

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	No Information Found
		IV. Non-Negative Media	No Information Found
		V. Other Language Media	No Information Found
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: Shreya parashar Date: 07/11/2017 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:

11604604	<u>No Match</u> <u>Found</u>	GCIS 00000499664	 Erika Kellerhals	Country: UNITED STATES	Date of Birth: [REDACTED]
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PCR:

C20170738204806 Erika Kellerhals 12998482 NCA customised Auto-Closed No-Hit 12/07/2017

BIS RESULTS:

Negative Media:

No Information Found

Non-Negative Media:

No Information Found

Other Language Media:

No Information Found

Public Record:

1 OF 1 RECORD(S)

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Date: 7/11/2017
Report processed by:
DEUTSCHE BANK AG||

Full Name
KELLERHALS, ERIKA A

Address
[REDACTED]
STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY

County
RICHMOND

Phone
[REDACTED]

ADDITIONAL PERSONAL INFORMATION

SSN
[REDACTED]-XXXX

DOB
[REDACTED]
(Age: 42)

Gender

LexID(sm)
001368644215

Subject Summary

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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
1:	██████-XXXX	New York	██████	

Most frequent SSN attributed to subject:

Possible E-Mail Addresses

████████████████████
████████████████████

Others Using SSN - 2 records found

#	Full Name	SSN	DOB
1:	KELLERHALS, ENER	██████-XXXX	██████
11:	YOUNG, MICHAEL S	██████-XXXX	

Address Summary - 14 records found

- | No. | Address |
|-----|---|
| 1: | ████████████████████
STATEN ISLAND, NY ██████████
RICHMOND COUNTY |
| 2: | 9053 SUGAR EST STE 101
ST THOMAS, VI 00802-3653
ST. THOMAS COUNTY |
| 3: | ████████████████████
JUPITER, FL ██████████
PALM BEACH COUNTY |
| 4: | 9053 ESTATE THOMAS APT 101
ST THOMAS, VI 00802
ST. THOMAS COUNTY Social Services Facility |
| 5: | 9100 PORT OF SALE MALL STE 15
ST THOMAS, VI 00802-3602
ST. THOMAS COUNTY |
| 6: | 9053 ESTATE THOMAS STE 10
ST THOMAS, VI 00802
ST. THOMAS COUNTY |
| 7: | PO BOX 608
ST THOMAS, VI ██████████
ST. THOMAS COUNTY |
| 8: | PO BOX 6347
ST THOMAS, VI ██████████-6347
ST. THOMAS COUNTY |
| 9: | 9100 PORT OF SALE MALL STE 2
ST THOMAS, VI 00802-3602 |

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- No. Address**
ST. THOMAS COUNTY
- 10: [REDACTED]
BROOKLYN, NY [REDACTED]
KINGS COUNTY
- 11: [REDACTED]
BROOKLYN, NY [REDACTED]
KINGS COUNTY
- 12: [REDACTED]
BROOKLYN, NY [REDACTED]
KINGS COUNTY
- 13: [REDACTED]
STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY
- 14: [REDACTED]
STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY

Address Details

1: [REDACTED] STATEN ISLAND, NY [REDACTED]

Address
[REDACTED]
STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY

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

Dates
2/1994 - 4/2017

Phone
[REDACTED]

Other Associates
HANRATTY, THOMAS E

2: 9053 SUGAR EST STE 101 ST THOMAS, VI 00802-3653

Address
9053 SUGAR EST STE 101
ST THOMAS, VI 00802-3653
ST. THOMAS COUNTY

Household Members
None Listed

Other Associates
None Listed

Dates
6/2017 - 6/2017

Phone

3: [REDACTED] JUPITER, FL [REDACTED]

Address
[REDACTED]
JUPITER, FL [REDACTED]
PALM BEACH COUNTY

Census Data for Geographical Region

Dates
4/2017 - 5/2017

Phone

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Median Head of Household Age: 63
 Median Income: \$126,306
 Median Home Value: \$728,954
 Median Education: 16 years

Household Members

None Listed

Other Associates

None Listed

4: 9053 ESTATE THOMAS APT 101 ST THOMAS, VI 00802

Address

9053 ESTATE THOMAS APT 101
 ST THOMAS, VI 00802
 ST. THOMAS COUNTY

Household Members

None Listed

Other Associates

None Listed

Dates

6/2016 - 10/2016

Phone

5: 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

6: 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

7: PO BOX 608 ST THOMAS, VI [REDACTED] - [REDACTED]

Address

PO BOX 608
 ST THOMAS, VI [REDACTED] - [REDACTED]
 ST. THOMAS COUNTY

Household Members

KELLERHALS, EDWARD A

Dates

3/2004 - 11/2015

Phone

Other Associates

FERGUSON, GREG J

8: PO BOX 6347 ST THOMAS, VI [REDACTED] -6347

Address

PO BOX 6347
 ST THOMAS, VI [REDACTED] -6347
 ST. THOMAS COUNTY

Household Members

KELLERHALS, EDWARD A

Dates

3/2004 - 4/2009

Phone

Other Associates

FERGUSON, GREG J

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9: 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

Dates

7/2003 - 6/2004

Phone

Other Associates

None Listed

10: [REDACTED] BROOKLYN, NY [REDACTED]

Address

[REDACTED]
BROOKLYN, NY [REDACTED]
KINGS COUNTY

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

Dates

11/1997 - 11/1997

Phone

11: [REDACTED] BROOKLYN, NY [REDACTED]

Address

[REDACTED]
BROOKLYN, NY [REDACTED]
KINGS COUNTY

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

Dates

10/1997 - 11/1997

Phone

12: [REDACTED] BROOKLYN, NY [REDACTED]

Address

[REDACTED]
BROOKLYN, NY [REDACTED]
KINGS COUNTY

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

Dates

2/1994 - 10/1997

Phone

13: [REDACTED] STATEN ISLAND, NY [REDACTED]

Address

[REDACTED]
STATEN ISLAND, NY [REDACTED]

Dates

2/1994 - 2/1994

Phone

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RICHMOND COUNTY

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

14: [REDACTED] STATEN ISLAND, NY [REDACTED]

Address

[REDACTED]
STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY

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

Dates

2/1994 - 2/1994

Phone

Voter Registrations - 1 records found

1: New York Voter Registration

Registrant Information

Name: KELLERHALS, ERIKA A

Residential Address: [REDACTED]
STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY

SSN: [REDACTED]-XXXX

Date of Birth: [REDACTED]

Gender: Female

Voter Information

Last Vote Date: 2002
Party Affiliation: DEMOCRAT
Active Status: ACTIVE

Driver Licenses - 0 records found

Professional Licenses - 0 records found

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 - 4 records found

1: FL MVR

Registrant Information

Registrant: KELLERHALS, ERIKA A

DOB: [REDACTED]

Address: [REDACTED]
JUPITER, FL [REDACTED]
PALM BEACH COUNTY

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Registration Information

Original Registration Date: 4/17/2017
Registration Date: 4/17/2017
Registration Expiration Date: 10/13/2017
Decal Number: 20117043

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2017
Make: Toyota
Model: 4Runner
Series: SR5/LIMITED/SR5 P
Body Style: 4 Dr Wagon Sport Utility
Color: White

Plate Information

License Plate Type: Private
License Plate Number: [REDACTED]
Plate State: FL

Source Information

Data Source: GOVERNMENTAL

2: FL MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2017
Make: Toyota
Model: 4Runner
Series: SR5/LIMITED/SR5 P
Body Style: 4 Dr Wagon Sport Utility
Color: White

Owner Information

Name: KELLERHALS, ERIKA A

DOB: [REDACTED]
Address: [REDACTED]

JUPITER, FL [REDACTED]
PALM BEACH COUNTY

Lienholder Information

Name: USAA FEDERAL SAVINGS BANK
Address: PO BOX 25145
LEHIGH VALLEY, PA 18002-5145
NORTHAMPTON COUNTY

Title Information

Title Number: [REDACTED]
Title Transfer Date: 4/17/2017
Title Issue Date: 5/5/2017

Source Information

Data Source: GOVERNMENTAL

3: NY MVR

Registrant Information

Registrant: KELLERHALS, ERIKA A

DOB: [REDACTED]
Address: [REDACTED]

STATEN ISLAND, NY [REDACTED]
RICHMOND COUNTY

Registration Information

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

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Vehicle Information

VIN: [REDACTED]
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: [REDACTED]
Plate State: NY

Source Information

Data Source: GOVERNMENTAL

4: NY MVR

Vehicle Information

VIN: [REDACTED]
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: [REDACTED]
Address: [REDACTED]

STATEN ISLAND, NY [REDACTED]
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 SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 42)	[REDACTED] BROOKLYN, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED]

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No.	Full Name	Address/Phone
2.	KELLERHALS, EDWARD A • AKA KELLERMALS, EDWARD A • AKA KELLERNALS, EDW SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 72)	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] 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: [REDACTED]-XXXX DOB: [REDACTED] (Age: 68)	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] BROOKLYN, NY [REDACTED] [REDACTED] BROOKLYN, NY [REDACTED]
4.	KELLERHALS, EDWARD	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED]
5.	DAHLING, ROBERT J SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 46)	[REDACTED] WEST ISLIP, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] PO BOX [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED]
5.A.	DAHLING, PATRICIA M • AKA DAHLING, P SSN: [REDACTED]-XXXX	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED]

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No.	Full Name	Address/Phone
	DOB: [REDACTED] (Age: 74)	STATEN ISLAND, NY [REDACTED] [REDACTED]
		[REDACTED] STATEN ISLAND, NY [REDACTED]
5.B.	DAHLING, MICHAEL A • AKA DAHLIG, MICHAEL SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 43)	[REDACTED] PHOENIX, AZ [REDACTED] [REDACTED] GOODYEAR, AZ [REDACTED] [REDACTED] TEMPE, AZ [REDACTED] [REDACTED] CHANDLER, AZ [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED]
5.C.	MAYFIELD, JESSICA E • AKA DAHLING, JESSICA A • AKA MAYFIELD, JESSIE • AKA MAYFIELD, JESSI • AKA MORRIS, JESSICA • AKA BUCCOLA, JESSIE SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 39)	[REDACTED] PHOENIX, AZ [REDACTED] [REDACTED] PHOENIX, AZ [REDACTED] [REDACTED] SAN DIEGO, CA [REDACTED] [REDACTED] SCOTTSDALE, AZ [REDACTED] [REDACTED] OCEANSIDE, CA [REDACTED] [REDACTED]
6.	DAHLING, MELISSA A • AKA KELLERHALS, MELISSA A SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 45)	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED]
6.A.	DAHLING, ROBERT J SSN: [REDACTED]-XXXX DOB: [REDACTED] (Age: 76)	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] [REDACTED]

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No.	Full Name	Address/Phone
		STATEN ISLAND, NY [REDACTED] [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED]

Business Associates - 1 records found

1: 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: 12/5/2016

Filing Date: 1/6/2014

Person Associates - 7 records found

No.	Full Name	Address	SSN	Phone	DOB
1:	BETZ, SHAUNA L	6501 RED HOOK PLZ STE 201 ST THOMAS, VI 00802-1373 9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602 5600 ROYAL DANE MALL STE 51 ST THOMAS, VI 00802-6410 [REDACTED] DENVER, CO [REDACTED] [REDACTED] DENVER, CO [REDACTED]	[REDACTED]-XXXX		[REDACTED]
2:	FERGUSON, GREG J FERGUSON, GREGORY J	9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602 PO BOX [REDACTED] ST THOMAS, VI [REDACTED] [REDACTED] PO BOX 608 ST THOMAS, VI 00804-0608 PO BOX 6347	[REDACTED]-XXXX	[REDACTED]	[REDACTED]

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No.	Full Name	Address	SSN	Phone	DOB
		ST THOMAS, VI 00804-6347			
		[REDACTED] MESA, AZ [REDACTED]			
3:	HANRATTY, THOMAS E	[REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED]	[REDACTED]-XXXX	[REDACTED]	[REDACTED]
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 [REDACTED] ST THOMAS, VI [REDACTED] [REDACTED] [REDACTED] ST THOMAS, VI [REDACTED] [REDACTED]	[REDACTED]-XXXX		[REDACTED]
5:	TRAYNOR, CARA ROBINSON, CARA	9100 PORT OF SALE MALL STE 22 ST THOMAS, VI 00802-3602 9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602 [REDACTED] ST THOMAS, VI [REDACTED] [REDACTED] [REDACTED] ST THOMAS, VI [REDACTED] [REDACTED]	[REDACTED]-XXXX		[REDACTED]

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No.	Full Name	Address	SSN	Phone	DOB
6:	GEARY, BRETT A A	[REDACTED] ST THOMAS, VI [REDACTED] [REDACTED]	[REDACTED]-XXXX	[REDACTED]	
		9053 ESTATE THOMAS APT 101 CHARLOTTE AMALIE, VI 00802			
		9100 PORT OF SALE MALL STE 22 ST THOMAS, VI 00802- 3602			
		[REDACTED] DUMFRIES, VA [REDACTED] [REDACTED]			
		9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802- 3602			
		PO BOX [REDACTED] ST THOMAS, VI [REDACTED] [REDACTED]			
7:	THOMAS, WILLIAM AVERY	[REDACTED] DALLAS, TX [REDACTED]	[REDACTED]-XXXX		10/1984
		[REDACTED] NORMAN, OK [REDACTED]			
		[REDACTED] APT 2 NORMAN, OK [REDACTED]			
		[REDACTED] STILLWATER, OK [REDACTED] [REDACTED]			
		9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802- 3602			

Neighbors - 10 records found

Name	Address	Phone
[REDACTED] STATEN ISLAND, NY [REDACTED]		
CAHILL, JAMES BRIAN	[REDACTED]	
CARDO, ERICA	STATEN ISLAND, NY [REDACTED]	
BURKE, MATTHEW L JR	[REDACTED] [REDACTED] STATEN ISLAND, NY [REDACTED]	
ASSENZA, CHRISTOPHER M	[REDACTED]	[REDACTED]
ASSENZA, MICHAEL P	STATEN ISLAND, NY [REDACTED]	
CATALFUMO, ANA M		
CATALFUMO, MICHAEL J		

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CIRIGLIANO, SUZANNE
 GUIRACOCHA, JULIO CESAR

GUIRACOCHA, CARLOS A

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

MIRO, FRANK AGUSTIN
 PACCIONE, PAMELA J

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

[REDACTED]

GLAZAROV, MICHELLE J

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

[REDACTED]

KRUSE, ADAM M
 KRUSE, BRANDON G
 KRUSE, DONNA V
 KRUSE, JOHN J
 KRUSE, VICTORIA M
 PRIOLO, ANNMARIE R

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

[REDACTED]

CUSACK, CHRISTOPH J

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

[REDACTED]

CUSACK, MARIE E

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

[REDACTED]

MCMILLAN, MAUREEN A
 MCMILLAN, ROBERT W
 MCMILLAN, ROBERT M

[REDACTED]
 STATEN ISLAND, NY [REDACTED]

[REDACTED]

Employment Locator - 15 records found

1:

Company Name: GRATITUDE AMERICA LTD
Name: KELLERHALS, ERIKA
Address: 9053 ESTATE THOMAS SUITE 101
 ST THOMAS, VI 00802
SSN: [REDACTED]-XXXX
Confidence: High

2:

Company Name: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC
Name: KELLERHALS, ERIKA A
Title: MEMBER MANAGER
SSN: [REDACTED]-XXXX
Confidence: Medium

3:

Company Name: THERAPY ASSOCIATION AND DISABILITIES ADVOCATES INC
Name: KELLERHALS, ERIKA A
Address: PO BOX 6016
 ST THOMAS, VI 00804-6016
SSN: [REDACTED]-XXXX
Confidence: High

4:

Company Name: THE MAHOGANY RUN HOME OWNER'S ASSOCIATION
Name: KELLERHALS, ERIKA A
Title: VICE PRESIDENT AND DIRECTOR

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- 5: **Address:** 6501 RED HOOK PLZ STE 201
ST THOMAS, VI 00802-1373
 SSN: ██████-XXXX
 Phone: ██████████
 Confidence: Medium
- Company Name:** PATIENT ASSIST VI
 Name: KELLERHALS, ERIKA A
- 6: **Address:** 9100 PORT OF SALE MALL STE 15
ST THOMAS, VI 00802-3602
 SSN: ██████-XXXX
 Confidence: High
- Company Name:** VISF
 Name: KELLERHALS, ERIKA A
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 Address: PO BOX 1605
KINGSHILL, VI 00851-1605
 SSN: ██████-XXXX
 Phone: ██████████
 Confidence: Medium
- 7: **Company Name:** KELLERHALS P.C
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ST THOMAS, VI 00804-0608
 SSN: ██████-XXXX
 Phone: ██████████
 Confidence: Medium
- 8: **Company Name:** THERAPY ASSOCIATION AND DISABILITIES ADVOCATES INC
 Name: KELLERHALS, ERIKA A
- Address:** PO BOX 608
ST THOMAS, VI 00804-0608
 SSN: ██████-XXXX
 Confidence: High
- 9: **Company Name:** ERIKA A. KELLERHALS P.C
 Name: KELLERHALS, ERIKA A
- Address:** PO BOX 608
ST THOMAS, VI 00804-0608
 SSN: ██████-XXXX
 Phone: ██████████
 Confidence: Medium
- 10: **Company Name:** ERIKA A. KELLERHALS P.C
 Name: KELLERHALS, ERIKA
- Title:** PRESIDENT
 Address: PO BOX 608
ST THOMAS, VI 00804-0608
 SSN: ██████-XXXX
 Phone: ██████████
 Confidence: Medium
- 11: **Company Name:** MARJORIE RAWLS ROBERTS P.C
 Name: KELLERHALS, ERIKA A

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12: Title: ATTORNEY
 Address: PO BOX 6347
 ST THOMAS, VI 00804-6347
 SSN: [REDACTED]-XXXX
 Phone: [REDACTED]
 Confidence: Medium

Company Name: ROBERTS, MARJORIE RAWLS
 Name: KELLERHALS, ERIKA A

13: Title: ASSOCIATE
 Address: PO BOX 6347
 ST THOMAS, VI 00804-6347
 SSN: [REDACTED]-XXXX
 Phone: [REDACTED]
 Confidence: High

Company Name: THE LALTJ LIMITED PARTNERSHIP
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14: Title: CONTACT
 Address: 17 STATE ST
 NEW YORK, NY 10004-1501
 SSN: [REDACTED]-XXXX
 Confidence: High

Company Name: ERIKA A. KELLERHALS, P.C.
 Name: KELLERHALS, ERIKA A

15: Title: MEMBER
 SSN: [REDACTED]-XXXX
 Phone: [REDACTED]
 Confidence: High

Company Name: MARJORIE RAWLS ROBERTS P.C
 Name: KELLERHALS, ERIKA A

Address: PO BOX 6347
 ST THOMAS, VI 00804-6347
 SSN: [REDACTED]-XXXX
 Phone: [REDACTED]
 Confidence: Medium

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

1: **Personal Information**
 Name: KELLERHALS, ERIKA
 Address: [REDACTED]
 STATEN ISLAND, NY [REDACTED]
 Phone Number: [REDACTED]
 Phone Type: Mobile
Carrier Information
 Carrier: NEW CINGULAR WRLS GA
 Carrier City: CHARLOTTE AMALIE (SAINT T
 Carrier State: VI

Sources - 48 records found

All Sources
 Corporate Affiliations
 Email addresses
 Historical Person Locator

48 Source Document(s)
 1 Source Document(s)
 7 Source Document(s)
 10 Source Document(s)

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Motor Vehicle Registrations	5 Source Document(s)
Person Locator 1	12 Source Document(s)
Person Locator 2	4 Source Document(s)
Phone	4 Source Document(s)
PhonesPlus Records	1 Source Document(s)
Utility Locator	3 Source Document(s)
Voter Registrations	1 Source Document(s)

Key

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▣ Moderate Risk Indicator. These symbols may prompt you to investigate further.

▢ General Information Indicator. These symbols inform you that additional information is provided.

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D&B:

Not required

LEGAL RESULTS:**Court Cases:**

JAMES P. CARROLL v. DAWN PROSSER

Civil Action No. 08-147

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

2012 U.S. Dist. LEXIS 79534

June 6, 2012, Decided

June 6, 2012, Filed

SUBSEQUENT HISTORY: Affirmed by Prosser v. Carroll (In re Prosser), 2013 U.S. App. LEXIS 15853 (3d Cir. V.I., Aug. 1, 2013)

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PRIOR HISTORY: Carroll v. Prosser, 2008 U.S. Dist. LEXIS 54960, 50 V.I. 389 (2008)

CORE TERMS: matter of law, insolvency, badge, "actual fraud, transferred, new trial, defraud, actual intent, fraudulent transfers, jury verdict, failed to present, essential element, post-petition, hinder, proven, deliberations, jewelry, transfers of property, failed to prove, citations omitted, instructing, fraudulent, waived, personal bank account, contra-equity, fraudulently, ownership, intent to hinder, direct evidence, unauthorized

COUNSEL: [*1] Bernard C. Pattie, Law Offices of Barnard Pattie P.C., St. Croix, USVI; Fred Stevens, Yann Geron, Fox Rothschild LP, New York, NY; Samuel H. Israel, FoxRothchild LLP, Philadelphia, PA, *For James P. Carroll, Plaintiff.*

Christopher A. Kroblin, Erika Kellerhals P.C., St. Thomas, USVI; Jeffrey B. C. Moorhead, Christiansted, USVI; Mark W. Eckard, Groner & Eckard, P.C., Christiansted, USVI; Norman Anthony Abood, Law Office of Norman A. Abood, Toledo, OH; Robert F. Craig, Robert F. Craig, P.C., Omaha, NE, *For Dawn Prosser, Defendant.*

JUDGES: SÁNCHEZ, J.

OPINION BY: Juan R. Sánchez

OPINION

MEMORANDUM

(June 6, 2012)

In this turnover action, James P. Carroll, the Chapter 7 trustee for the bankruptcy estate of non-party Debtor Jeffrey Prosser, seeks to restore to the estate pre-petition fraudulent transfers and post-petition unauthorized transfers made from Debtor Jeffrey Prosser to his wife, Defendant Dawn Prosser. Following trial, the jury returned a verdict in favor of Trustee Carroll and against Prosser. ¹ Thereafter, Prosser moved for judgment as a matter of law and, in the alternative, filed a [*2] "protective" motion for a new trial. The Trustee moved for judgment on the jury verdict.

¹ By agreement of all parties, this case was tried contemporaneously with the parallel Chapter 11 case, *Stan Springel v. Dawn Prosser*, No. 08-146 (D.V.I.) to two separate juries. Although the two juries heard the overlapping evidence in the two cases at the same time as each other, each jury heard a separate opening and closing, each jury was charged independently of the other, and each jury deliberated separately.

In her motion for judgment as a matter of law, Prosser argues Carroll failed to present any evidence that Jeffrey Prosser owned the assets at the time of their transfer. Specifically, Prosser argues the evidence was necessarily insufficient because the jury in the parallel Chapter 11 case, *Stan Springel v. Dawn Prosser*, No. 08-146 (D.V.I.), found the transfers were made directly from Jeffrey Prosser's company to his wife for fair value and without

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fraud, indicating Jeffrey Prosser never owned the assets. In addition, Prosser argues Carroll failed to prove Jeffrey Prosser's insolvency at the time of each transfer, an essential element of Carroll's claims, Carroll contends these two issues **[*3]** have been waived because Prosser failed to raise them in a motion for judgment as a matter of law prior to submission of all the evidence to the jury. Alternatively, Carroll asserts Prosser's arguments fail as a matter of law.

Federal Rule of Civil Procedure 50, which was amended in 2006, permits a court to grant judgment as a matter of law "only if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability." *Price v. Trans Union, L.L.C.*, No. 09-1332, 2012 U.S. Dist. LEXIS 36176, at *7, [WL], at *2 (E.D. Pa. Mar. 16, 2012) (quoting *LePage's' Inc. v. 3M*, 324 F.3d 141, 145-46 (3d Cir. 2003)). In determining whether to grant this "sparingly invoked remedy," the court must "refrain from weighing the evidence, determining the credibility of witnesses, or substituting [its] own version of the facts for that of the jury." *Marra v. Phila. Hous. Auth.*, 497 F.3d 286, 300 (3d Cir. 2007) (internal citations and quotation marks omitted). A motion for judgment as a matter of law may "be made at any time before the case is submitted to the jury." FED R. Civ. P. 50(a)(2). **[*4]** As long as the motion was raised before the jury received the case, the movant may renew the motion within 28 days after entry of judgment. FED. R. CIV. P. 50(b). However, failure to make a motion for judgment as a matter of law during trial "wholly waives the right to mount any post-trial attack on the sufficiency of the evidence." *Murphy v. City of Phila. Dep't of Recreation*, No. 07-4104, 2011 U.S. Dist. LEXIS 94358, at *9, [WL], at *3 n.1 (E.D. Pa. Aug. 19, 2011) (citations omitted); see also *Jeckell v. Crestwood Area Sch. Dist*, No. 04-1135, 2008 U.S. Dist. LEXIS 71380, at *1, [WL], at *2-3 (M.D. Pa. Sept. 18, 2008).

Although Prosser made a Rule 50 motion during trial, her argument, as it related to the Chapter 7 case, was only that Trustee Carroll did not adduce proof of actual intent by Jeffrey Prosser to hinder, delay, or defraud his creditors. This is not the same as arguing Trustee Carroll failed to prove Jeffrey Prosser owned the assets he transferred to his wife. In addition, Prosser asserted an insolvency argument, however this argument related only to the solvency of Jeffrey Prosser's company, and not to himself personally. Thus, because Prosser did not raise either of the arguments she seeks to raise herein at trial, they **[*5]** are deemed waived.

Prosser contends it would be unfair and inequitable to find waiver, as her arguments could not have been raised until the jury in the Chapter 11 case delivered its verdict. Prosser thus contends this Court should view the Chapter 11 jury verdict as newly discovered evidence pursuant to Federal Rule of Civil Procedure 60 (permitting a court to relieve a party from a final judgment for, *inter alia*, "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)"). This Court disagrees.

The verdict in the parallel Chapter 11 case is entirely irrelevant to the issue of whether Prosser could have raised the arguments made here before the jury's deliberations. Indeed, the Chapter 11 jury's finding was based on evidence submitted prior to that jury's deliberations. If, based on the evidence submitted at trial, the Chapter 11 jury could find

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the transfers at issue in that case were made directly from Jeffrey Prosser's company to his wife for fair value and without fraud, so too Prosser could have argued -- "at any time" during the course of the trial, and certainly once all the evidence had been submitted [*6] to the jury -- that Carroll failed to present evidence showing Jeffrey Prosser owned the assets he transferred to his wife, and failed to present evidence showing Jeffrey Prosser's insolvency at the time of each transfer. There is no reason why Prosser had to wait for the jury verdict in the parallel case before raising either of those arguments.

Even if this Court were to find Prosser's arguments not waived, however, the motion is denied as a matter of law. Upon review of the evidence submitted to the jury, this Court finds Trustee Carroll submitted sufficient evidence regarding Jeffrey Prosser's ownership of the assets he fraudulently transferred to his wife to support the verdict in this case. In addition, the Court finds Jeffrey Prosser's insolvency at the time of each transfer is not an essential element of Trustee Carroll's claims.

Trustee Carroll presented Alan Barbree, a forensic accounting expert, to testify about Jeffrey Prosser's ownership of each of the five categories of assets Carroll sought to recover in his case: (1) cash; (2) jewelry; (3) improvements to the Shoys Estate; (4) furniture; and (5) fine art and antiques. As to the first two categories, Barbree testified that [*7] Jeffrey Prosser transferred cash and jewelry to his wife via payments made directly from his personal bank account. Trial Tr. 118:3-120:7, 121:7-124:19, 125:2-15, 129: 8-130:23, 132:2-17, 135:11-136:5, 136:18-141:16, 141:20-142:11, June 7, 2011. These transfers were explained in detail at trial, and supporting documentation was included With Barbree's summary of the transfers, all of which was provided to the jury during its deliberations so it could track the payments. Based on this evidence, the jury could reasonably have concluded Jeffrey Prosser's personal bank account was the point of origin for the cash and jewelry transferred. See *id.*; see also Trial Exs. 201 - 203, 216. Barbree further testified that the remaining three categories of assets Trustee Carroll sought to recover (improvements to the Shoys mansion, furniture, and art and antiques) were paid for either through Jeffrey Prosser's personal bank account or through a "contra-equity account" set up at Jeffrey Prosser's company for his use. Trial Tr. 143:17-24, 144:20-145:8, 147:3-161:22, June 7, 2011. As stipulated by the parties, payments made through this contra-equity account were "distributions" made solely for the benefit [*8] of the shareholder, Jeffrey Prosser, and thus were Prosser's personal funds. *Id.* at 163. These transfers were also explained in detail at trial, and supporting documentation was again provided to the jury at the time of its deliberations so it could also track these payments. See Trial Exs. 213-215, 217. From this evidence alone, a jury could reasonably conclude the assets paid for through the contra-equity account, as distributions to Jeffrey Prosser, were owned by Jeffrey Prosser, and were in fact transfers from Jeffrey Prosser to his wife. Moreover, Prosser herself testified these items were gifts from her husband, providing further evidence of her husband's initial ownership. See, e.g., Trial Tr. 224:6-25 (jewelry), June 7, 2011. As a result, this Court finds Trustee Carroll presented sufficient evidence for a jury to conclude Jeffrey Prosser owned the particular assets at issue which he then fraudulently transferred to his wife.

Prosser next argues Trustee Carroll failed to present evidence of Jeffrey Prosser's insolvency at the time of each transfer, which Prosser contends was an essential element of each of Carroll's claims. Trustee Carroll asserted three types of claims against [*9]

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Prosser. The first two types of claims were based on "actual fraud," meaning that Trustee Carroll bore the burden of proof to show Jeffrey Prosser made transfers to his wife with "actual intent to hinder, delay, or defraud a creditor." 11 U.S.C. § 548(a)(1)(A) (actual fraud provision); *In re Valley Bldg. & Constr. Corp.*, 435 B.R. 276, 285 (Bankr. E.D. Pa. 2010) (stating actual fraud provisions require the trustee to establish the debtor made payments with actual intent to hinder, delay, or defraud any creditor). Because "individuals are rarely willing to admit intent, actual fraud is rarely proven by direct evidence," *In re Pa. Gear Corp.*, Bankr. No. 02-36436, Adv. Nos. 03-940, 03-942, 2008 WL 2370169, at *9 (Bankr. E.D. Pa. Apr. 22, 2008). Instead, courts consider various factors, or "badges of fraud," in determining whether fraud has been proven by circumstantial evidence. *In re Am. Rehab & Physical Therapy, Inc.*, Bankr. No. 04-14562, Adv. No. 04-847, 2006 Bankr. LEXIS 1440, at *49, [WL], at *15-16 (Bankr. E.D. Pa. May 18, 2006). One such badge of fraud is insolvency of the debtor, but not all badges of fraud need to be shown to prove a claim of actual fraud. *In re Valley Bldg. & Constr. Corp.*, 435 B.R. at 286 [*10] (detailing 11 badges of fraud courts may consider in determining actual intent, not all of which must be proven to support a claim of actual fraud, and noting this list is "non-exhaustive"); *In re Fedders N.Am., Inc.*, 405 B.R. 527, 545 (Bankr. D. Del. 2009) ("The presence or absence of any single badge of fraud is not conclusive." (citation omitted)). Thus, while insolvency of the debtor is a factor that may support a claim for actual fraud, it is not an essential element of such a claim. The third type of claim brought by Trustee Carroll sought to recover unauthorized post-petition transfers from Jeffrey Prosser to his wife, pursuant to 11 U.S.C. §549, which permits a trustee to avoid transfers of property belonging to the estate that occur after the commencement of the case and are not authorized under the Bankruptcy Code or by the Bankruptcy Court. 11 U.S.C. § 549(a); see also *In re Pa. Gear Corp.*, 2008 WL 2370169, at *6. To prevail on this type of claim, a trustee must show that after the commencement of the case at issue, property of the estate was transferred, and the transfer was not approved by the Bankruptcy Court or any provision of the Code. 11 U.S.C. § 549; *In re PSA, Inc.*, 335 B.R. 580, 584-85 (Bankr. D. Del. 2005). [*11] Insolvency is thus not a required element for this type of claim either. See *In re Kennesaw Mint Inc.*, 32 B.R. 799, 803 (Bankr. N.D. Ga. 1983) ("Section 549(a) does not require the trustee to prove insolvency in order to avoid post-petition transfers.").

Moreover, the jury instructions for all three claims brought by Trustee Carroll, which were agreed upon by all parties in this case, are consistent with this law. See Trial Tr. 158-162, June 9, 2011 (instructing jury, as to the first type of fraudulent transfer claim, that "[a]lthough the intent to hinder, delay, or defraud a creditor is often difficult to prove by direct evidence, certain fact patterns, or badges of fraud, will usually show fraudulent intent. When seeking to avoid a fraudulent transfer on the basis of actual fraud, a trustee must prove a "goodly" number of badges of fraud. No one particular badge of fraud must be proven to demonstrate intent to hinder, delay, or defraud" (and listing various badges of fraud, including insolvency of debtor)); *id.* at 163 (instructing, as to the second type of fraudulent transfer claim brought by Trustee Carroll pursuant to United States Virgin Islands law, that the jury "must find that [*12] transfers were fraudulent if Trustee Carroll has proved that Dawn Prosser received or was the beneficiary of certain transfers of property of Jeffrey Prosser, and each of those transfers was made with the actual intent to hinder, delay, or defraud then present or future creditors"); *id.* at 166 (instructing jury, as to the third type of fraudulent transfer claim brought by Trustee Carroll, that "[i]n order for

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Trustee Carroll to recover from Dawn Prosser[] on Trustee Carroll's post-petition transfer claims based on Section 549 of the Bankruptcy Code, you must find Trustee Carroll has proved the following three elements by a preponderance of the evidence. One, Dawn Prosser received or was the beneficiary of certain transfers of property of Jeffrey Prosser. Two, such transfers were received after the petition date of Jeffrey Prosser. Three, such transfers were not approved by the Bankruptcy Court or authorized by the Bankruptcy Code"). Given that Trustee Carroll did not need to prove insolvency of the Debtor at the time of each transfer, Prosser's argument fails, and based on the entire record before this Court, Prosser's motion for judgment as a matter of law is denied.

Alternatively, Prosser [*13] argues she is entitled to a new trial pursuant to Federal Rule of Civil Procedure 59(a) because the jury verdict is unsupportable and because judgment should be entered in favor of Prosser, Rule 59 provides, "[t]he court may, on motion, grant anew trial on all or some of the issues ... after a jury trial, for any reason for which a new trial has heretofore been granted in an action in federal court." FED. R. CIV. P. 59(a)(1). Generally, a district court may grant a motion for new trial pursuant to Rule 59 "if it determines that the verdict is inconsistent with substantial justice because the verdict is against the weight of the evidence; the damages are excessive; the trial was unfair; or that substantial errors were made in the admission or rejection of evidence or the giving or refusal of instructions." *Younis Bros. & Co. v. CIGNA Worldwide Ins. Co.*, 899 F. Supp. 1385, 1397 (E.D.Pa. 1995) (internal quotation marks omitted) (quoting *Ne. Women's Or., Inc. v. McMonagle*, 689 F. Supp. 465 (E.D. Pa. 1988), *aff'd in relevant part*, 868 F.2d 1342 (3d Cir. 1989). The decision to grant a new trial lies within the discretion of the district court, although "such requests are disfavored." *State Farm Mut Auto. Ins. Co. v. Lincow*, 715 F. Supp. 2d 617, 626 (ED. Pa. 2010) [*14] (internal citations omitted).

Prosser argues she is entitled to a new trial for essentially the same reasons advanced in her motion for judgment as a matter of law. Specifically, Prosser argues Trustee Carroll failed to prove Jeffrey Prosser owned the assets he fraudulently transferred to his wife in his individual capacity, and not as an officer of his company, and Trustee Carroll did not prove Jeffrey Prosser was insolvent at the time of each transfer. This motion is therefore denied for the same reasons that Prosser's motion for judgment as a matter of law was denied.

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**

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2014 V.I. LEXIS 45; 61 V.I. 13**July 14, 2014, Decided****July 14, 2014, Filed****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, § (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, § (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

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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, § (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 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 § (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.

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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 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

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[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 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. § [REDACTED](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. § [REDACTED](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. § [REDACTED].

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

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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.

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.

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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.

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-

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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

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

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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.

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.

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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, removing, concealing or otherwise harming or reducing the value of the property of one or both of the parties."⁸ On March 26, 2012, the Court held a final pretrial conference to set deadlines for trial. The Court also maintained the parties' visitation agreement.⁹

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

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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 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,

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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.

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

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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. 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. § [REDACTED] (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

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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. § [REDACTED] (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 '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. §§ [REDACTED] (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. § [REDACTED] (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.

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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.

[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

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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 (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

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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 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 A.2d 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

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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, 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.

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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 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

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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.

[**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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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami)

Supermarket Source, Inc v. Dolphin Gourmet Market, Inc et al

PLAINTIFF: Supermarket Source, Inc A Florida Corporation

DEFENDANT: Dolphin Gourmet Market, Inc A Foreign Corporation;
Ahmad, Nael Abdel Rahim

DOCKET CASE NUMBER: 1:10cv23986

FILING DATE: 11/4/2010

JURISDICTION: Diversity

JUDGE: Graham, Donald L

NATURE OF SUIT: 190 Other Contract

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JURY DEMAND: None

STATUS: Case Closed

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