

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:

RDC

PCR

Yes

BIS

No Hit

Hit

No Hit

Hit

Not Required

Not Required

No

Not Required

D&B

Smartlinx

Court Cases

Results?

Yes

Not Required

Results?

be Required

Yes

Not Required

Review by Legal May

No Results

Search not required

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

Research Analyst

Instructions:

1. Review and confirm that all results are returned for your client.
2. Please note that you are still required to perform any Martindale-Hubbell search (if applicable) on each search subject. We have attached the web link below for your convenience: <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.

No

VII. Smartlinx

VIII. Court Cases

No

Click here for results:

I. RDC Results

II. PCR Results

III. Negative Media

IV. Non-Negative Media

Reviewer Comments (as necessary):

No RDC alert (Please see attached)

No PCR alert (Please see attached)

There was no information found

There was no information found

V. Other Language Media Not Required

VI. D&B

Not Required

Result Found(please see attached)

Result Found(please see attached)

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OFAC RESULTS

RDC:

11593661

No Match

Found

GCIS

00000483290

Erika Kellerhals

Country:United States

Date of

Birth:

10/13/1974

PCR:

C20161034949193 Erika Kellerhals 12013248 NCA customised Auto-Closed No-Hit

12/10/2016

BIS RESULTS

Negative Media:

There was no information found

Non-Negative Media:

There was no information found

Other Language Media:

Not Required

Public Records:

1 OF 1 RECORD(S)

FOR INFORMATIONAL PURPOSES ONLY

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Date:10/12/2016

Report processed by:

DEUTSCHE BANK AG||

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Page 2

Full Name

KELLERHALS, ERIKA A

Address

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

RICHMOND COUNTY

ADDITIONAL PERSONAL INFORMATION

SSN

DOB

074-72-XXXX

Subject Summary

Name Variations

1: KELLERHALES, ERICKA A

2: KELLERHALLS, ERIKA A

3: KELLERHALS, E A

4: KELLERHALS, ERIKA

5: KELLERHALS, ERIKA A

SSNs Summary

No. SSN

1:

074-72-XXXX

State Iss.

New York

Possible E-Mail Addresses

ERIKA@MARJORIEROBERTSPC.COM

EKELLAR@VT.EDU

Others Using SSN - 2 records found

#

Full Name

1:

KELLERHALS, ENER

SSN

074-72-XXXX

DOB

10/1974

Date Iss.

Warnings

Most frequent SSN attributed to subject:

1987-1988

10/1974

(Age:41)

County

RICHMOND

Phone

(718) 667-1921

Gender

LexID(sm)

001368644215

11: YOUNG, MICHAEL S

074-72-XXXX

Address Summary - 12 records found

No. Address

1:

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

RICHMOND COUNTY

2:

3:

4:

9053 ESTATE THOMAS 101

ST THOMAS, VI 00802

ST. THOMAS COUNTY

9100 PORT OF SALE MALL STE 15

ST THOMAS, VI 00802-3602

ST. THOMAS COUNTY

9053 ESTATE THOMAS STE 10

ST THOMAS, VI 00802

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Page 3

No. Address

ST. THOMAS COUNTY

5: PO BOX 608

ST THOMAS, VI 00804-0608

ST. THOMAS COUNTY

6: PO BOX 6347

ST THOMAS, VI 00804-6347

ST. THOMAS COUNTY

7:

8:

9:

9100 PORT OF SALE MALL STE 2

ST THOMAS, VI 00802-3602

ST. THOMAS COUNTY

184 JORALEMON ST APT 1

BROOKLYN, NY 11201-4329

KINGS COUNTY

184 JORALEMON ST APT 12R

BROOKLYN, NY 11201-4329

KINGS COUNTY

10: 187 JORALEMON ST APT 12R

BROOKLYN, NY 11201-4306

KINGS COUNTY

11: 242 BRYSON AVE

STATEN ISLAND, NY 10314-1923

RICHMOND COUNTY

12: 242 BYRNE AVE

STATEN ISLAND, NY 10314-4409

RICHMOND COUNTY

Address Details

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

Address

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

RICHMOND COUNTY

Census Data for Geographical Region

Median Head of Household Age: 47

Median Income: \$82,353

Median Home Value: \$584,337

Median Education: 14 years

Household Members

DAHLING, MELISSA A

KELLERHALS, EDWARD

KELLERHALS, EDWARD A

KELLERHALS, ENER

KELLERHALS, KATHLEEN M

Other Associates

HANRATTY, THOMAS E

2: 9053 ESTATE THOMAS 101 ST THOMAS, VI 00802

Address

9053 ESTATE THOMAS 101

ST THOMAS, VI 00802

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Dates

6/2016 - 8/2016

Phone

Dates

Phone

2/1994 - 10/2016

(718) 667-1921

Page 4

ST. THOMAS COUNTY

Household Members

None Listed

Other Associates

None Listed

3: 9100 PORT OF SALE MALL STE 15 ST THOMAS, VI 00802-3602

Address

9100 PORT OF SALE MALL STE 15

ST THOMAS, VI 00802-3602

ST. THOMAS COUNTY

Household Members

None Listed

Other Associates

BETZ, SHAUNA L

4: 9053 ESTATE THOMAS STE 10 ST THOMAS, VI 00802

Address

9053 ESTATE THOMAS STE 10

ST THOMAS, VI 00802

ST. THOMAS COUNTY

Household Members

None Listed

Other Associates

None Listed

5: PO BOX 608 ST THOMAS, VI 00804-0608

Address

PO BOX 608

ST THOMAS, VI 00804-0608

ST. THOMAS COUNTY

Household Members

KELLERHALS, EDWARD A

Other Associates

FERGUSON, GREG J

6: PO BOX 6347 ST THOMAS, VI 00804-6347

Address

PO BOX 6347

ST THOMAS, VI 00804-6347

ST. THOMAS COUNTY

Household Members

KELLERHALS, EDWARD A

Other Associates

FERGUSON, GREG J

7: 9100 PORT OF SALE MALL STE 2 ST THOMAS, VI 00802-3602

Address

9100 PORT OF SALE MALL STE 2

ST THOMAS, VI 00802-3602

ST. THOMAS COUNTY

Household Members

KELLERHALS, EDWARD A

Other Associates

None Listed

8: 184 JORALEMON ST APT 1 BROOKLYN, NY 11201-4329

Address

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Dates

Phone

Dates

7/2003 - 6/2004

Phone

Dates

3/2004 - 4/2009

Phone

Dates

3/2004 - 11/2015

Phone

Dates

5/2016 - 5/2016

Phone

Dates

12/2003 - 6/2016

Phone

Page 5

184 JORALEMON ST APT 1  
BROOKLYN, NY 11201-4329  
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

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

Address

184 JORALEMON ST APT 12R

BROOKLYN, NY 11201-4329

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

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

Address

187 JORALEMON ST APT 12R

BROOKLYN, NY 11201-4306

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

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

Address

242 BRYSON AVE

STATEN ISLAND, NY 10314-1923

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

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

Address

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Dates

Phone

Dates

2/1994 - 2/1994

Phone

Dates

2/1994 - 10/1997

Phone

Dates

10/1997 - 11/1997

Phone

11/1997 - 11/1997

Page 6

242 BYRNE AVE  
STATEN ISLAND, NY 10314-4409  
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

Voter Registrations - 1 records found

1: New York Voter Registration

Registrant Information

Name: KELLERHALS, ERIKA A

Residential Address: 242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

RICHMOND COUNTY

SSN: 074-72-XXXX

Date of Birth: 10/1974

Gender: Female

Voter Information

Last Vote Date: 2002

Party Affiliation: DEMOCRAT

Active Status: ACTIVE

Driver Licenses - 0 records found

Professional Licenses - 1 records found

1: Professional License

Licensee Information

Name: KELLERHALS, ERIKA ANN

SSN: 074-72-XXXX

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

County: ST. THOMAS

Phone: (340) 779-2564

Gender: FEMALE

License Information

License Type: 105284

Issue Date: 02/10/2015

Status: OTHERS

Health Care Providers - 0 records found

Health Care Sanctions - 0 records found

Pilot Licenses - 0 records found

Sport Licenses - 0 records found

Real Property - 0 records found

Motor Vehicle Registrations - 2 records found

1: NY MVR

Registrant Information

Registrant: KELLERHALS, ERIKA A

DOB: 10/1974

Address: 242 BRYANT AVE  
STATEN ISLAND, NY 10306-3142  
RICHMOND COUNTY  
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2/1994 - 2/1994

Page 7

Registration Information

Original Registration Date: 1/30/2002

Registration Date: 1/30/2002

Registration Expiration Date: 1/29/2004

Vehicle Information

VIN: WWPD63B42P171962

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2002

Make: Volkswagen

Model: Passat

Series: GLS

Body Style: Sedan 4 Door

Weight: 3196

Plate Information

License Plate Type: Private

License Plate Number: AHG1059

Plate State: NY

Source Information

Data Source: GOVERNMENTAL

2: NY MVR

Vehicle Information

VIN: WWPD63B42P171962

Class: PASSENGER CAR/LIGHT TRUCK

Model Year: 2002

Make: Volkswagen

Model: Passat

Series: GLS

Body Style: Sedan 4 Door

Weight: 3196

Owner Information

Name: KELLERHALS, ERIKA A

DOB: 10/1974

Address: 242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

RICHMOND COUNTY

Lienholder Information

Name: CHASE MANHATTAN BANKUSA NA

Address: PO BOX 5210

NEW HYDE PARK, NY 11042-5210

NASSAU COUNTY

Title Information

Title Transfer Date: 3/6/2002

Title Issue Date: 3/6/2002

Source Information

Data Source: GOVERNMENTAL

Boats - 0 records found

Aircraft - 0 records found

Bankruptcy Information - 0 records found

Judgments/Liens - 0 records found

UCC Liens - 0 records found

Fictitious Businesses - 0 records found  
Notice Of Defaults - 0 records found  
Potential Relatives - 10 records found  
1st Degree: 6, 2nd Degree: 4

No.

1.

Full Name

KELLERHALS, ENER

Address/Phone

184 JORALEMON ST

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Page 8

No.

Full Name

SSN:074-72-XXXX

DOB:10/1974

(Age: 41)

2.

KELLERHALS, EDWARD A

- AKA RELLERMALS, EDWARD A

- AKA KELLERNALS, EDW

SSN:063-36-XXXX

DOB:7/1944

(Age: 72)

Address/Phone

BROOKLYN, NY 11201-4329

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

(718) 667-1921

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

(718) 667-1921

102 LINCOLN AVE

STATEN ISLAND, NY 10306-2459

PO BOX 608

ST THOMAS, VI 00804-0608

PO BOX 6347

ST THOMAS, VI 00804-6347

9100 PORT OF SALE MALL STE 2

ST THOMAS, VI 00802-3602

3.

KELLERHALS, KATHLEEN M

- AKA KELLERHAL, KATHLEEN M

- AKA KELLERHALS, KATHLEEN

- AKA KELLERHALS, K M

- AKA KELLERHALS, KATHEEN

- AKA KELLERBALS, KATHLEEN M

- AKA KELLERHALS, KATHLEEN M

SSN:063-36-XXXX

DOB:6/1949

(Age: 67)

4.

KELLERHALS, EDWARD

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

(718) 667-1921

256 BRYANT AVE

STATEN ISLAND, NY 10306-3142

(718) 351-1242

184 JORALEMON ST STE 12R

BROOKLYN, NY 11201-4329

187 JORALEMON ST APT 12R

BROOKLYN, NY 11201-4306  
242 BRYANT AVE  
STATEN ISLAND, NY 10306-3142  
(718) 667-1921  
(718) 979-7823

5.

DAHLING, ROBERT J  
SSN:133-60-XXXX  
DOB:4/1971  
(Age: 45)  
196 RICE AVE  
STATEN ISLAND, NY 10314-3032  
(718) 273-7338  
413 HEBERTON AVE  
STATEN ISLAND, NY 10302-2125  
PO BOX 61494  
STATEN ISLAND, NY 10306-7494  
46 BACHE AVE  
STATEN ISLAND, NY 10306-3010  
(718) 351-1586  
76 PRINCETON AVE  
STATEN ISLAND, NY 10306-2816  
(718) 987-7331  
(718) 987-7685  
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Page 9

No.

5.A.

Full Name

DAHLING, ROBERT J

SSN:080-34-XXXX

DOB:11/1940

(Age: 75)

Address/Phone

196 RICE AVE

STATEN ISLAND, NY 10314-3032

(718) 273-7338

(718) 979-0174

46 BACHE AVE

STATEN ISLAND, NY 10306-3010

(718) 351-1586

(718) 979-0174

76 PRINCETON AVE

STATEN ISLAND, NY 10306-2816

(718) 987-7331

(718) 987-7685

5.B.

DAHLING, PATRICIA M

• AKA DAHLING, P

SSN:106-34-XXXX

DOB:3/1943

(Age: 73)

196 RICE AVE

STATEN ISLAND, NY 10314-3032

(718) 273-7338

359 DEMOREST AVE

STATEN ISLAND, NY 10314-2161

(347) 861-0330

5 BOWEN ST APT

STATEN ISLAND, NY 10304-3513

5.C.

DAHLING, MICHAEL A

• AKA DAHLIG, MICHAEL

SSN:133-60-XXXX

DOB:6/1974

(Age: 42)

4926 E AMELIA AVE

PHOENIX, AZ 85018-5523

15822 W PAPAGO ST

GOODYEAR, AZ 85338-3340

1207 E SECRETARIAT DR

TEMPE, AZ 85284-1611

5050 W IVANHOE ST

CHANDLER, AZ 85226-1964

196 RICE AVE

STATEN ISLAND, NY 10314-3032

(718) 273-7338

5.D.

MAYFIELD, JESSICA E

- AKA DAHLING, JESSICA A
- AKA MAYFIELD, JESSIE
- AKA MAYFIELD, JESSI
- AKA MORRIS, JESSICA
- AKA BUCCOLA, JESSIE

SSN:605-09-XXXX

DOB:11/1977

(Age: 38)

3516 E PICCADILLY RD

PHOENIX, AZ 85018-5116

4926 E AMELIA AVE

PHOENIX, AZ 85018-5523

300 W BEECH ST UNIT 1504

SAN DIEGO, CA 92101-8450

6945 E 2ND ST APT 4

SCOTTSDALE, AZ 85251-5339

(480) 994-7352

(760) 685-6573

2395 CARRIAGE CIR

OCEANSIDE, CA 92056-3605

6.

DAHLING, MELISSA A

46 BACHE AVE

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Page 10

No.

Full Name

• AKA KELLERHALS, MELISSA A

SSN:087-70-XXXX

DOB:12/1971

(Age: 44)

Address/Phone

STATEN ISLAND, NY 10306-3010

(718) 351-1586

46 BEACH AVE

STATEN ISLAND, NY 10306-1915

242 BRYANT AVE

STATEN ISLAND, NY 10306-3142

(718) 667-1921

76 PRINCETON AVE

STATEN ISLAND, NY 10306-2816

(718) 987-7331

(718) 987-7685

Business Associates - 2 records found

1: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC

Name: KELLERHALS, ERIKA A

Address: 501 E KENNEDY BLVD STE 802

TAMPA, FL 33602-5201

Status: ACTIVE

State: FL

Corporation Number: M13000002984

Descriptive Status: ACTIVE

Title: MEMBER MANAGER

Record Type: CURRENT

Record Date: 10/28/2013

2: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC

Name: KELLERHALS, ERIKA A

Address: 501 E KENNEDY BLVD STE 802

TAMPA, FL 33602-5201

Status: INACTIVE

State: FL

Corporation Number: M13000002984

Descriptive Status: INACTIVE

Title: MEMBER MANAGER

Record Type: CURRENT

Record Date: 8/4/2016

Filing Date: 1/6/2014

Person Associates - 7 records found

No. Full Name

Address

1: BETZ, SHAUNA L

9100 PORT OF SALE

MALL STE 15

ST THOMAS, VI 008023602

6501

RED HOOK PLZ STE  
201  
ST THOMAS, VI 008021373  
5600  
ROYAL DANE MALL  
STE 51  
ST THOMAS, VI 008026410  
148  
W MAPLE AVE  
DENVER, CO 80223-1841  
For internal use only  
SSN  
522-69-XXXX  
Phone  
DOB  
12/1981

Page 11

No. Full Name

Address

1576 S JERSEY ST  
DENVER, CO 80224-1935  
2: FERGUSON, GREG J  
FERGUSON, GREGORY J  
9100 PORT OF SALE  
MALL STE 15  
ST THOMAS, VI 008023602  
PO

BOX 12259  
ST THOMAS, VI 008015259  
PO

BOX 608  
ST THOMAS, VI 008040608  
PO

BOX 6347  
ST THOMAS, VI 008046347  
2422

W PECOS AVE  
MESA, AZ 85202-7821  
3: HANRATTY, THOMAS E 256 BRYANT AVE H  
STATEN ISLAND, NY  
10306-3142

242 BRYANT AVE  
STATEN ISLAND, NY  
10306-3142

102 LINCOLN AVE  
STATEN ISLAND, NY  
10306-2459

4: ROBINSON, KELLY M  
TRAYNOR, KELLY  
9100 PORT OF SALE  
MALL STE 22  
ST THOMAS, VI 008023602  
9100

PORT OF SALE  
MALL STE 15  
ST THOMAS, VI 008023602  
4600

ESTATE  
CHARLOTTE AMALIE  
ST THOMAS, VI 008022305  
2369

KRONPRINDSENS  
GADE STE 8  
ST THOMAS, VI 008026252  
3219

CONTANT STE 211  
ST THOMAS, VI 008026111

134-56-XXXX

7/1973

123-20-XXXX

(718) 667-1921

(718) 987-5316

(718) 987-5316

1/1928

601-42-XXXX (480) 831-6166 4/1976

SSN

Phone

DOB

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Page 12

No. Full Name

5: TRAYNOR, CARA  
ROBINSON, CARA

Address

9100 PORT OF SALE  
MALL STE 22  
ST THOMAS, VI 008023602

9100  
PORT OF SALE  
MALL STE 15  
ST THOMAS, VI 008023602  
4600

ESTATE  
CHARLOTTE AMALIE  
ST THOMAS, VI 008022305  
2369

KRONPRINDSENS  
GADE STE N08  
ST THOMAS, VI 008026252  
3219

CONTANT STE 211  
ST THOMAS, VI 008026111

6:  
GEARY, BRETT A A

17724 MINE RD  
DUMFRIES, VA 220252003  
9100

PORT OF SALE  
MALL STE 15  
ST THOMAS, VI 008023602  
9100

PORT OF SALE  
MALL STE 22  
ST THOMAS, VI 008023602  
P0

BOX 305259  
ST THOMAS, VI 008035259  
15211

STREAMSIDE CT  
DUMFRIES, VA 220253022

7:  
THOMAS, WILLIAM AVERY 10204 MAPLERIDGE DR  
DALLAS, TX 75238-2257  
2900 CHAUTAUQUA AVE  
APT 255

NORMAN, OK 73072-7715  
2900 CHAUTAUQUA AVE  
APT 2  
NORMAN, OK 73072-7723  
1020 W 4TH AVE APT 13

STILLWATER, OK 740743337

For

internal use only

451-83-XXXX

10/1984

580-23-XXXX (703) 221-2506

(703) 445-9194

SSN

052-60-XXXX

Phone

DOB

7/1976

Page 13

No. Full Name

Address

9100 PORT OF SALE

MALL STE 15

ST THOMAS, VI 008023602

Neighbors

- 10 records found

242 BRYANT AVE STATEN ISLAND, NY 10306-3142

Name

CAHILL, JAMES BRIAN

CARDO, ERICA

BURKE, MATTHEW J

ASSENZA, CHRISTOPHER M

ASSENZA, MICHAEL P

CIRIGLIANO, MICHAEL EDWARD

CIRIGLIANO, SUZANNE

MIRO, FRANK AGUSTIN

PACCIONE, PAMELA J

GLAZAROV, MICHELLE J

LEOKUMOVICH, BORIS

KRUSE, ADAM M

KRUSE, BRANDON G

KRUSE, DONNA V

KRUSE, JOHN J

KRUSE, VICTORIA M

CUSACK, C J

CUSACK, MARIE E

GILLIUM, MAUREEN A

MCMILLAN, ROBERT M

RAMIN, DENISE A

Address

235 BRYANT AVE

STATEN ISLAND, NY 10306-3103

235 BRYANT AVE APT 2

STATEN ISLAND, NY 10306-3103

241 BRYANT AVE

STATEN ISLAND, NY 10306-3143

(718) 979-2166

Phone

(718) 987-5658

SSN

Phone

DOB

243 BRYANT AVE

STATEN ISLAND, NY 10306-3143

(718) 979-6876

245 BRYANT AVE

STATEN ISLAND, NY 10306-3143

250 BRYANT AVE

STATEN ISLAND, NY 10306-3142

(718) 667-1705  
(718) 351-8871  
251 BRYANT AVE  
STATEN ISLAND, NY 10306-3143  
(718) 351-3510  
251 BRYANT AVE APT H  
STATEN ISLAND, NY 10306-3143  
256 BRYANT AVE  
STATEN ISLAND, NY 10306-3142  
257 BRYANT AVE APT  
STATEN ISLAND, NY 10306-3136  
Employment Locator - 14 records found

1:  
Company Name: THERAPY ASSOCIATION AND DISABILITIES ADVOCATES INC  
Name: KELLERHALS, ERIKA A  
Address: PO BOX 6016  
ST THOMAS, VI 00804-6016  
SSN: 074-72-XXXX  
Confidence: High

2:  
Company Name: KELLERHALS FERGUSON FLETCHER KROBLIN PLLC  
Name: KELLERHALS, ERIKA A  
For internal use only  
(718) 351-3510  
(718) 351-1242  
(347) 286-0615

Page 14

Title: MEMBER MANAGER

SSN: 074-72-XXXX

Confidence: Medium

3:

Company Name: THE MAHOGANY RUN HOME OWNER'S ASSOCIATION

Name: KELLERHALS, ERIKA A

Title: VICE PRESIDENT AND DIRECTOR

Address: 6501 RED HOOK PLZ STE 201

ST THOMAS, VI 00802-1373

SSN: 074-72-XXXX

Phone: (340) 626-5890

Confidence: Medium

4:

Company Name: PATIENT ASSIST VI

Name: KELLERHALS, ERIKA A

Address: 9100 PORT OF SALE MALL STE 15

ST THOMAS, VI 00802-3602

SSN: 074-72-XXXX

Confidence: High

5:

Company Name: VISF

Name: KELLERHALS, ERIKA A

Title: VICE PRESIDENT

Address: PO BOX 1605

KINGSHILL, VI 00851-1605

SSN: 074-72-XXXX

Phone: (304) 692-3310

Confidence: Medium

6:

Company Name: KELLERHALS P.C

Name: KELLERHALS, ERIKA A

Title: PARTNER

Address: PO BOX 608

ST THOMAS, VI 00804-0608

SSN: 074-72-XXXX

Phone: (340) 779-2564

Confidence: Medium

7:

Company Name: THERAPY ASSOCIATION AND DISABILITIES ADVOCATES INC

Name: KELLERHALS, ERIKA A

Address: PO BOX 608

ST THOMAS, VI 00804-0608

SSN: 074-72-XXXX

Confidence: High

8:

Company Name: ERIKA A. KELLERHALS P.C

Name: KELLERHALS, ERIKA A

Address: PO BOX 608

ST THOMAS, VI 00804-0608

SSN: 074-72-XXXX

Phone: (340) 779-2564

Confidence: Medium

9:

Company Name: ERIKA A. KELLERHALS P.C

Name: KELLERHALS, ERIKA

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Page 15

Title: PRESIDENT

Address: PO BOX 608

ST THOMAS, VI 00804-0608

SSN: 074-72-XXXX

Phone: (340) 779-2564

Confidence: Medium

10:

Company Name: MARJORIE RAWLS ROBERTS P.C

Name: KELLERHALS, ERIKA A

Title: ATTORNEY

Address: PO BOX 6347

ST THOMAS, VI 00804-6347

SSN: 074-72-XXXX

Phone: (340) 776-7235

Confidence: Medium

11:

Company Name: ROBERTS, MARJORIE RAWLS

Name: KELLERHALS, ERIKA A

Title: ASSOCIATE

Address: PO BOX 6347

ST THOMAS, VI 00804-6347

SSN: 074-72-XXXX

Phone: (340) 776-7235

Confidence: High

12:

Company Name: THE LALTJ LIMITED PARTNERSHIP

Name: KELLERHALS, ERIKA MS

Title: CONTACT

Address: 17 STATE ST

NEW YORK, NY 10004-1501

SSN: 074-72-XXXX

Confidence: High

13:

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

Name: KELLERHALS, ERIKA A

Title: MEMBER

SSN: 074-72-XXXX

Phone: (340) 779-2564

Confidence: High

14:

Company Name: MARJORIE RAWLS ROBERTS P.C

Name: KELLERHALS, ERIKA A

Address: PO BOX 6347

ST THOMAS, VI 00804-6347

SSN: 074-72-XXXX

Phone: (340) 776-7235

Confidence: Medium

Criminal Filings - 0 records found

Cellular & Alternate Phones - 1 records found

1:

Personal Information

Name: KELLERHALS, ERIKA

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

Phone Number: (340) 690-0891

Phone Type: Mobile

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Page 16

Carrier Information

Carrier: NEW CINGULAR WRLS GA

Carrier City: CHARLOTTE AMALIE (SAINT T

Carrier State: VI

Sources - 44 records found

All Sources

Corporate Affiliations

Email addresses

Historical Person Locator

Motor Vehicle Registrations

Person Locator 1

Person Locator 2

Phone

PhonesPlus Records

Professional Licenses

Utility Locator

Voter Registrations

44 Source Document(s)

2 Source Document(s)

7 Source Document(s)

7 Source Document(s)

3 Source Document(s)

11 Source Document(s)

4 Source Document(s)

4 Source Document(s)

1 Source Document(s)

1 Source Document(s)

3 Source Document(s)

1 Source Document(s)

D&B:

Not Required

LEGAL RESULTS:

Court Cases:

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

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

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

2012 U.S. Dist. LEXIS 93633

July 6, 2012, Filed

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CASE SUMMARY:

OVERVIEW: Appellant filed a notice of appeal from a decision of the bankruptcy court.

Appellee trustee moved to dismiss the appeal for failure to prosecute under Fed. R. Bankr.

P. 8001(a). Of the six Poulis factors, five weighed in favor of dismissal and one weighed

against dismissal. The court took into account the possibility that appellant's counsel had

some of the responsibility for its failure to follow the court's scheduling order. Nonetheless,

on balance, the Poulis factors demonstrated that dismissal of the appeal was an

appropriate sanction for appellant's failure to file its brief.

OUTCOME: Motion to dismiss granted.

CORE TERMS: summary judgment, scheduling, reconsideration, deadline, weigh, failure

to prosecute, designation, discovery, failure to comply, affirming, bankruptcy proceedings,

extension of time, general denials, citations omitted, genuine issue, effectiveness,

reconsider, notice of appeal, failure to follow, bad faith, financial resources, deemed

admitted, dilatoriness, non-moving, willful, incur, Bankruptcy Rules, matter of law, personal

responsibility, clear error

LexisNexis(R) Headnotes

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN1] Under Fed. R. Bankr. P. 8001(a), the district court is empowered to dismiss an

appeal for failure to prosecute or otherwise follow the procedures set out in the Bankruptcy

Rules. Before such a dismissal occurs, a district court must consider six factors outlined in

Poulis v. State Farm Fire and Cas. Co. In Poulis, the U.S. Court of Appeals for the Third

Circuit stated that a district court must balance the following factors: (1) the extent of the

party's personal responsibility; (2) the prejudice to the adversary caused by the failure to

meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether

the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of

sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6)

the meritoriousness of the claim or defense.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN2] An appeal from a judgment, order, or decree of a bankruptcy judge to a district court

or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk

within the time allowed by Fed. R. Bankr. P. 8002. An appellant's failure to take any step

other than timely filing a notice of appeal does not affect the validity of the appeal, but is

ground only for such action as the district court or bankruptcy appellate panel deems

appropriate, which may include dismissal of the appeal. Fed. R. Bankr. P. 8001(a) (2011).

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

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[HN3] Not all of the Poulis factors need be met for a district court to find dismissal is

warranted. However, courts must consider and balance all six Poulis factors before

dismissing a case with prejudice, and all doubts must be resolved in favor of an

adjudication on the merits.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN4] Dismissal typically occurs in cases showing consistently dilatory conduct or the

complete failure to take any steps other than the mere filing of a notice of appeal.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN5] A client's lack of responsibility for its counsel's dilatory conduct is not dispositive on

a motion to dismiss for failure to prosecute, because a client cannot always avoid the

consequences of the acts or omissions of its counsel.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN6] Prejudice for the purpose of the Poulis factors does not mean irreparable harm.

Rather, the burden imposed by impeding the opposing party's ability to prepare a

meaningful litigation strategy has been held to be sufficiently prejudicial.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

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

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN8] Either of these violations--failing to comply with the Bankruptcy Rules for filing a

brief within 15 days of the docketing of his appeal or providing for the transcript of the

bankruptcy court proceedings--is grounds for a dismissal under Fed. R. Bankr. P. 8001.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN9] The fourth Poulis factor considers whether the conduct of the appellant or of the

appellant's attorney was willful or in bad faith.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

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

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN11] The sixth Poulis factor considers the meritoriousness of the appellant's claim.

Ordinarily, a claim, or defense, will be deemed meritorious when the allegations of the

motion, if established, would support recovery by plaintiff or would constitute a complete

defense.

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

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

Civil Procedure > Summary Judgment > Standards > General Overview

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[HN12] In reviewing a determination of a bankruptcy court's grant of summary judgment, a reviewing court subjects the bankruptcy court's legal determinations to plenary review, reviewing its factual findings for clear error, and considering its exercise of discretion for abuse thereof. A bankruptcy court may grant summary judgment if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c).

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

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

Civil Procedure > Summary Judgment > Evidence

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

Bankruptcy Law > Practice & Proceedings > Adversary Proceedings > Discovery

Civil Procedure > Discovery > Methods > Admissions > General Overview

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

Civil Procedure > Discovery > Methods > Admissions > Responses

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

Civil Procedure > Discovery > Methods > Admissions > Responses

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

Civil Procedure > Discovery > Methods > Admissions > General Overview

Civil Procedure > Summary Judgment > Supporting Materials > Discovery Materials

[HN18] The U.S. Court of Appeals for the Third Circuit has long recognized

that deemed

admissions are sufficient to support orders of summary judgment.

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

[HN19] To establish a claim for avoidance of a preferential transfer pursuant to 11

U.S.C.S. § 547, a party must establish that the transfer was: 1. to or for the benefit of a

creditor; 2. for or on account of an antecedent debt owed by the debtor before such

transfer was made; 3. made while the debtor was insolvent; 4. made -- on or within 90

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

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

[HN20] To establish a claim for avoidance of a fraudulent transfer pursuant to 11 U.S.C.S.

§ 548(a)(1)(B), a party must show that within two (2) years of the petition date, the debtor

received less than a reasonably equivalent value in exchange for such transfer or

obligation, and: 1. was insolvent on the date that such transfer was made or such

obligation was incurred, or became insolvent as result of such transfer or obligation; 2. was

engaged in business or a transaction, or was about to engage in business or a transaction,

for which any property remaining with the debtor was an unreasonably small capital; 3.

intended to incur, or believed that the debtor would incur, debts that would be beyond the

debtor's ability to pay as such debts matured; or 4. made such transfer to or for the benefit

of an insider, or incurred such obligation to or for the benefit of an insider, under an

employment contract and not in the ordinary course of business.

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

[HN21] To establish a claim for the avoidance of a fraudulent transfer pursuant to 11

U.S.C.S. § 548(a)(1)(A), a party must show that within two years of the petition date, the

debtor made such transfer or incurred such obligation with intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such

transfer was made or such obligation was incurred, indebted.

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

[HN22] To establish a claim for the recovery of a post-petition transfer pursuant to 11

U.S.C.S. § 549, the appropriate inquiry is: (1) whether a transfer of property occurred; (2)

whether the property transferred was property of the estate; (3) whether the

transfer

occurred after commencement of the bankruptcy case; and (4) whether the transfer was authorized by the Bankruptcy Code.

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

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

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

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

[HN24] A bankruptcy court's denial of an appellant's motion for reconsideration is generally

reviewed for abuse of discretion. However, to the extent that the denial of reconsideration

is predicated on an issue of law, such an award is reviewed de novo; to the extent that the

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

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

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend [HN26] The purpose of a motion for reconsideration is to correct manifest errors of law or

fact or to present newly discovered evidence. Such motions are not substitutes for

appeals, and are not to be used as a vehicle for registering disagreement with the court's

initial decision, for rearguing matters already addressed by the court, or for raising

arguments that could have been raised before but were not.

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend [HN27] A motion for reconsideration cannot be used to relitigate old

matters, raise

argument or present evidence that could have been raised prior to the entry of judgment.

Bankruptcy Law > Practice & Proceedings > Appeals > Procedures

[HN28] A claim will be deemed meritorious when the allegations, if established, would

support recovery by the claimant.

COUNSEL: [\*1] Jeffrey B. C. Moorhead, Esq., Jeffrey B. C. Moorhead, P.C., St. Croix,

USVI, For North Shore Real Estate Corp.

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

Real Estate Corp.

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

Carroll.

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

JUDGES: GÓMEZ, Chief Justice.

OPINION BY: Curtis V. Gómez

OPINION

MEMORANDUM OPINION

(July 6, 2012)

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

prosecution.

I. FACTUAL AND PROCEDURAL BACKGROUND

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Page 7

2012 U.S. Dist. LEXIS 93633, \*

On June 30, 2010, North Shore Real Estate Corporation ("North Shore") filed a notice of appeal from the May 26, 2010, judgment of the United States Bankruptcy Court for the

District of the Virgin Islands (the "Bankruptcy Division"), and the June 9, 2010, order of the

Bankruptcy Division denying North Shore's motion for reconsideration. On July 9, 2010,

the Court entered an Order stating that:

Appellant shall, not later than 10 days after the date of this Order, file and serve on the other parties the designation of

record and statement of the issues to be presented, [\*2] failing which the Appeal may be dismissed for failure to prosecute ... .

...

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

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

North Shore did not file a designation of record nor a statement of the issues within the

time provided in the July 9, 2010, order. North Shore did not file its brief within the time

provided in the order.

On March 9, 2011, North Shore filed a motion for leave to file an untimely designation of

record, statement of issues, and brief. North Shore attached to its motion a designation of

record and statement of issues. North Shore did not attach a brief.

Subsequently, James P. Carroll, Chapter 7 Trustee ("Carroll"), filed a motion to dismiss

this matter for lack of prosecution. North Shore did not file an opposition.

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

... North Shore shall, not later than April 2, 2012, file and serve on James P. Carroll the designation of record and a

statement of issues to be presented, failing which this appeal may be dismissed [\*3] for failure to prosecute...

... North Shore's brief shall, not later than April 10, 2012, be filed and served on James P. Carroll, failing which this

appeal may be dismissed for failure to prosecute...

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

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

North Shore did not file a designation of record nor a statement of the issues within the

time provided in the March 28, 2012, order. North Shore did not file its brief within the time

provided in the order.

Carroll now moves again for dismissal of this appeal for lack of

prosecution. North Shore  
has not filed an opposition.

## II. DISCUSSION

[HN1] "Under Rule 8001(a) 1  
of the Federal Rules of Bankruptcy Procedure, the District  
Court is empowered to dismiss an appeal for failure to prosecute or  
otherwise follow the  
procedures set out in the Bankruptcy Rules." In re Richardson Industrial  
Contractors, Inc.,  
189 Fed. Appx. 93, at \*96 (3d Cir. 2006). Before such a dismissal occurs,  
however, a  
district court must consider six factors outlined in Poulis v. State Farm  
Fire and Cas. Co.,  
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747 F.2d 863, 868 (3d Cir. 1984) [hereinafter Poulis]. In Poulis, the Third Circuit stated that

a district court [\*4] must balance the following factors:

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

where there is a clear record of delay or contumacious conduct by the plaintiff")(alteration

in original); see also In re E Toys Inc., 263 Fed. Appx. 235, 237 (3d Cir. 2008) (affirming

the district court's dismissal of a bankruptcy appeal for failure to prosecute upon

consideration of the Poulis factors).

1 [HN2] "An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel ...

shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any

step other than timely filing a notice of appeal [\*5] does not affect the validity of the appeal, but is ground only for such action

as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal... ." FED. R.

BANKR. P. 8001(a) (2011).

[HN3] "Not all of the[] Poulis factors need be met for a district court to find dismissal is

warranted." Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988). However, courts must

consider and balance all six Poulis factors before dismissing a case with prejudice, and all

doubts must be resolved in favor of an adjudication on the merits. See \$8,221,877.16 in

U.S. Currency, 330 F.3d 141, 161 (3d Cir. 2003) ("[W]e have always required consideration and balancing of all six of the factors, and have recommended the resolution

of any doubts in favor of adjudication on the merits."); see also Bjorgung, 197 Fed. Appx.

at 125-26 ("Although '[n]ot all of the Poulis factors need be satisfied in order to dismiss a

complaint' they must all be considered") (quoting Mindek v. Rigatti, 964 F.-2d 1369, 1373

(3d Cir. 1992)).

### III. ANALYSIS

In In re Richardson Industrial Contractors, Inc., 189 Fed. Appx. 93 (3d Cir. 2006), the

United States Court of Appeals for the Third Circuit addressed [\*6] the relevant factors that a district court must consider before dismissing a bankruptcy appeal for failure to prosecute. In that case, the district court dismissed a creditor's appeal with prejudice for failure to comply with the mandates of the Federal Rules of Bankruptcy Procedure. In so doing, the district court considered only two of the six Poulis factors: the creditor's bad faith in requesting a second extension of time in which to file his brief and the ineffectiveness of alternative sanctions. The creditor appealed the district court's decision. On appeal, the Third Circuit found that, in addition to not considering all six Poulis factors, the district court's discussion of two factors was limited and did not set out the basis for its conclusions in such a way to permit meaningful review of its decision. In reviewing similar cases in other circuits, the Richardson court noted that [HN4] "

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

" Richardson, 189

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Fed. Appx. 93, at \*97 (quoting *In re Beverly Mfg. Corp.*, 778 F.2d 666, 667 (11th Cir.

1985)); see also *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) [\*7] (upholding

dismissal of bankruptcy appeal for failure to follow Bankruptcy Rules or timely file appeal

brief where plaintiffs provided no explanation or excuse for noncompliance); *In re*

*Champion*, 895 F.2d 490, 492 (8th Cir. 1990) (finding no abuse of discretion in dismissing

appeal where appellant had not filed designation of record or statement of issues required

by Bankruptcy Rule 8006); *In re Tampa Chain Co.*, 835 F.2d 54, 56 (2d Cir. 1987)

(affirming dismissal of bankruptcy appeal for failure to file a brief for seven months after the

due date or provide any explanation for the failure, even after the court's inquiry into

delinquency).

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

dismissal.

#### 1. Extent of North Shore's Personal Responsibility

The first Poulis factor assesses the extent of the appellant's personal responsibility. 747

F.2d at 868. North Shore has suggested that its counsel is responsible for its failure to

follow the Court's scheduling order. North Shore averred that,

Defendant, Chapter 7 Debtor Jeffrey J. Prosser (Case No. 06-30009), and his family, including Dawn Prosser, the

owner of North Shore, are overwrought and under [\*8] assault with numerous and often duplicate suits replete with

continuous motions and actions...

(Appellant's Mem. Supp. Mot. Leave to File Untimely Resp. 2, ECF No. 4).

North Shore

also contended that it is "without the financial resources to employ an adequate number of

counsel that have the time availability to meet the relentless and continuous assault and

actions..." *Id.* North Shore went on to aver that it has "mounted a defense with far too small

group [sic] of counsel and others which have committed what time they can and what effort

they can, when possible, for little, or in most cases, for no compensation." *Id.*

Indeed, North Shore referred generally to the commotion of the bankruptcy proceedings in

explaining its failure to comply with the original scheduling order in this matter. North Shore

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

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## 2. Prejudice to Carroll

The second Poulis factor considers prejudice to the appellee caused by the appellant's failure to meet scheduling orders and respond to discovery. 747 F.2d at 868. [HN6]

Prejudice for the purpose of the Poulis factors "does not mean 'irremediable harm.'" See

Ware, 322 F.3d at 222; see also *Curtis T. Bedwell and Sons, Inc. v. Int'l Fidelity Ins. Co.*,

843 F.2d 683, 693-94 (3d Cir. 1988) (rejecting the argument that "the district [\*10] court

should not have dismissed its claim ... unless the harm to the other parties amounted to

'irremediable prejudice'). Rather, the burden imposed by impeding the opposing party's

ability to prepare a meaningful litigation strategy has been held to be sufficiently

prejudicial. See Ware, 322 F.3d at 222.

Carroll argues that he has "incurred costs and fees of bringing the underlying adversary

proceeding and opposing North Shore's late filings." (Carroll's Opp'n Mot. Leave to File

Untimely Resp. 5, ECF No. 5). Carroll also argues that he "should not be made to incur the

additional costs to oppose an appeal that North Shore failed to address for several

months, particularly when North Shore's current default merely continues its dilatory

performance in the underlying bankruptcy proceeding." *Id.*

Additional costs and fees do not necessarily amount to prejudice. However, it is clear that

North Shore's conduct has prejudiced Carroll by hampering his ability to resolve the

underlying bankruptcy matter. See Lee, 455 Fed. Appx. at 201-202 (finding that the

plaintiff's conduct prejudiced the defendants by "impeding their efforts to resolve [the]

case, causing them to file unnecessary [\*11] motions, and requiring them to incur extra

expenses.") The Court also notes that the Bankruptcy Division has stayed execution as to

the bank account involved in the underlying matter, pending resolution of this appeal.

Consequently, North Shore's lengthy delay has had an impact on the Bankruptcy Division's

proceedings. Thus, the Court finds that the second Poulis factor weighs in favor of

dismissal.

## 3. History of Dilatoriness

[HN7] The third Poulis factor considers the appellant's history of dilatoriness. 747 F.2d at 868. North Shore did not file its brief within the original time period set by the Court. North Shore also failed to move for an extension of time within which to file its brief until more than six months after the Court's deadline. Additionally, North Shore did not file its brief within the extended time period set by the Court. Indeed, rather than trying to make up for lost time in the more than seven months since its brief was originally due, North Shore has elected not to file even a brief in compliance with the Court's extended time period. Similarly, North Shore did not file oppositions to Carroll's motions to dismiss this appeal. The Court also notes the history leading [\*12] up to this appeal. As the Bankruptcy Court noted in its May 26, 2010, judgment, As established by the record of the entire Adversary and the docket, North Shore has set upon a pattern and practice of filing pleadings after the deadlines have passed: (1) North Shore's initial opposition to the first Motion for Summary Judgment was due on November 2, 2008, but was actually filed on November 30, 2009, more than a year after the due date. (2) North Shore obtained leave of court to file a late opposition to Trustee's motion for entry of default and default judgment, having missed that deadline. (3) North Shore filed a late response to the renewed Motion for Summary

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Judgment, without seeking leave of court. (4) North Shore has never complied with the discovery deadlines. North

Shore apparently views court-imposed deadlines as suggestions rather than as Orders compelling timely performance.

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

North Shore has a sufficient history of dilatoriness in this matter such that the third Poulis

factor weighs in favor of dismissal. See, e.g., Buccolo, 308 Fed. Appx. 574, at \*575

(affirming district court's dismissal of the bankruptcy appeal for failure [\*13] to prosecute

where appellant "did not comply with the Bankruptcy Rules for filing a brief within 15 days

of the docketing of his appeal... or for providing for the transcript of the Bankruptcy Court

proceedings..." noting that [HN8] "[e]ither of these violations is grounds for dismissal

under Bankruptcy Rule 8001").

#### 4. Willfulness and Bad Faith

[HN9] The fourth Poulis factor considers whether the conduct of the appellant or of the

appellant's attorney was willful or in bad faith. 747 F.2d at 868. North Shore failed to

comply with the Court's original scheduling order, failed to move for an extension of time

within which to file its brief until more than six months after the original filing deadline, and

has failed to comply with the Court's new scheduling order. In explaining its failure to follow

the Court's original scheduling order, North Shore referred generally to the hustle and

bustle of the bankruptcy proceedings. North Shore also pointed to the size of its legal team

and financial resources.

North Shore's explanations for its delays are unpersuasive. By failing to file an appellant's

brief or timely move for an extension of time within which to do so, North Shore has

demonstrated a willful [\*14] disregard for the Court's scheduling orders and for the

appellate process in general. See, e.g., In re Toys Inc., 263 Fed. Appx. at 238 (finding that

"the record provides a basis to conclude that [the appellant's] conduct showed willful

disregard for the appellate process" because "[h]e ignored the deadlines issued by the

District Court"). The fourth Poulis factor therefore weighs in favor of dismissal.

#### 5. Effectiveness of Alternative Sanctions

[HN10] The fifth Poulis factor assesses the effectiveness of sanctions other than dismissal. 747 F.2d at 868. North Shore has not suggested any such sanctions. A possible alternative to dismissal would be to grant North Shore an extension of time within which to file its appellant's brief. However, the Court has already granted such an extension. Granting any further extension would reward North Shore's blatant failure to comply with this Court's orders by allowing it to file an opening brief more than 22 months after the commencement of its appeal. The Court could also impose a fine against North Shore's counsel as a penalty for its failure to comply with the scheduling orders in this matter. See Poulis, 747 F.2d at 869. Alternatively, the Court could [\*15] consider the propriety of ordering North Shore to pay Carroll's attorney's fees associated with filing the instant motion. See id. However, North Shore has made it clear that its financial resources available to prosecute this matter are very limited. Thus, it is unlikely that North Shore will have the ability to comply with a

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2012 U.S. Dist. LEXIS 93633, \*

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

North Shore has demonstrated little urgency in litigating its appeal. In addition to not filing

a timely brief, it has elected not to file an opposition to Carroll's motions to dismiss. As

such, the Court doubts the effectiveness of alternative sanctions. Cf. Richardson, 189 Fed.

Appx. 93, at \*98 (finding dismissal inappropriate where appellant requested two extensions

and filed his brief prior to the District Court's order of dismissal). Based on North Shore's

absence thus far it is not evident that alternative sanctions will prompt it to take action in

prosecuting this appeal. [\*16] Thus, the ineffectiveness of alternative sanctions weighs in

favor of dismissal.

#### 6. Merit of North Shore's Appeal

[HN11] The sixth Poulis factor considers the meritoriousness of the appellant's claim. 747

F.2d at 868. "Ordinarily, '[a] claim, or defense, will be deemed meritorious when the

allegations of the [motion], if established [], would support recovery by plaintiff or would

constitute a complete defense." Buccolo, 308 Fed. Appx. 574, at n.1 (quoting Poulis, 747

F.2d at 869-70). In this appeal, North Shore challenges the Bankruptcy Division's grant of

summary judgment to Carroll in the amount of \$115,140. North Shore also challenges the

Bankruptcy Division's decision to deny its motion for reconsideration of the summary

judgment.

#### a. Summary Judgment

[HN12] In reviewing a determination of a bankruptcy court's grant of summary judgment, a

reviewing court subjects the bankruptcy court's "legal determinations to plenary review,

reviewing its factual findings for clear error, and considering its exercise of discretion for

abuse thereof." In re Atamian, 300 Fed. Appx. 175, 176 (3d Cir. 2008)- (citations omitted).

A bankruptcy court may grant summary judgment if "the pleadings, the discovery and

disclosure [\*17] materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R.

CIV. P. 56(c) (hereafter referred to as "Rule 56(c)"); see also *Hersh v. Allen Products Co.*, 789 F.2d 230, 232 (3d Cir. 1986).

[HN13] The movant has the initial burden of showing that there is no genuine issue of

material fact. *Gans v. Mundy*, 762 F.2d 338, 342 (3d Cir. 1985). Once the initial burden is

met it shifts to the non-moving party to establish specific facts showing there is a genuine

issue for trial. *Id.* The non-moving party "may not rest upon mere allegations, general

denials, or ... vague statements ... ." *Quiroga v. Hasbro, Inc.*, 934 F.2d 497, 500 (3d Cir.

1991). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving

party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

[HN14] "[A]t the summary judgment stage the judge's function is not himself to weigh the

evidence and determine the truth of the matter but to determine whether there is a genuine

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2012 U.S. Dist. LEXIS 93633, \*

issue for trial." Id. In making this determination, this Court draws all reasonable [\*18]

inferences in favor of the non-moving party. See Bd. of Educ. v. Earls, 536 U.S. 822, 850,

122 S. Ct. 2559, 153 L. Ed. 2d 735 (2002); see also Armbruster v. Unisys Corp., 32 F.3d

768, 777 (3d Cir. 1994).

In Carroll's motion for summary judgment he sought "a determination that \$72,720 in

prepetition transfers and \$42,420 in postpetition [sic] transfers from Debtor to North Shore

Real Estate Corporation were fraudulent transfers, preferences or otherwise avoidable

pursuant to 11 U.S.C. §§ 544, 547, 548 and 549, and recoverable under § 550." (May 26,

2010, Bankr. Summ. J. Mem. Op. 1, ECF No. 1, Ex. 3)(citation omitted)

Carroll asserted

that "North Shore [] failed to respond to the Trustee's discovery requests, and ... all of the

Requests for Admissions were deemed admitted and, accordingly, there [were] no genuine

issues of material fact and the Trustee [was] entitled to judgment as a matter of law."

(Carroll Renewed Mot. Summ. J. ¶ 4, Bankr. Case No. 06-30009, Adv. Pro. No. 08-03048,

ECF No. 30).

North Shore asserted in its opposition to Carroll's motion to dismiss that it indeed

responded to Carroll's requests for admission. It explained that its response came in the

form of the affidavit of Dawn Prosser, wife of the debtor [\*19] in the underlying bankruptcy

proceedings.

After reviewing the record, the bankruptcy court found that "North Shore [] failed to

respond to or answer any of Trustee's discovery requests, including the ... Requests for

Admissions." (May 26, 2010, Bankr. Summ. J. Mem. Op. 2, ECF No. 1, Ex. 3).

As such, it

determined that the requests for admissions were deemed admitted.

[HN15] Federal Rule of Bankruptcy Procedure 7036 provides that Federal Rule of Civil

Procedure 36 applies in adversary bankruptcy proceedings. Rule 36 of the Federal Rules

of Civil Procedure, in pertinent part, provides

[HN16] (a) ...

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after

being served, the party to whom the request is directed serves on the

requesting party a written answer or objection addressed to the matter and signed by the party or its attorney... .

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

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

After reviewing Dawn Prosser's affidavit, the Court finds that the numbered paragraphs in the affidavit do not correspond to Carroll's numbered requests for admission. Looking at the substance of the affidavit, the Court finds that the affidavit does not address all of

Carroll's requests for admission. 2 deemed denied. See FED. R. CIV. P. 36 (a)(3).

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The requests for admission which are not addressed are

2012 U.S. Dist. LEXIS 93633, \*

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

Furthermore, the requests for admission which are addressed in the affidavit  
3

are simply

general denials, such as "I deny that..." (See Dawn Prosser Aff. ¶¶ 2-12).

The denials lack

any substance or explanation. Such general denials do not comply with the requirements

of Federal Rule of Civil Procedure 36. See FED. R. CIV. P. 36 [\*21]

(requiring [HN17]

specific denials which "fairly respond to the substance of the matter.") As

such, the

generally denied requests for admission are deemed admitted. See id.

3 Dawn Prosser's affidavit is written so as to generally deny the

information in requests 1, 5, 6, 7, 8, 9, 10, 11, 13, 16, 18, and

22. (Dawn Prosser Aff. ¶¶ 2-12). There are no facts or evidence identified upon which the denials are based.

[HN18] The Third Circuit has long recognized that deemed admissions "are sufficient to

support orders of summary judgment." *Kelvin Cryosystems Inc. v. Lightnin*, 252 Fed. Appx.

469, 472 (3d Cir. 2007)(citations omitted); see also *DIRECTV, Inc. v. Jarvis*, 262 Fed.

Appx. 413, 416 (3d Cir. 2008) (affirming the district court's entry of summary judgment

based on the appellant's failure to respond to requests for admission).

[HN19] To establish a claim for avoidance of a preferential transfer pursuant to 11 U.S.C.

§ 547, a party must establish that the transfer was:

1. to or for the benefit of a creditor;

2. for or on account of an antecedent debt owed by the debtor before such transfer was made;

3. made while the debtor was insolvent;

4. made -- on or within 90 days before the date of the filing of the petition; [\*22] ...

5. that enables such creditor to receive more than such creditor would receive if -a.

the case were a case under Chapter 7 of this title;

b. the transfer had not been made; and

c. such creditor received payment of such debt to the extent provided by the provisions of this title

11 U.S.C. § 547(b).

[HN20] To establish a claim for avoidance of a fraudulent transfer pursuant to 11 U.S.C. §

548(a)(1)(B), a party must show that within two (2) years of the petition date, the debtor

received less than a reasonably equivalent value in exchange for such transfer or

obligation, and:

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

11 U.S.C. § 548(a)(1)(B).

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[HN21] To establish a claim for the avoidance of a fraudulent transfer pursuant to 11

U.S.C. § 548(a)(1)(A), a party must show that within two years of the petition date, the

debtor made such transfer or incurred such obligation with intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such

transfer was made or such obligation was incurred, indebted.

[HN22] To establish a claim for the recovery of a post-petition transfer pursuant to 11

U.S.C. § 549, the appropriate inquiry is: (1) whether a transfer of property occurred; (2)

whether the property transferred was property of the estate; (3) whether the transfer

occurred after commencement of the bankruptcy case; and (4) whether the transfer was

authorized by the Bankruptcy Code. 11 U.S.C. § 549.

Pursuant to 11 U.S.C. § 550, a trustee may recover transfers avoided under 11 U.S.C. §§

544, 547, 548, and 549, for the benefit of the estate, the property transferred, or if the court

so orders, the value of such property, from the initial transferee of such transfer or the

entity for whose benefit such transfer was made.

Requests for admission [\*24] numbered 1, 5, 6, 7, 8, 9, 10, 11, and 13, 16, 18, 22, and 23,

correspond to the elements required to establish each of Carroll's claims. Each relevant

request was deemed admitted. Thus, the bankruptcy court did not err in finding that there

remained no genuine issue as to any material fact. As such, the burden was properly

shifted to North Shore to show a genuine issue remaining for trial.

North Shore did not present any evidence in support of judgment in its favor. It merely

pointed the court again to Dawn Prosser's affidavit. As previously discussed, the affidavit

contains only general denials. Such general denials are not sufficient to satisfy North

Shore's burden of proof. See FED. R. CIV. P. 56(e) ([HN23] "an adverse party may not rest

upon the mere allegations or denials of the adverse party's pleadings, but the adverse

party's response, by affidavits or as otherwise provided in this rule, must set forth specific

facts showing that there is a genuine issue for trial.") Thus, the

bankruptcy court did not err

in finding that North Shore failed to meet its burden.

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

b. Motion for Reconsideration

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

[HN24] A bankruptcy court's denial of an appellant's motion for reconsideration is generally reviewed for abuse of discretion. See generally *Max's Seafood Café v.*

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

Local Rule of Civil Procedure 7.3 provides that:

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

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

LRCI 7.3 (2008). [\*26]

[HN26] The purpose of a motion for reconsideration "is to correct manifest errors of law or

fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906,

909 (3d Cir. 1985). Such motions are not substitutes for appeals, and are not to be used

as "a vehicle for registering disagreement with the court's initial decision, for rearguing

matters already addressed by the court, or for raising arguments that could have been

raised before but were not." *Bostic v. AT&T of the V.I.*, 312 F.Supp. 2d 731, 733, 45 V.I.

553 (D.V.I. 2004).

In its motion for reconsideration, North Shore made two arguments. First, it argued that the

bankruptcy court should reconsider because it improperly failed to consider Dawn

Prosser's affidavit in deciding Carroll's motion for summary judgment. That argument is

unsupported by the record. This Court has herein cited to numerous references in the

bankruptcy court's memorandum opinion where it refers to and analyzes the substance of

Dawn Prosser's affidavit. As such, the bankruptcy court did not err in refusing to reconsider

on that basis.

Second, North Shore argued that the court should grant its motion because the underlying

complaint contains "factually [\*27] untrue" allegations. (North Shore Mot. Recons. 6-7,

Adv. Pro. No. 08-03048, ECF No. 36). That argument ignores the numerous opportunities

which North Shore had to oppose Carroll's factual assertions.

Carroll served North Shore with various requests for discovery, including requests for

admissions. North Shore failed to adequately respond to such requests.

Thereafter, Carroll

filed two motions for summary judgment. North Shore had the opportunity to file

oppositions to each of those motions. Although North Shore was tardy in filing such

oppositions, the bankruptcy court nonetheless considered them in its

memorandum

opinion. Finally, the bankruptcy court held a hearing on Carroll's second motion for summary judgment. North Shore had the opportunity to challenge any of Carroll's factual assertions and to submit any evidence in support of its challenges at that hearing. North Shore failed to submit sufficient evidence supporting its assertions at that time.

[HN27] "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment."

See *Dunkley v. Mellon Investor Servs.*, 378 Fed. Appx. 169, 172 (3rd Cir. 2010)(internal

[\*28] citation omitted). Yet, that is precisely what North Shore has done. Indeed, the

information that North Shore presents was available to it at the time when it filed its

opposition to Carroll's motion for summary judgment. In an effort to relitigate this matter,

North Shore now seeks to rehash procedurally admitted factual issues. That effort is not

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2012 U.S. Dist. LEXIS 93633, \*

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

Upon review of the Bankruptcy Division's summary judgment and order denying reconsideration, the Court finds that the likelihood that North Shore could successfully challenge the bankruptcy court's exercise of its broad discretion as to such matters is minimal. Thus, the final Poulis factor weighs in favor of dismissal. Cf. *Buccolo*, 308 Fed.

Appx. 574, at n.1 ( [HN28] "[a] claim ... will be deemed meritorious when the allegations ...

if established [], would support recovery by" the claimant) (internal citations omitted) (first alteration in the original).

#### IV. CONCLUSION

Of the six Poulis factors, five weigh in favor of dismissal and one weighs against dismissal.

The Court takes into account the possibility that North Shore's counsel bears [\*29] some of the responsibility for its failure to follow the Court's scheduling order. Nonetheless, on balance, the Poulis factors demonstrate that dismissal of this appeal is an appropriate sanction for North Shore's failure to file its appellant's brief, or otherwise comply with this Court's scheduling orders. See *In re Buccolo*, 308 Fed. Appx. 574, 576 (3d Cir.

2009)(finding that "even if the consideration of the merits of [the appellant's] claim or defense does not tip the scales for or against dismissal, it cannot be said that the District

Court abused its discretion in concluding that on balance, dismissal was warranted.")(emphasis added); *In re E Toys Inc.*, 263 Fed. Appx. 235, 238 (3d Cir. 2008)

(affirming the district court's ruling that the Poulis factors favored dismissal of a bankruptcy appeal as a sanction for the appellant's "repeated failures to adhere to ordered briefing deadlines").

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

JULITO A. FRANCIS, Petitioner v. DEBRA L. WRIGHTFRANCIS,  
Respondent

Family No. ST-10-DI-226

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

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

July 14, 2014, Decided  
July 14, 2014, Filed  
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CASE SUMMARY:

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

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

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

LexisNexis(R) Headnotes

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

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

Civil Procedure > Judicial Officers > Judges > Discretion

[HN1] In an action for divorce, the court has the authority to equitably divide joint personal property and real property, limited to the marital homestead as defined in V.I. Code Ann.

tit. 33, § 2305(d). Real property owned by the couple, other than the marital homestead, is divided by way of a civil partition action. When determining the equity of the distribution, the court also has broad discretion to consider the case's most salient facts. The Supreme

Court of the Virgin Islands further refined the court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean "equal," only "equitable."

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

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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

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

Civil Procedure > Judicial Officers > Judges > Discretion

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

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

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

[HN3] The court may distribute personal property in accordance with V.I. Code Ann. tit. 16,

§ 109(4). However, the statute does not define marital property. Whether an asset is

marital property or separate property for purposes of distribution of the marital estate is a

matter reserved to the sound discretion of the trial court. Once these distinctions have

been made, the trial judge has broad equitable powers in disposing of marital property.

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

[HN4] Although not specifically defined, marital property has been construed to encompass

any property which the couple acquired during the marriage and which is subject to

equitable distribution upon divorce.

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

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

[HN5] Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined

that a pension fund is marital personal property, subject to claim by the other spouse upon

divorce. To the extent earned during the marriage, the pension benefits represent

compensation for marital effort and are substitutes for current earnings which would have

increased the marital standard of living or would have been converted into other assets

divisible at dissolution. Subjecting the benefits to division is just,

because in most cases  
the retirement benefits constitute the most valuable asset the couple has  
acquired and  
they both have relied upon their pension payments for security in their  
older years.

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

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

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

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

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

Family Law > Marriage > General Overview

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

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

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

[HN9] The court has the authority to divide the personal property in divorce action even after a divorce decree has been issued. The trial court will be required to issue rulings on

post-divorce ownership of personal property such as cars, boats, electronics, jewelry, shares of stock, bonds and monies deposited with financial institutions.

Civil Procedure > Sanctions > Contempt > Civil Contempt

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

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

HEADNOTES

VIRGIN ISLANDS OFFICIAL REPORTS HEADNOTES

[Headnotes classified to Virgin Islands Digest]

1. Divorce § 11.50--Division of Property--Power of Court In an action for

divorce, the  
court has the authority to equitably divide joint personal property and real  
property, limited  
to the marital homestead. Real property owned by the couple, other than the  
marital  
homestead, is divided by way of a civil partition action. When determining  
the equity of the  
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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

distribution, the court also has broad discretion to consider the case's most salient facts.

The Supreme Court of the Virgin Islands further refined the court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead.

The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean

"equal," only "equitable." 33 V.I.C. § 2305(d).

2. Property § 15.05--Homestead--Generally A homestead is defined as the abode including land and buildings, owned by, and actually occupied by, a person, or by

members of his family free of rental charges. Although the Virgin Islands Code does not

expressly define a marital homestead, both the United States Court of Appeals for the

Third Circuit and the Appellate Division of the United States District Court for the Virgin

Islands have interpreted the applicable statute to hold that a "marital homestead" is any

homestead in which a husband and wife both reside during the marriage and that is owned

by one or both of the spouses. 33 V.I.C. § 2305(a), (c).

3. Property § 15.30--Homestead--Divorce When the divorcing parties had lived in the

marital homestead for 7 years of their 21-year marriage, the husband's mother occupied

an apartment on the property, the wife had the means to secure alternative housing and

had not shown the need or desire to remain there, and the husband had acquired the

[\*\*14] property from his mother, the husband was awarded possession, minus an award

to the wife for her interest and contributions. 33 V.I.C. § 2305.

4. Divorce § 11.50--Division of Property--Power of Court The court may distribute

personal property in accordance with the statute governing final orders in divorce cases.

However, the statute does not define marital property. Whether an asset is marital property

or separate property for purposes of distribution of the marital estate is a matter reserved

to the sound discretion of the trial court. Once these distinctions have been made, the trial

judge has broad equitable powers in disposing of marital property. 16 V.I.C. § 109.

5. Divorce § 11.70--Division of Property--Types of Property Interests

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

6. Divorce § 11.45--Division of Property--Pensions Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined that a pension fund is marital property, subject to claim by the other spouse upon divorce. To the extent earned during the marriage, the pension benefits represent compensation for marital effort and are substitutes for current earnings which would have increased the marital standard of living or would have been converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their pension payments for security in their older years.  
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7. Divorce § 11.40--Division of Property--Particular Cases When neither party had made sufficient information available to the court to justify the division of their respective retirement accounts, but it appeared that they had about the same amount in their funds, each party was entitled to retain his or her existing interest in his or her account. 16 V.I.C.

§ 109.

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

9. Divorce § 11.70--Division of Property--Types of Property Interests Many states have compared professional degrees to pension or retirement plans when establishing what constitutes marital property. Pension and retirement plans entitle an owner to a definite amount at a certain date, which an individual has a contractual right to receive.

Professional degrees rely on uncertain future events and provide only an expectation of enhanced income. The value of a professional degree is speculative and dependent upon the attributes and future choices of its possessor to be fairly valued.

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

V.I.C. § 109.

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

common purpose and contribute toward its success.

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

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

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

COUNSEL: [\*1] ANDREW L. CAPDEVILLE, ESQ., Law Offices of Andrew Capdeville, St.

Thomas, USVI, Attorney for the Petitioner.

[\*\*16] JULIE GERMAN EVERT, ESQ., Law Offices of Julie German Evert, St.

Thomas, USVI,

Attorney for the Respondent.

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

OPINION BY: DEBRA S. WATLINGTON

OPINION

MEMORANDUM OPINION

(July 14, 2014)

This matter came on for a trial on April 8, 2014, before the Honorable Debra S. Watlington,

Judge of the Superior Court of the Virgin Islands for the determination of the parties'

personal property and the marital homestead. Petitioner/Husband Mr. Julito A. Francis

appeared with counsel Andrew L. Capdeville, Esq., and Respondent/Wife Dr. WrightFrancis

appeared with counsel Julie German Evert, Esq.<sup>1</sup>

The Court heard sworn

testimony from Mr. Francis, Dr. Wright-Francis, Mrs. Joan Francis, and Erica Kellerhals,

Esq.

<sup>1</sup> 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-CV188,

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.<sup>2</sup>

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.<sup>3</sup>  
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The parties also stipulated that the marital homestead, IB-29 Estate Solberg, St.

2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

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.<sup>4</sup>

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

#### UNDISPUTED FACTS

The parties, Mr. Julito Francis and Dr. Debra Wright-Francis, were married on August 17,

1991 in Opelika, Alabama. They have one minor child, Brooklyn J. Francis, born on March

6, 2000 and one adult daughter, Saryn J. Francis, born on January 27, 1993.

The parties

both resided in Georgia until [\*4] Mr. Francis relocated in 2004 to St. Thomas; while Dr.

Wright-Francis and their daughters joined him in 2005. The parties resided at No. IB-29

Estate Solberg, St. Thomas, Virgin Islands during their marriage. A Decree of Divorce was

entered on July 25, 2012, dissolving the marriage.

Mr. Francis is the son of Joan Francis and brother to Diane A. Marsh. Joan Francis and

her daughter, Diane, acquired the property known as 1B-29 Estate Solberg from the Virgin

Islands Housing Finance Authority which required them to build on the land within a set

time period. After realizing that they would not be able to comply with

program regulations,  
they transferred ownership to Mr. Francis to begin construction to help  
secure financing to  
build. Mr. Francis' mother and sister conveyed Parcel No. IB-29 Estate  
Solberg to Mr.  
Francis and Joan Francis by Warranty Deed on April 12, 1995. Subsequently,  
on October  
29, 1997, Joan Francis [\*\*18] executed a Quitclaim Deed transferring her  
interest in  
Parcel No. IB-29 Estate Solberg solely to Mr. Francis.5  
A dwelling structure was completed  
in 1988 which Joan Francis moved into in 2000. At that point, Joan Francis  
began  
contributing to the mortgage and the utility bill [\*5] on a monthly basis  
until 2006. In  
January 2014, Joan Francis resumed making contributions of six hundred  
dollars  
(\$600.00) per month not including utilities.  
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5 Mr. Francis filed copies of the 1995 Warranty Deed and 1997 Quitclaim Deed with his exhibit list on March 28, 2014.

No. IB-29 Estate Solberg, is a two (2) level structure and has three (3) units. The upper

level has three (3) bedrooms and two (2) bathrooms and the lower level is split into two (2)

separate one (1) bedroom, one (1) bathroom units. Dr. Wright-Francis continues to occupy

the main level of the marital homestead while Mr. Francis has remained in the one (1)

bedroom unit which he previously used as his office. Joan Francis, resides in the other one

(1) bedroom apartment on the lower level. Mr. Francis is responsible for the mortgage

payments for the property. Dr. Wright-Francis assisted with some maintenance of the

property.

In January 2014, Dr. Wright-Francis purchased an apartment at the Towers Condominiums in Estate Contant which she uses for rental purposes.<sup>6</sup>

The marital

homestead has structure problems and has deteriorated throughout the parties' marriage.<sup>7</sup>

Notwithstanding the purported poor condition of the home, Mr. [\*6] Francis would like to

retain the marital homestead.

6 Mr. Francis filed a copy of Dr. Wright Francis's Warranty Deed and Mortgage for Apartment No. F-15, The Towers

Condominiums located at No. 7A Southside Quarter, St. Thomas, Virgin Islands, with his Motion to the homestead.

7 Mr. Francis' exhibits 10(c), 10(d), 10(e), 10(f), 10(g), 10(k), and 10(m), which were admitted into evidence are photos

depicting the deteriorated state of the home and its structural problems.

The parties acquired multiple assets throughout their marriage in the form of real property

in the Virgin Islands and Georgia; individual retirement accounts; and other investment

accounts. Mr. Francis was employed with the U.S. Virgin Islands Government, first as the

Executive Director of the Public Finance Authority (PFA), then as the Chief Executive

Officer of the Virgin Islands Next Generation Network (VINGN). He was later terminated in

October of 2011 from VINGN where he received an annual salary of One Hundred Seventy One [\*\*19] Thousand Dollars (\$171,000.00). He challenged his

termination but

after an employment mediation, the decision was upheld. After being terminated, Mr.

Francis, an investment manager, has focused on his [\*7] wealth management business,

known as ACSB Capital Management LLC.

Dr. Wright-Francis, a medical OB-GYN, contracts medical services with the East End Medical Clinic as an OB-GYN for an annual amount of Two Hundred Thousand Dollars

(\$200,000.00) and with Schneider Regional Medical Center for about Two Thousand Five

Hundred Dollars (\$2,500.00) per-week for on-call services.

PROCEDURAL HISTORY

Julito Francis filed a verified Petition for Divorce on November 4, 2010. On February 3,

2011, Dr. Wright-Francis filed an answer to Mr. Francis' petition and on March 29, 2011

the Court referred the parties to mediation. The parties mediated but were not able to

reach an agreement. During the mediation period, the parties filed motions concerning

custody and wasting of marital assets. Consequently, the Court issued an Order on

December 22, 2011, prohibiting them from "disrupting" their children and "destroying,

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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

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 articulated in Court. As a [\*10] result, the Court entered an Order on November 4, 2013 that incorporated the negotiated terms which the parties stipulated to on the record in the September 10, 2013 hearing. On November 18, 2013, this Court entered an Order which granted a Motion to Amend filed by Dr. Wright-Francis. The Order amended the previous November 4, 2013 Order which instructed Mr. Francis to pay his settlement amount by certified check or bank draft instead of transferring the sum from his retirement account directly to Dr. Wright-Francis' account or to her personally by electronic means. Mr. Francis objected to Dr. Wright-Francis' method of payment request, filed a timely

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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

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 1B-29 Estate Solberg.

12 The mortgage for the Solberg property stipulates that only Mr. Francis signed the promissory note despite both parties being

listed on the document [\*12] as "Borrower."

Mr. Francis seeks a portion of Dr. Wright-Francis' current and future earnings since he

claims that he supported her financially while she completed medical school in 1992. As a

result, Mr. Francis asserts that Dr. Wright-Francis' medical license is marital property

which is divisible like the parties' other assets.

Additionally, Mr. Francis contends that Dr. Wright-Francis' net worth is Two

Million One

Hundred Three Thousand, Eight Hundred Fifty Seven Dollars and Twenty Four Cents

(\$2,103,857.24). He claims that his net worth is One Million One Hundred Nine Thousand,

Nine Hundred Twelve Dollars and Eighty Two Cents (\$1,109,912.82). Mr. Francis seeks

Four Hundred Ninety Six Thousand Dollars (\$496,000.00), to make his [\*\*22] net worth

equal to Dr. Wright-Francis.<sup>13</sup>

Mr. Francis also expressed a willingness to rescind his request, if Dr. Wright-Francis relinquishes her interest in the marital homestead.

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

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

<sup>14</sup> 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.<sup>15</sup>

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).

<sup>15</sup> 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,<sup>16</sup> Seventeen Thousand Five [\*\*23] Dollars and One Cent (\$117,005.01).<sup>17</sup> she found that Mr. Francis spent approximately One Hundred 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).<sup>18</sup>

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

17 See, Respondent's Exhibit 3A

18 See, Respondent's Exhibit 3A.

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

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

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

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

Dr. Wright-Francis informed the Court that she is seeking half of the value of the parties' marital homestead located at IB-29 Estate Solberg and half of the value of what Mr.

Francis "wasted." She contends that Joan Francis does not have any ownership interest in the Solberg property [\*\*24] and that the homestead should be sold if Mr. Francis is not able to buy her out.

#### ANALYSIS

[1] [HN1] In an action for divorce, this Court has the authority to equitably divide joint personal property and real property, limited to the marital homestead as defined in Title 33 V.I.C. § 2305(d). Bradford v. Cramer, 54 V.I. 669, 676 (V.I. 2011). Real property [\*17]

owned by the couple, other than the marital homestead, is divided by way of a civil partition action. *Fuentes v. Fuentes*, 38 V.I. 29, 1997 WL 889532 (Terr. V.I. 1997). When determining the equity of the distribution, the Court also has broad discretion to consider the case's most salient facts. *Charles v. Charles*, 788 F.2d 960, 965 (3rd Cir. 1986). The Supreme Court of the Virgin Islands further refined the Court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. *Garcia v. Garcia*, 59 V.I. 758 (V.I. 2013). "The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean 'equal,' only 'equitable.'" *Fuentes*, 38 V.I. at 40, 1997 WL 889532, at \*5 (emphasis added).

#### A. Marital Homestead

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

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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

'marital homestead,' both the United States Court of Appeals for the Third Circuit and the

Appellate Division of the District Court interpreted Title 33 V.I.C. §§ 2305(a), (c) to hold

that a "marital homestead" is any 'homestead' [\*18] in which a husband and wife both

reside during the marriage and that is owned by one or both of the spouses."

Garcia, 59

V.I. 758 (V.I. 2013) quoting, Harvey v. Christopher, 55 V.I. 565, 572 (V.I. 2011).

Pursuant to the parties' stipulation, IB-29 Estate Solberg is valued at Seven Hundred

Twenty Five Thousand Dollars (\$725,000.00) subject to a One Hundred Ten Thousand

Dollars (\$110,000.00) mortgage. Although the parties dispute the amount owed to Balbo,

they acknowledge that [\*\*25] Balbo Construction is owed money for work it has done on

the homestead.<sup>19</sup>

<sup>19</sup> See Civil Complaint, Balbo v. Julito Francis & Debra Francis, ST-14-CV-188.

Testimony revealed that Dr. Wright-Francis assumed responsibility for the children's

school tuition and cost of other activities during the course of their marriage. Mr. Francis

satisfied almost all expenses related to their home including the mortgage property and

home insurance payments. Since the parties' divorce, the parties have shared equally their

children's expenses and Mr. Francis has continued to pay all real property expenses.

Here, the home located at IB-29 Estate Solberg, St. Thomas appears to satisfy the

requirements outlined in Title 33 V.I.C. § 2305(a) since Mr. Francis gained ownership

rights when: 1) his mother and sister conveyed the property to him and 2) [\*19] the parties

resided in the home from 2005 until they terminated their marriage in 2012. However, the

Supreme Court, through Garcia, required that further examination is needed when a

purported marital homestead is comprised of multiple units like the Solberg property.

In Garcia, the parties resided in a two level structure that was partitioned of into four (4)

separate independent apartments. The wife argued that the marital homestead constituted

all four (4) apartments and consequently, she was entitled to an equitable portion of the

homestead. The husband opined that all of the apartments should not count towards the homestead since "(1) it had a dual nature, as portions of the building were rented to tenants, and (2) although Felipe and Edna resided there at some points during their marriage, there were large spans of time during which the parties did not occupy it together." 59 V.I. 758 (V.I. 2013). Ultimately, the Garcia Court remanded the matter back to the Superior Court for further consideration without determining which units comprised the marital abode.

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

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[3] The Court has considered that the parties resided in the Solberg home from 2005-2012

for approximately seven (7) of their twenty one (21) years of marriage with their children.

Mr. Francis' mother has occupied an attached apartment on the same property since 2000.

They have all contributed in various degrees to the subject property. Both parties are clearly capable of providing for themselves and their children, as they are both

accomplished professionals and have already agreed to share equally in the costs of

raising their children. Dr. Wright-Francis obviously has the capacity and means to secure

alternative housing; and has neither demonstrated a need [\*21] or desire to remain in the

marital homestead.

This Court cannot disregard the fact that neither party purchased the real property upon

which the marital homestead was built. Much consideration is given to the fact that Mr.

Francis acquired the property from his mother to help her construct a home for her to live.

While evidence shows that the parties together were able to finance the construction, they

benefitted by living on the property with their children for seven (7) years of their twentyone

(21) years of marriage. Joan Francis has lived in an adjoining apartment for approximately fourteen (14) years. Thus, only the main residential unit

(inclusive of what

was the home office and children's area) that the parties occupied during their marriage

constitute the marital homestead and not the entire property known as IB-29 Estate Solberg.

In view of the circumstances surrounding the acquisition and construction of IB-29 Solberg,

maintenance and occupancy of said property, the Court finds that based on a balancing of

equities, Mr. Francis should retain possession of the marital homestead.

Moreover, having

considered the stipulated assessed value of the real property, and the debts associated

[\*22] with the property, and given serious consideration to the equities involved under the

particular facts herein, the Court has determined that Dr. Wright-Francis has a thirty-five

percent (35%) interest in the marital homestead which constitutes approximately seventy

percent (70%) of the developed property. As a result Seventy Six Thousand, Six Hundred Fifty Dollars (\$76,650.00) plus \$30,000.00 reimbursement for moneys expended for constructions costs represents a fair award to [\*\*27] Dr. Wright-Francis for her contributions and interest in the marital homestead. Thus, Mr. Francis will be required to pay Dr. Wright Francis a total of One Hundred Six Thousand, Six Hundred Fifty Dollars (\$106,650.00).

#### B. Personal Property

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

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

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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

(2003). See, *Felix v. Felix*, 1998 WL 458499, \*2 (D.V.I. 1998). Compare, 16 V.I.C. 68

(defining what constitutes 'separate property' of a spouse, not subject to distribution).

#### 1. Equitable Distribution of Retirement Accounts

[6] [HN5] Considering the tremendous statutory examples and case law from other

jurisdictions holding pension funds as marital property, the Virgin Islands has determined

that a pension fund is also marital personal property, subject to claim by the other spouse

upon divorce. *Fuentes*, 38 V.I. at 40, 1997 WL 889532, at \*8. The *Fuentes* Court goes on

to rationalize its decision by quoting the Rhode Island Supreme Court in *Stevenson v.*

*Stevenson*, 511 A.2d 961, 965 (R.I. 1986):

To the extent earned during the marriage, the [pension] benefits represent compensation for marital effort and are

substitutes for current earnings which would have increased ... the marital standard of living or would have been

converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the

retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their

pension payments for [\*\*28] security in their older years. [\*24] *Family Law and Practice*, § 37.07[1] at 37-81 (1985).

*Fuentes v. Fuentes*, 38 V.I. 29, 1997 WL 889532 (Terr. V.I. 1997). The evidence shows

that Mr. Francis has approximately Five Hundred Thousand Dollars (\$500,000.00) in his

retirement account. While, Dr. Wright-Francis has an amount that exceeds Five Hundred

Thousand Dollars (\$500,000.00), the exact amount is unknown.

According to the Court in *Fuentes*, both parties are entitled to an equitable share of the

other's retirement account. The *Fuentes* Court further explains that there are two (2)

different methods used to determine the percentage which spouses are entitled. The first

method presumes a present value on the retirement plan based on the expected lifespan

of the employee-spouse. *Weir v. Weir*, 173 N.J. Super. 130, 413 A.2d 638 (1980). This

method requires the Court to determine values contingent on life expectancy and

employee-spouse's share of the retirement pay. *Fuentes*, 38 V.I. at 41, 1997 WL 889532,

at \*7. The second method calculates the percentage that the non-employee is entitled to,

based on length of employment and marriage. They receive benefits when they become available under the plan. Id. Both methods require basic knowledge of the retirement plans that includes, but are not limited to the following information: 1) present value; 2) account history; [\*25] 3) retirement plan regulations; and 4) the distribution schedule.

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

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

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

## 2. Equitable Distribution of the Medical Degree

[8] Mr. Francis requests equitable distribution of Dr. Wright-Francis' medical degree, which was acquired after one (1) year of marriage. The U.S. Virgin Islands has not previously decided whether educational or professional degrees constitute marital property.<sup>20</sup>

[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).

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

[9] [HN7] Many states have compared professional degrees to pension or retirement plans when establishing what constitutes marital property. Pension and retirement plans entitle an owner to a definite amount at a certain date, which an individual has a contractual right to receive. See, *Fuentes*, 38 V.I. 29, 1997 WL 889532, at \*5-6. See also, *Kikkert v. Kikkert*, 88 N.J. 4, 438 A.2d 317 (1981). Professional degrees rely on uncertain

future events and provide only an expectation of enhanced income. The value of a professional degree is speculative and dependent upon the attributes and future choices of its possessor to be fairly valued. See, *In re the marriage of Sally K. Olar*, 747 P.2d 676, 679-80 (1987). See also, *Archer v. Archer*, 303 Md. 347, 493 A.2d 1074, 1079 [\*\*30] (1985), citing *Deering v. Deering*, 292 Md. 115, 437 A2d 883 (1981). See also, *Mahoney v. Mahoney*, 91 N.J. 488, 453 A.2d 527, 531-32 (1982). New York is the only jurisdiction so far to rule professional degrees are marital property subject to equitable distribution. See, *O'Brien v. O'Brien*, 66 N.Y.2d 576, 498 N.Y.S.2d 743, 489 N.E.2d 712 (1985). New York legislation provides that a court consider the efforts one spouse has made to the other spouse's career. See, N.Y. DOM. REL. LAW § 236(B)(1), (5). In *O'Brien v. O'Brien*, the Defendant-wife sought equitable distribution of the Plaintiff/Husband's license to practice medicine. The Plaintiff commenced the action for divorce two (2) months [\*28] after obtaining such license. The Plaintiff began his postgraduate classes after the parties were married. For the majority of the parties nine (9) years of marriage, he was working towards a career in medicine. Meanwhile, the Defendant maintained their household, relinquished her opportunity to further her career,  
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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

and provided financially for the parties. The Defendant provided expert testimony

evaluating the present value of the Plaintiff's medical license. O'Brien v. O'Brien, 66 N.Y.2d

576, 498 N.Y.S.2d 743, 489 N.E.2d 712 (1985).

[10] Here, Dr. Wright-Francis acquired her medical degree in 1992, she began working

towards the degree years before the parties were married. There is no evidence that Mr.

Francis was unjustly compelled to delay or relinquish his education or career goals in order

for Dr. Wright-Francis to pursue her goals. Mr. Francis did not provide testimony on the

amount in which he contributed to Dr. Wright-Francis' education.

Furthermore, Mr. Francis

does not offer personal or expert testimony on the potential or actual worth of Dr. Wright-Francis'

degree. Two (2) decades have passed since Dr. Wright-Francis received her medical degree. Mr. Francis failed to provide the Court any substantial or credible

evidence to calculate a value of Dr. [\*29] Wright-Francis' medical degree.

[11] [HN8] The Virgin Islands has long viewed "marriage as a partnership or joint venture,

whereby both parties collaborate for a common purpose and contribute toward its

success." See, Fuentes v. Fuentes, 247 F. Supp. 2d 714 (2003); Felix v. Felix, 1998 WL

458499, \*2 (D.V.I. 1998).

It is important to note that Mr. Francis also received a higher education degree

immediately before the marriage. Mr. Francis acquired his Master's in Business

Administration in 1990 and is admittedly a well-qualified astute financial investment

manager. The parties testified that [\*\*31] they supported each other with the help of their

families in the early years of their relationship and marriage. Both degrees provided an

expectancy of a better life, but this was not guaranteed by contract or other form of surety.

Even so, both degrees launched successful and profitable careers for the parties. Both

parties worked throughout the duration of the marriage and contributed financially to the

marriage.

Accordingly, Mr. Francis' evidence and testimony are insufficient to demonstrate that Dr.

Wright-Francis' medical degree is marital property. In this instance, Dr. Wright-Francis'

medical degree is her separate property and is not subject to equitable distribution.

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

[12] [HN9] The Court also has the authority to divide the personal property in divorce

action even after a divorce decree has been issued. In Garcia, the Supreme Court explains

that "the Superior Court will be required to issue rulings on post-divorce ownership of

personal property ... such as cars, boats, electronics, jewelry, shares of stock, bonds and

monies deposited with financial institutions ... ." Garcia, 59 V.I. 758.

This Court is guided by Morris v. Morris, 20 V.I. 249, 1984 WL 998145 (Terr. V.I. 1984),

and in the absence of provable ownership, the Court considers the personal property to be

jointly owned in equal shares. With respect to the disposition of the household furniture,

the evidence satisfies the Court that they are jointly owned by the parties and shall be

distributed as set forth in Appendix A of this Opinion which is incorporated herein.

C. Determination on Waste of Marital Assets

In the Order entered by the Court on December 23, 2011, the parties were ordered to

refrain from "destroying, removing, concealing or otherwise harming or reducing the value

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2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

of the property of one or both of the parties."21

In addition, the parties were authorized to engage in [\*31] acts reasonable and necessary to the conduct of the parties' usual

business and occupation; make expenditures and incur indebtedness for reasonable

attorney's fees; and make expenditures and incur indebtedness for [\*\*32] reasonable and

necessary living expenses for food, clothing, shelter, transportation, and medical care.22

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

22 id. at Paragraph 5.

Dr. Wright-Francis argues that Mr. Francis excessively spent and wasted assets. Dr.

Wright-Francis submitted reports and sworn testimony analyzing Mr. Francis' income and expenses.23

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

[13] Although there is some evidence that Mr. Francis withdrew Two Hundred Twenty

Thousand One Hundred Seventy Nine Dollars and Ninety Three Cents (\$220,179.93)

between 2011 and 2012, there is no evidence Mr. Francis deliberately destroyed,

concealed or harmed the parties property. The money Mr. Francis withdrew from his

annuity was used to pay expenses, including expenses associated with his children's care,

the marital homestead, businesses and living expenses, they are reasonable and

necessary.24

The Court also considers the fact that Mr. Francis was terminated from his employment with VINGN and used his investments [\*32] to support his

obligations and

standard of living.

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

and living expenses.

[14] Moreover, the Supreme Court in *Walters v. Walters* explains that there must be

sufficient evidence that a party intentionally disobeyed a Court order to be held in

contempt. To clarify its position, The *Walters* Court quotes the Court of the Second Circuit

of Appeals: [HN10] "A party may be held in civil contempt for failure to comply with a court

order if '(1) the order the contemnor failed to comply with is clear and unambiguous, (2) the

proof of noncompliance is clear and convincing, and (3) the contemnor has

not diligently attempted to comply in a reasonable manner.' " Id. at 352 (quoting *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004)).

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

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Page 36

2014 V.I. LEXIS 45, \*; 61 V.I. 13, \*\*

[\*\*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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