not specifically defined, marital property has been construed to encompass any property which the couple acquired during the marriage and which is subject to equitable distribution upon divorce.

***Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Characterization > Marital Property
Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Classification > Retirement Benefits > Pensions***

[HN5] Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined that a pension fund is marital personal property, subject to claim by the other spouse upon divorce. To the extent earned during the marriage, the pension benefits represent compensation for marital effort and are substitutes for current earnings which would have increased the marital standard of living or would have been converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their pension payments for security in their older years.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Classification > Degrees, Licenses & Enhanced Earnings

[HN6] Most states hold that an educational degree is not marital property. Courts have consistently considered whether one spouse had postponed his or her own career and educational goals to support and contribute to the career and educational goals of the other spouse. They also acknowledge the injustice that occurs after a couple collectively works towards the attainment of an advanced educational degree or career goal, the

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expectation of a higher standard of living in the future can be frustrated by the dissolution of a marriage.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > Classification > Degrees, Licenses & Enhanced Earnings

[HN7] Many states have compared professional degrees to pension or retirement plans when establishing what constitutes marital property. Pension and retirement plans entitle an owner to a definite amount at a certain date, which an individual has a contractual right to receive. Professional degrees rely on uncertain future events and provide only an expectation of enhanced income. The value of a professional degree is speculative and dependent upon the attributes and future choices of its possessor to be fairly valued.

Family Law > Marriage > General Overview

[HN8] The Virgin Islands has long viewed marriage as a partnership or joint venture, whereby both parties collaborate for a common purpose and contribute toward its success.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Jurisdiction > General Overview

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > General Overview

[HN9] The court has the authority to divide the personal property in divorce action even after a divorce decree has been issued. The trial court will be required to issue rulings on post-divorce ownership of personal property such as cars, boats, electronics, jewelry, shares of stock, bonds and monies deposited with financial institutions.

Civil Procedure > Sanctions > Contempt > Civil Contempt

[HN10] A party may be held in civil contempt for failure to comply with a court order if (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.

SUMMARY: Division of property in divorce case. The Superior Court, Watlington, J., divided the parties' real and personal property.

HEADNOTES

VIRGIN ISLANDS OFFICIAL REPORTS HEADNOTES

[Headnotes classified to Virgin Islands Digest]

1. Divorce § 11.50--Division of Property--Power of Court In an action for divorce, the court has the authority to equitably divide joint personal property and real property, limited to the marital homestead. Real property owned by the couple, other than the marital homestead, is divided by way of a civil partition action. When determining the equity of the

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distribution, the court also has broad discretion to consider the case's most salient facts. The Supreme Court of the Virgin Islands further refined the court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean "equal," only "equitable." 33 V.I.C. § 2305(d).

2. Property § 15.05--Homestead--Generally A homestead is defined as the abode including land and buildings, owned by, and actually occupied by, a person, or by members of his family free of rental charges. Although the Virgin Islands Code does not expressly define a marital homestead, both the United States Court of Appeals for the Third Circuit and the Appellate Division of the United States District Court for the Virgin Islands have interpreted the applicable statute to hold that a "marital homestead" is any homestead in which a husband and wife both reside during the marriage and that is owned by one or both of the spouses. 33 V.I.C. § 2305(a), (c).

3. Property § 15.30--Homestead--Divorce When the divorcing parties had lived in the marital homestead for 7 years of their 21-year marriage, the husband's mother occupied an apartment on the property, the wife had the means to secure alternative housing and had not shown the need or desire to remain there, and the husband had acquired the **[**14]** property from his mother, the husband was awarded possession, minus an award to the wife for her interest and contributions. 33 V.I.C. § 2305.

4. Divorce § 11.50--Division of Property--Power of Court The court may distribute personal property in accordance with the statute governing final orders in divorce cases. However, the statute does not define marital property. Whether an asset is marital property or separate property for purposes of distribution of the marital estate is a matter reserved to the sound discretion of the trial court. Once these distinctions have been made, the trial judge has broad equitable powers in disposing of marital property. 16 V.I.C. § 109.

5. Divorce § 11.70--Division of Property--Types of Property Interests Although not specifically defined, marital property has been construed to encompass any property which the couple acquired during the marriage and which is subject to equitable distribution upon divorce.

6. Divorce § 11.45--Division of Property--Pensions Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined that a pension fund is marital personal property, subject to claim by the other spouse upon divorce. To the extent earned during the marriage, the pension benefits represent compensation for marital effort and are substitutes for current earnings which would have increased the marital standard of living or would have been converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their pension payments for security in their older years.

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7. Divorce § 11.40--Division of Property--Particular Cases When neither party had made sufficient information available to the court to justify the division of their respective retirement accounts, but it appeared that they had about the same amount in their funds, each party was entitled to retain his or her existing interest in his or her account. 16 V.I.C. § 109.

8. Divorce § 11.70--Division of Property--Types of Property Interests Most states hold that an educational degree is not marital property. Courts have consistently considered whether one spouse had postponed his or her own career and educational goals to support and contribute to the career and educational goals of the other spouse. They also acknowledge the injustice that occurs after a couple collectively works towards the attainment of an advanced educational degree or career goal, the expectation of a higher standard of living in the future can be frustrated by the dissolution of a marriage. **[**15]**

9. Divorce § 11.70--Division of Property--Types of Property Interests Many states have compared professional degrees to pension or retirement plans when establishing what constitutes marital property. Pension and retirement plans entitle an owner to a definite amount at a certain date, which an individual has a contractual right to receive. Professional degrees rely on uncertain future events and provide only an expectation of enhanced income. The value of a professional degree is speculative and dependent upon the attributes and future choices of its possessor to be fairly valued.

10. Divorce § 11.40--Division of Property--Particular Cases The wife's medical degree was not marital property subject to equitable distribution, as the husband had not been compelled to delay or relinquish his own education or goals, he offered no evidence with which to calculate the value of the degree, and he himself had an advanced degree. 16 V.I.C. § 109.

11. Marriage § 1.50--Generally--Definition and Nature The Virgin Islands has long viewed marriage as a partnership or joint venture, whereby both parties collaborate for a common purpose and contribute toward its success.

12. Divorce § 11.50--Division of Property--Power of Court The court has the authority to divide the personal property in divorce action even after a divorce decree has been issued. The trial court will be required to issue rulings on post-divorce ownership of personal property such as cars, boats, electronics, jewelry, shares of stock, bonds and monies deposited with financial institutions.

13. Divorce § 11.40--Division of Property--Particular Cases Although there was some evidence that the husband in a divorce case withdrew \$220,179.93 from his annuity between 2011 and 2012, there was no evidence that he deliberately destroyed, concealed or harmed the parties' property. The money was used to pay reasonable and necessary expenses, including expenses associated with his children's care, the marital homestead, businesses and living expenses; furthermore, the husband had been terminated from his employment and used his investments to support his obligations and standard of living.

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14. Contempt § 5.10--Noncompliance With Court Order--Generally A party may be held in civil contempt for failure to comply with a court order if (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.

COUNSEL: [*1] ANDREW L. CAPDEVILLE, ESQ., Law Offices of Andrew Capdeville, St. Thomas, USVI, *Attorney for the Petitioner.*

[**16] JULIE GERMAN EVERT, ESQ., Law Offices of Julie German Evert, St. Thomas, USVI, *Attorney for the Respondent.*

JUDGES: WATLINGTON, *Judge of the Superior Court of the Virgin Islands*

OPINION BY: DEBRA S. WATLINGTON

OPINION

MEMORANDUM OPINION

(July 14, 2014)

This matter came on for a trial on April 8, 2014, before the Honorable Debra S. Watlington, Judge of the Superior Court of the Virgin Islands for the determination of the parties' personal property and the marital homestead. Petitioner/Husband Mr. Julito A. Francis appeared with counsel Andrew L. Capdeville, Esq., and Respondent/Wife Dr. Wright-Francis appeared with counsel Julie German Evert, Esq.¹ The Court heard sworn testimony from Mr. Francis, Dr. Wright-Francis, Mrs. Joan Francis, and Erica Kellerhals, Esq.

¹ Julie German Evert, Esq., entered her notice of appearance in this matter on behalf of Dr. Wright Francis on February 12, 2014. Vincent A. Fuller, Esq., was the attorney of record at the previous hearing.

PRELIMINARY MATTERS

Prior to commencing the trial, the Court addressed stipulations and outstanding motions of both parties. The [*2] parties stipulated to the admission of Civil Complaint, ST-14-CV-188, *Balbo Corporation v. Julito Francis & Debra Francis*, filed by Mr. Gerard Castor. However, they do not stipulate or concede to the amount of monetary relief alleged in the pleading.² The parties also stipulated that the marital homestead, IB-29 Estate Solberg, St. Thomas, U.S. Virgin Islands, is valued at Seven Hundred Twenty Five Thousand Dollars (\$725,000.00) subject to a mortgage of One Hundred Ten Thousand Dollars (\$110,000.00). The parties further stipulated that the Court may make its determination of [**17] jointly owned marital household furniture based on evidence submitted from the January 13, 2014 hearing.³

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2 Gerald Castor is the owner of Balbo Construction which performed construction work for the parties on the marital homestead located at IB-29 Estate Solberg. In the civil action, Balbo alleges that the parties are liable for outstanding payments amounting to Three Hundred Ninety Six Thousand, Five Hundred Forty Four Dollars and Seventy Six Cents (\$396,544.76).

3 This matter came before the Court for a final hearing on January 13, 2014, to resolve the outstanding issues regarding distribution of personal property.

[*3] Thereafter, the pending motions were addressed as follows: 1) Dr. Wright-Francis' Motion to Exclude Gerard Castor's testimony was rendered moot in light of the parties' stipulation; 2) the Court denied Dr. Wright-Francis' Motion to Exclude Mr. Francis and his mother, Joan A. Francis, from testifying that she has an interest in the parties' marital homestead; 3) the Court denied Mr. Francis' request to exclude the expert testimony and report of Attorney Erika Kellerhals; 4) the Court denied Dr. Wright-Francis' Motion to Exclude Mr. Francis from testifying that he is entitled to money from her earnings; and 5) the Court granted Dr. Wright Francis' Motion to Exclude testimony concerning the value of the parties' real and personal property located in the state of Georgia.⁴

4 The Court's jurisdiction in this matter is limited to jointly owned personal property and the marital homestead.

UNDISPUTED FACTS

The parties, Mr. Julito Francis and Dr. Debra Wright-Francis, were married on August 17, 1991 in Opelika, Alabama. They have one minor child, Brooklyn J. Francis, born on March 6, 2000 and one adult daughter, Saryn J. Francis, born on January 27, 1993. The parties both resided in Georgia until **[*4]** Mr. Francis relocated in 2004 to St. Thomas; while Dr. Wright-Francis and their daughters joined him in 2005. The parties resided at No. IB-29 Estate Solberg, St. Thomas, Virgin Islands during their marriage. A Decree of Divorce was entered on July 25, 2012, dissolving the marriage.

Mr. Francis is the son of Joan Francis and brother to Diane A. Marsh. Joan Francis and her daughter, Diane, acquired the property known as 1B-29 Estate Solberg from the Virgin Islands Housing Finance Authority which required them to build on the land within a set time period. After realizing that they would not be able to comply with program regulations, they transferred ownership to Mr. Francis to begin construction to help secure financing to build. Mr. Francis' mother and sister conveyed Parcel No. IB-29 Estate Solberg to Mr. Francis and Joan Francis by Warranty Deed on April 12, 1995. Subsequently, on October 29, 1997, Joan Francis **[**18]** executed a Quitclaim Deed transferring her interest in Parcel No. IB-29 Estate Solberg solely to Mr. Francis.⁵ A dwelling structure was completed in 1988 which Joan Francis moved into in 2000. At that point, Joan Francis began contributing to the mortgage and the utility bill **[*5]** on a monthly basis until 2006. In January 2014, Joan Francis resumed making contributions of six hundred dollars (\$600.00) per month not including utilities.

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5 Mr. Francis filed copies of the 1995 Warranty Deed and 1997 Quitclaim Deed with his exhibit list on March 28, 2014.

No. IB-29 Estate Solberg, is a two (2) level structure and has three (3) units. The upper level has three (3) bedrooms and two (2) bathrooms and the lower level is split into two (2) separate one (1) bedroom, one (1) bathroom units. Dr. Wright-Francis continues to occupy the main level of the marital homestead while Mr. Francis has remained in the one (1) bedroom unit which he previously used as his office. Joan Francis, resides in the other one (1) bedroom apartment on the lower level. Mr. Francis is responsible for the mortgage payments for the property. Dr. Wright-Francis assisted with some maintenance of the property.

In January 2014, Dr. Wright-Francis purchased an apartment at the Towers Condominiums in Estate Contant which she uses for rental purposes.⁶ The marital homestead has structure problems and has deteriorated throughout the parties' marriage.⁷ Notwithstanding the purported poor condition of the home, Mr. [*6] Francis would like to retain the marital homestead.

6 Mr. Francis filed a copy of Dr. Wright Francis's Warranty Deed and Mortgage for Apartment No. F-15, The Towers Condominiums located at No. 7A Southside Quarter, St. Thomas, Virgin Islands, with his Motion to the homestead.

7 Mr. Francis' exhibits 10(c), 10(d), 10(e), 10(f), 10(g), 10(k), and 10(m), which were admitted into evidence are photos depicting the deteriorated state of the home and its structural problems.

The parties acquired multiple assets throughout their marriage in the form of real property in the Virgin Islands and Georgia; individual retirement accounts; and other investment accounts. Mr. Francis was employed with the U.S. Virgin Islands Government, first as the Executive Director of the Public Finance Authority (PFA), then as the Chief Executive Officer of the Virgin Islands Next Generation Network (VINGN). He was later terminated in October of 2011 from VINGN where he received an annual salary of One Hundred Seventy One [*19] Thousand Dollars (\$171,000.00). He challenged his termination but after an employment mediation, the decision was upheld. After being terminated, Mr. Francis, an investment manager, has focused on his [*7] wealth management business, known as ACSB Capital Management LLC.

Dr. Wright-Francis, a medical OB-GYN, contracts medical services with the East End Medical Clinic as an OB-GYN for an annual amount of Two Hundred Thousand Dollars (\$200,000.00) and with Schneider Regional Medical Center for about Two Thousand Five Hundred Dollars (\$2,500.00) per-week for on-call services.

PROCEDURAL HISTORY

Julito Francis filed a verified Petition for Divorce on November 4, 2010. On February 3, 2011, Dr. Wright-Francis filed an answer to Mr. Francis' petition and on March 29, 2011 the Court referred the parties to mediation. The parties mediated but were not able to reach an agreement. During the mediation period, the parties filed motions concerning custody and wasting of marital assets. Consequently, the Court issued an Order on December 22, 2011, prohibiting them from "disrupting" their children and "destroying,

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removing, concealing or otherwise harming or reducing the value of the property of one or both of the parties." On March 26, 2012, the Court held a final pretrial conference to set deadlines for trial. The Court also maintained the parties' visitation agreement.⁸

⁸ See, Paragraph (2) (b) of this Court's Order in [*8] this matter dated December 22, 2011.

⁹ Mr. Francis informed the Court, in his Motion to Restrain Respondent From Denying Petitioner Access to Former Marital Residence that the parties negotiated a visitation agreement in September of 2011, whereby both parties have custody of their minor daughter, Brooklyn, for fifteen (15) days of each month. Such agreement was not contested by Dr. Wright Francis.

On July 16, 2012, Dr. Wright-Francis filed an Emergency Motion for Issuance of Show Cause Order, alleging that Mr. Francis violated the Court's December 22, 2011 Order by withdrawing Two Hundred Twenty Thousand, One Hundred Seventy Nine Dollars and Ninety Three Cents (\$220,179.93) from his Fidelity Rollover IRA account. While the Court initially granted Dr. Wright-Francis' motion on July 17, 2012, that Order was later vacated on July 25, 2012. The Court reasoned that it was not able to make a determination since discovery had not been completed. [**20] Instead, the Court instructed the parties to retain a Certified Personal Accountant (CPA) to appraise all of their jointly owned properties and to recommend how the marital assets should be divided. The parties never complied with the order to retain [*9] an accountant.¹⁰

¹⁰ See Court's July 25, 2012 Order.

On July 25, 2012, the Court issued a Divorce Decree to the parties and reserved determination on issues of custody, alimony, personal and real property for a later date. Meanwhile, the parties continued to live in separate sections of the marital homestead. During a June 17, 2013 hearing, the parties informed the Court that they were able to resolve the issues of custody and visitation amicably, consistent with their earlier agreement. On July 12, 2013 the parties were referred back to mediation. After the second mediation session, the mediator reported that the parties had reached a total impasse.

However, in a status conference held on September 10, 2013, the parties advised the Court that they had reached an agreement and through counsel, the terms were read onto the record. Each party confirmed that the terms were accurate and they agreed to them. The Court acknowledged the terms and ordered counsel for both parties to reduce the agreement to writing and submit it with their client's respective signatures. Instead each party submitted separate draft settlements that differed slightly from the oral agreement articulated in Court. As a [*10] result, the Court entered an Order on November 4, 2013 that incorporated the negotiated terms which the parties stipulated to on the record in the September 10, 2013 hearing. On November 18, 2013, this Court entered an Order which granted a Motion to Amend filed by Dr. Wright-Francis. The Order amended the previous November 4, 2013 Order which instructed Mr. Francis to pay his settlement amount by certified check or bank draft instead of transferring the sum from his retirement account directly to Dr. Wright-Francis' account or to her personally by electronic means. Mr. Francis objected to Dr. Wright-Francis' method of payment request, filed a timely

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opposition on November 20, 2013, and requested the Court to reconsider its Amended Order entered on November 18, 2013.¹¹

¹¹ On November 18, 2013 the Court entered an Order on Dr. Wright-Francis's November 6, 2014 Motion to Amend, two (2) days before the fourteen (14) day statutory period for Mr. Francis to respond ended, pursuant to Rule 15(b)(3) of the Federal Rules of Civil Procedure. Mr. Francis filed his opposition to the Motion to Amend on November 20, 2013.

[21]** Having reviewed the parties conflicting requests, the Court vacated its November 18, 2013 Order because it found that the parties' settlement **[*11]** agreement lacked mutual assent since the parties could not agree on the method of payment. The parties also claimed that they would incur injury if payment was not made as each requested. The Court determined that the parties negotiated and accepted the agreement based on two (2) different interpretations of its terms. As a result, this matter was scheduled for trial. Subsequently, Mr. Francis moved the Court on February 12, 2014 for permission to return to the marital homestead since his existing apartment poorly accommodated him and his daughter for their monthly visitation and Dr. Wright-Francis had recently purchased property on St. Thomas.

THE PARTIES' ARGUMENTS

Mr. Francis advised the Court that he is solely responsible for the mortgage on 1B-29 Estate Solberg.¹² Mr. Francis also informed the Court that he paid all of the household expenses without any contribution from Dr. Wright-Francis and continues to pay those expenses. He also claims that he has made payments on the balance owed to Balbo for construction work on IB-29 Estate Solberg.

¹² The mortgage for the Solberg property stipulates that only Mr. Francis signed the promissory note despite both parties being listed on the document **[*12]** as "Borrower."

Mr. Francis seeks a portion of Dr. Wright-Francis' current and future earnings since he claims that he supported her financially while she completed medical school in 1992. As a result, Mr. Francis asserts that Dr. Wright-Francis' medical license is marital property which is divisible like the parties' other assets.

Additionally, Mr. Francis contends that Dr. Wright-Francis' net worth is Two Million One Hundred Three Thousand, Eight Hundred Fifty Seven Dollars and Twenty Four Cents (\$2,103,857.24). He claims that his net worth is One Million One Hundred Nine Thousand, Nine Hundred Twelve Dollars and Eighty Two Cents (\$1,109,912.82). Mr. Francis seeks Four Hundred Ninety Six Thousand Dollars (\$496,000.00), to make his **[**22]** net worth equal to Dr. Wright-Francis.¹³ Mr. Francis also expressed a willingness to rescind his request, if Dr. Wright-Francis relinquishes her interest in the marital homestead.

¹³ If the Court were to add both of the parties' purported net worth, divide them in half, and then subtract Mr. Francis' individual net worth it would amount to \$496,000.00.

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Mr. Francis denied accusations of depleting any marital property. Instead, Mr. Francis contends that he withdrew [*13] money from his retirement account to pay off expenses, including mortgage payments, other property expenses and travel expenses back and forth to Washington D.C. where he visits with the parties' older daughter and cultivates business for his company, ACSB Capital Management LLC.¹⁴

¹⁴ The parties' older daughter, Saryn J. Francis, born on January 27, 1993, is an undergraduate student at Howard University located in Washington, D.C.

The Court also heard sworn expert testimony from **Erika Kellerhals, Esq.**, (hereafter Kellerhals) on behalf of Dr. Wright-Francis. Kellerhals testified that she analyzed Mr. Francis' financial records. She advised the Court that she submitted her findings in two (2) reports: the first one analyzed Mr. Francis' bank accounts, investments, credit cards and retirement account and the second report assessed the financial reports Mr. Francis submitted to the Court as exhibits for trial.¹⁵ Kellerhals testified that the records she received from Mr. Francis were incomplete and that it appears that Mr. Francis was commingling funds since she was not able to distinguish between his personal and business expenditures. Kellerhals also refuted Mr. Francis' claim that he has been [*14] cultivating business in Washington, D.C. since his records do not show evidence that he has any clients outside the territory of the U.S. Virgin Islands. With respect to the money owed to Balbo, Kellerhals testified that financial records show that Mr. Francis has paid Balbo about Fifteen Thousand Dollars (\$15,000.00) and Dr. Wright-Francis has paid approximately Thirty Thousand Dollars (\$30,000.00).

¹⁵ Kellerhals' Curriculum Vitae reflects her education and expertise in legal tax related assessments and financial analyses.

Kellerhals claim that although in deposition Mr. Francis submitted incomplete bank account information to 2011-2012,¹⁶ she found that Mr. Francis spent approximately One Hundred Seventeen Thousand Five [****23**] Dollars and One Cent (\$117,005.01).¹⁷ For the year 2012, Mr. Francis submitted his 1040 tax form, and again, Kellerhals found that Mr. Francis spent about One Hundred Seventy Nine Thousand Twenty One Dollars (\$179,021.00).¹⁸

¹⁶ Mr. Francis submitted Fidelity IRA and 401K statements for December 2011-February 2012, April 2012-May 2012; Charles Schwab IRA statements for November 2012-December 2012; an AmEx credit card spending report for the year of 2011; and Marriott Credit Card [***15**] statements for December 24, 2011-December 23, 2012. Mr. Francis also submitted Texas Credit Union statements for December 2012-January 2013 and Banco Popular statements for March-May 2013, which are outside the scope of investigation.

¹⁷ See, Respondent's Exhibit 3A

¹⁸ See, Respondent's Exhibit 3A.

Kellerhals concluded that Mr. Francis' spending habits increased drastically since the parties divorced on July 25, 2012, in violation of the Court's December 22, 2011 Order.

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Kellerhals opined that: 1) retirement funds are marital assets; 2) Mr. Francis' wasted marital assets by withdrawing money from his annuity early to cover his excessive spending in the amount of Two Hundred Twenty Thousand One Hundred Seventy Nine Dollars and Ninety Three Cents (\$220,179.93); and 3) that Dr. Wright-Francis is entitled one half of the "wasted" amount of about One Hundred Ten Thousand and Ninety Dollars (\$110,090.00).

Dr. Wright-Francis testified that Mr. Francis is not entitled to earnings resulting from her medical degree because the parties, collectively, paid off student loans by selling stocks that were jointly purchased. Dr. Wright-Francis also testified that she obtained her degree in 1992, just a year after [*16] the parties were married. Dr. Wright-Francis further contends that she did not work for one (1) year in order to care for the parties' children in the early years. She contends that except for approximately two (2) to four (4) years, the parties' income were comparable. She confirmed her work contracts with the East End Medical Clinic and the Schneider Regional Medical Center.

Dr. Wright-Francis acknowledged the purchase of a unit at the Towers Condominiums in Estate Contant on January 17, 2014, for which she currently collects a monthly rent. She confirmed that she continues to reside at IB-29 Estate Solberg with the parties' minor daughter.

Dr. Wright-Francis informed the Court that she is seeking half of the value of the parties' marital homestead located at IB-29 Estate Solberg and half of the value of what Mr. Francis "wasted." She contends that Joan Francis does not have any ownership interest in the Solberg property [**24] and that the homestead should be sold if Mr. Francis is not able to buy her out.

ANALYSIS

[1] [HN1] In an action for divorce, this Court has the authority to equitably divide joint personal property and real property, limited to the marital homestead as defined in Title 33 V.I.C. § 2305(d). *Bradford v. Cramer*, 54 V.I. 669, 676 (V.I. 2011). Real property [*17] owned by the couple, other than the marital homestead, is divided by way of a civil partition action. *Fuentes v. Fuentes*, 38 V.I. 29, 1997 WL 889532 (Terr. V.I. 1997). When determining the equity of the distribution, the Court also has broad discretion to consider the case's most salient facts. *Charles v. Charles*, 788 F.2d 960, 965 (3rd Cir. 1986). The Supreme Court of the Virgin Islands further refined the Court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. *Garcia v. Garcia*, 59 V.I. 758 (V.I. 2013). "The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, **equitable distribution does not necessarily mean 'equal,' only 'equitable.'**" *Fuentes*, 38 V.I. at 40, 1997 WL 889532, at *5 (emphasis added).

A. Marital Homestead

[2] [HN2] Pursuant to Title 33 V.I.C. § 2305(a), a homestead is defined as "the abode including land and buildings, owned by, and actually occupied by, a person, or by members of his family free of rental charges." The Court in *Garcia* quoted *Harvey v. Christopher*, to explain that although the Virgin Islands Code does not expressly define a

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'marital homestead,' both the United States Court of Appeals for the Third Circuit and the Appellate Division of the District Court interpreted Title 33 V.I.C. §§ 2305(a), (c) to hold that a "marital homestead" is any 'homestead' **[*18]** in which a husband and wife both reside during the marriage and that is owned by one or both of the spouses." *Garcia*, 59 V.I. 758 (V.I. 2013) quoting, *Harvey v. Christopher*, 55 V.I. 565, 572 (V.I. 2011).

Pursuant to the parties' stipulation, IB-29 Estate Solberg is valued at Seven Hundred Twenty Five Thousand Dollars (\$725,000.00) subject to a One Hundred Ten Thousand Dollars (\$110,000.00) mortgage. Although the parties dispute the amount owed to Balbo, they acknowledge that **[**25]** Balbo Construction is owed money for work it has done on the homestead.¹⁹

¹⁹ See Civil Complaint, *Balbo v. Julito Francis & Debra Francis*, ST-14-CV-188.

Testimony revealed that Dr. Wright-Francis assumed responsibility for the children's school tuition and cost of other activities during the course of their marriage. Mr. Francis satisfied almost all expenses related to their home including the mortgage property and home insurance payments. Since the parties' divorce, the parties have shared equally their children's expenses and Mr. Francis has continued to pay all real property expenses.

Here, the home located at IB-29 Estate Solberg, St. Thomas appears to satisfy the requirements outlined in Title 33 V.I.C. § 2305(a) since Mr. Francis gained ownership rights when: 1) his mother and sister conveyed the property to him and 2) **[*19]** the parties resided in the home from 2005 until they terminated their marriage in 2012. However, the Supreme Court, through *Garcia*, required that further examination is needed when a purported marital homestead is comprised of multiple units like the Solberg property.

In *Garcia*, the parties resided in a two level structure that was partitioned of into four (4) separate independent apartments. The wife argued that the marital homestead constituted all four (4) apartments and consequently, she was entitled to an equitable portion of the homestead. The husband opined that all of the apartments should not count towards the homestead since "(1) it had a dual nature, as portions of the building were rented to tenants, and (2) although Felipe and Edna resided there at some points during their marriage, there were large spans of time during which the parties did not occupy it together." 59 V.I. 758 (V.I. 2013). Ultimately, the *Garcia* Court remanded the matter back to the Superior Court for further consideration without determining which units comprised the marital abode.

Here, the Solberg property is apportioned into three (3) units. The parties resided in the larger unit with their daughters for approximately seven **[*20]** (7) years while Mr. Francis' mother lived in a smaller unit. The third unit was used as a home office by Mr. Francis, until he started to use it as his living quarters after the parties divorced. Unlike *Garcia*, the parties did not use their other units as rental property to produce income. Mr. Francis asserted that Joan Francis contributed to her household **[**26]** expenses for a portion of the time she has lived there. It is also important to note that Mr. Francis' mother resided on the property first and has been the only other resident.

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[3] The Court has considered that the parties resided in the Solberg home from 2005-2012 for approximately seven (7) of their twenty one (21) years of marriage with their children. Mr. Francis' mother has occupied an attached apartment on the same property since 2000. They have all contributed in various degrees to the subject property. Both parties are clearly capable of providing for themselves and their children, as they are both accomplished professionals and have already agreed to share equally in the costs of raising their children. Dr. Wright-Francis obviously has the capacity and means to secure alternative housing; and has neither demonstrated a need **[*21]** or desire to remain in the marital homestead.

This Court cannot disregard the fact that neither party purchased the real property upon which the marital homestead was built. Much consideration is given to the fact that Mr. Francis acquired the property from his mother to help her construct a home for her to live. While evidence shows that the parties together were able to finance the construction, they benefitted by living on the property with their children for seven (7) years of their twenty-one (21) years of marriage. Joan Francis has lived in an adjoining apartment for approximately fourteen (14) years. Thus, only the main residential unit (inclusive of what was the home office and children's area) that the parties occupied during their marriage constitute the marital homestead and not the entire property known as IB-29 Estate Solberg.

In view of the circumstances surrounding the acquisition and construction of IB-29 Solberg, maintenance and occupancy of said property, the Court finds that based on a balancing of equities, Mr. Francis should retain possession of the marital homestead. Moreover, having considered the stipulated assessed value of the real property, and the debts associated **[*22]** with the property, and given serious consideration to the equities involved under the particular facts herein, the Court has determined that Dr. Wright-Francis has a thirty-five percent (35%) interest in the marital homestead which constitutes approximately seventy percent (70%) of the developed property. As a result Seventy Six Thousand, Six Hundred Fifty Dollars (\$76,650.00) plus \$30,000.00 reimbursement for moneys expended for constructions costs represents a fair award to **[**27]** Dr. Wright-Francis for her contributions and interest in the marital homestead. Thus, Mr. Francis will be required to pay Dr. Wright Francis a total of One Hundred Six Thousand, Six Hundred Fifty Dollars (\$106,650.00).

B. Personal Property

[4] [HN3] The Court may distribute personal property in accordance with Title 16 V.I.C. § 109 (4). However, the statute does not define marital property. "Whether an asset is marital property or separate property for purposes of distribution of the marital estate, is a matter reserved to the sound discretion of the trial court." See, *Feddersen v. Feddersen*, 68 F. Supp. 2d 585, 41 V.I. 230 (D.V.I. 1999). See also, *MacAleer v. MacAleer*, 1999 PA Super 35, 725 A.2d 829, 831 (1999). Once these distinctions have been made, the trial judge has broad equitable powers in disposing of marital property. *Fuentes*, 38 V.I. at 35, 1997 WL 889532, at *5.

[5] [HN4] Although not specifically defined, marital property **[*23]** has been construed to encompass any property which the couple acquired during the marriage and which is subject to equitable distribution upon divorce. See *Fuentes v. Fuentes*, 247 F.Supp.2d 714

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(2003). See, *Felix v. Felix*, 1998 WL 458499, *2 (D.V.I. 1998). Compare, 16 V.I.C. 68 (defining what constitutes 'separate property' of a spouse, not subject to distribution).

1. Equitable Distribution of Retirement Accounts

[6] [HN5] Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined that a pension fund is also marital personal property, subject to claim by the other spouse upon divorce. *Fuentes*, 38 V.I. at 40, 1997 WL 889532, at *8. The *Fuentes* Court goes on to rationalize its decision by quoting the Rhode Island Supreme Court in *Stevenson v. Stevenson*, 511 A.2d 961, 965 (R.I. 1986):

To the extent earned during the marriage, the [pension] benefits represent compensation for marital effort and are substitutes for current earnings which would have increased ... the marital standard of living or would have been converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their pension payments for **[**28]** security in their older years. **[*24]** *Family Law and Practice*, § 37.07[1] at 37-81 (1985).

Fuentes v. Fuentes, 38 V.I. 29, 1997 WL 889532 (Terr. V.I. 1997). The evidence shows that Mr. Francis has approximately Five Hundred Thousand Dollars (\$500,000.00) in his retirement account. While, Dr. Wright-Francis has an amount that exceeds Five Hundred Thousand Dollars (\$500,000.00), the exact amount is unknown.

According to the Court in *Fuentes*, both parties are entitled to an equitable share of the other's retirement account. The *Fuentes* Court further explains that there are two (2) different methods used to determine the percentage which spouses are entitled. The first method presumes a present value on the retirement plan based on the expected lifespan of the employee-spouse. *Weir v. Weir*, 173 N.J. Super. 130, 413 A.2d 638 (1980). This method requires the Court to determine values contingent on life expectancy and employee-spouse's share of the retirement pay. *Fuentes*, 38 V.I. at 41, 1997 WL 889532, at *7. The second method calculates the percentage that the non-employee is entitled to, based on length of employment and marriage. They receive benefits when they become available under the plan. *Id.* Both methods require basic knowledge of the retirement plans that includes, but are not limited to the following information: 1) present value; 2) account history; **[*25]** 3) retirement plan regulations; and 4) the distribution schedule.

With regard to the retirement accounts, the parties have simply failed to submit sufficient information for the Court to make a determination. Mr. Francis' submission only demonstrates the balance of his Fidelity IRA account when the parties dissolved their marriage in 2012. The Court has no reliable evidence from Dr. Wright-Francis regarding her retirement fund other than her vague testimony. Neither party has made sufficient information available to this Court, to justify the division of their respective individual accounts.

[7] On July 25, 2012, the Court refused to make a determination on Dr. Wright-Francis' show cause motion because it lacked sufficient evidence and ordered the parties to commission a CPA *supra*. The parties failed to comply. As a result, the record is still void of evidence of a CPA analysis or recommendation to aid the Court. Kellerhals reports and testimony are not helpful in this regard since it was designed for the sole purpose of demonstrating waste of assets by Mr. Francis. Notwithstanding, **[**29]** it appears that the

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parties have approximately the same amount in their funds, or close thereto. Thus, a division is [*26] unnecessary and each party is entitled to retain their existing interest in their own accounts.

2. Equitable Distribution of the Medical Degree

[8] Mr. Francis requests equitable distribution of Dr. Wright-Francis' medical degree, which was acquired after one (1) year of marriage. The U.S. Virgin Islands has not previously decided whether educational or professional degrees constitute marital property.²⁰ [HN6] Most states hold that an educational degree is not marital property. Courts have consistently considered whether one spouse had postponed his or her own career and educational goals to support and contribute to the career and educational goals of the other spouse. See, *Mahoney v. Mahoney*, 91 N.J. 488, 453 A.2d 527, 531-32 (1982); *In re the marriage of Sally K. Olar*, 747 P.2d 676, 678 (1987). They also acknowledge the injustice that occurs after "a couple collectively works towards the attainment of an advanced educational degree or career goal," the expectation of a higher standard of living in the future can be frustrated by the dissolution of a marriage. *In re the marriage of Sally K. Olar*, 747 P.2d 676, 678 (1987). They also acknowledge that injustice that occurs after "a couple collectively works towards the attainment of an advanced educational degree or career goal," the expectation of a higher standard of living in the [*27] future by the dissolution of marriage. *In re the marriage of Sally K. Olar*, 747 P.2d. 676, 678 (1987).

20 For the purpose of this Order, education and professional degrees will be used interchangeably.

[9] [HN7] Many states have compared professional degrees to pension or retirement plans when establishing what constitutes marital property. Pension and retirement plans entitle an owner to a definite amount at a certain date, which an individual has a contractual right to receive. See, *Fuentes*, 38 V.I. 29, 1997 WL 889532, at *5-6. See also, *Kikkert v. Kikkert*, 88 N.J. 4, 438 A.2d 317 (1981). Professional degrees rely on uncertain future events and provide only an expectation of enhanced income. The value of a professional degree is speculative and dependent upon the attributes and future choices of its possessor to be fairly valued. See, *In re the marriage of Sally K. Olar*, 747 P.2d 676, 679-80 (1987). See also, *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074, 1079 [**30] (1985), citing *Deering v. Deering*, 292 Md. 115, 437 A2d 883 (1981). See also, *Mahoney v. Mahoney*, 91 N.J. 488, 453 A.2d 527, 531-32 (1982).

New York is the only jurisdiction so far to rule professional degrees are marital property subject to equitable distribution. See, *O'Brien v. O'Brien*, 66 N.Y.2d 576, 498 N.Y.S.2d 743, 489 N.E.2d 712 (1985). New York legislation provides that a court consider the efforts one spouse has made to the other spouse's career. See, N.Y. DOM. REL. LAW § 236(B)(1), (5). In *O'Brien v. O'Brien*, the Defendant-wife sought equitable distribution of the Plaintiff/Husband's license to practice medicine. The Plaintiff commenced the action for divorce two (2) months [*28] after obtaining such license. The Plaintiff began his postgraduate classes after the parties were married. For the majority of the parties nine (9) years of marriage, he was working towards a career in medicine. Meanwhile, the Defendant maintained their household, relinquished her opportunity to further her career,

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and provided financially for the parties. The Defendant provided expert testimony evaluating the present value of the Plaintiff's medical license. *O'Brien v. O'Brien*, 66 N.Y.2d 576, 498 N.Y.S.2d 743, 489 N.E.2d 712 (1985).

[10] Here, Dr. Wright-Francis acquired her medical degree in 1992, she began working towards the degree years before the parties were married. There is no evidence that Mr. Francis was unjustly compelled to delay or relinquish his education or career goals in order for Dr. Wright-Francis to pursue her goals. Mr. Francis did not provide testimony on the amount in which he contributed to Dr. Wright-Francis' education. Furthermore, Mr. Francis does not offer personal or expert testimony on the potential or actual worth of Dr. Wright-Francis' degree. Two (2) decades have passed since Dr. Wright-Francis received her medical degree. Mr. Francis failed to provide the Court any substantial or credible evidence to calculate a value of Dr. **[*29]** Wright-Francis' medical degree.

[11] [HN8] The Virgin Islands has long viewed "marriage as a partnership or joint venture, whereby both parties collaborate for a common purpose and contribute toward its success." See, *Fuentes v. Fuentes*, 247 F. Supp. 2d 714 (2003); *Felix v. Felix*, 1998 WL 458499, *2 (D.V.I. 1998).

It is important to note that Mr. Francis also received a higher education degree immediately before the marriage. Mr. Francis acquired his Master's in Business Administration in 1990 and is admittedly a well-qualified astute financial investment manager. The parties testified that **[**31]** they supported each other with the help of their families in the early years of their relationship and marriage. Both degrees provided an expectancy of a better life, but this was not guaranteed by contract or other form of surety. Even so, both degrees launched successful and profitable careers for the parties. Both parties worked throughout the duration of the marriage and contributed financially to the marriage.

Accordingly, Mr. Francis' evidence and testimony are insufficient to demonstrate that Dr. Wright-Francis' medical degree is marital property. In this instance, Dr. Wright-Francis' medical degree is her separate property and is not subject to equitable distribution.

3. Equitable Distribution **[*30]** of Household Furniture and other Property Located at IB-29 Estate Solberg

[12] [HN9] The Court also has the authority to divide the personal property in divorce action even after a divorce decree has been issued. In *Garcia*, the Supreme Court explains that "the Superior Court will be required to issue rulings on post-divorce ownership of personal property ... such as cars, boats, electronics, jewelry, shares of stock, bonds and monies deposited with financial institutions" *Garcia*, 59 V.I. 758.

This Court is guided by *Morris v. Morris*, 20 V.I. 249, 1984 WL 998145 (Terr. V.I. 1984), and in the absence of provable ownership, the Court considers the personal property to be jointly owned in equal shares. With respect to the disposition of the household furniture, the evidence satisfies the Court that they are jointly owned by the parties and shall be distributed as set forth in **Appendix A** of this Opinion which is incorporated herein.

C. Determination on Waste of Marital Assets

In the Order entered by the Court on December 23, 2011, the parties were ordered to *refrain* from "destroying, removing, concealing or otherwise harming or reducing the value

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of the property of one or both of the parties."²¹ In addition, the parties were *authorized* to engage in **[*31]** acts reasonable and necessary to the conduct of the parties' usual business and occupation; make expenditures and incur indebtedness for reasonable attorney's fees; and make expenditures and incur indebtedness for **[**32]** reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.²²

²¹ See, Paragraph (2) (b) of Order dated December 23, 2011

²² *id.* at Paragraph 5.

Dr. Wright-Francis argues that Mr. Francis excessively spent and wasted assets. Dr. Wright-Francis submitted reports and sworn testimony analyzing Mr. Francis' income and expenses.²³

²³ See, Respondent's Exhibits 3 and 3A.

[13] Although there is some evidence that Mr. Francis withdrew Two Hundred Twenty Thousand One Hundred Seventy Nine Dollars and Ninety Three Cents (\$220,179.93) between 2011 and 2012, there is no evidence Mr. Francis deliberately destroyed, concealed or harmed the parties property. The money Mr. Francis withdrew from his annuity was used to pay expenses, including expenses associated with his children's care, the marital homestead, businesses and living expenses, they are reasonable and necessary.²⁴ The Court also considers the fact that Mr. Francis was terminated from his employment with VINGN and used his investments **[*32]** to support his obligations and standard of living.

²⁴ Petitioner's bank statements submitted at Deposition show payment to his attorney and reasonable and necessary business and living expenses.

[14] Moreover, the Supreme Court in *Walters v. Walters* explains that there must be sufficient evidence that a party intentionally disobeyed a Court order to be held in contempt. To clarify its position, The *Walters* Court quotes the Court of the Second Circuit of Appeals: [HN10] "A party may be held in civil contempt for failure to comply with a court order if '(1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner.'" *Id.* at 352 (*quoting Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004)).

Accordingly, it is not unreasonable to expect Mr. Francis to use his available resources to finance his daily and regular obligations. Dr. Wright-Francis fails to provide clear and convincing evidence of intent to harm marital assets. For that reason, the Court cannot find that Mr. Francis excessively spent and wasted marital assets in 2011 and 2012, in violation of the Court Order entered on December 23, 2011.

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[*33] CONCLUSION

Based [*33] on all of the above the Court concludes that both parties individually possess sufficient financial and professional resources to continue to support themselves and their children with a standard of living equivalent to that enjoyed during the marriage. Thus, the post-divorce distribution of the marital homestead and personal property are decided in accordance with this Memorandum Opinion and the accompanying Order of even date.

ORDERED that a copy of this Order be directed to Andrew L. Capdeville, Esq. and Julie German Evert, Esq.

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