U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-1804

VIRGIN GRAND ESTATES #60 VILLA ASSOCIATION,
a/k/a Virgin Grand no. 60 Homeowners Association,
Appellant

v.

INTER-OCEAN INSURANCE AGENCY, ST. THOMAS, LLC

Appeal from the District Court, D.V.I.
Judge Robert A. Molloy, No. 3:21-cv-00074

Before: KRAUSE, CHUNG, and SMITH, *Circuit Judges*
Argued: May 13, 2026; Filed: August 18, 2026

NONPRECEDENTIAL OPINION*

CHUNG, *Circuit Judge*. After an individual filed a lawsuit due to the injury he suffered on the property of Virgin Grand Estates #60 Villa Association ("Virgin Grand"), Virgin Grand sought defense and indemnity from Certain Underwriters at Lloyd's of London ("Lloyd's"). Because Lloyd's denied coverage, Virgin Grand brought contractual and insurance bad-faith claims against Lloyd's and tort claims against Lloyd's coverholder Red Hook Agencies ("Red Hook"). The District Court dismissed Virgin Grand's First Amended Complaint ("FAC") and denied Virgin Grand's motions for reconsideration and leave to amend, which Virgin Grand now appeals. We will affirm the District Court's orders.

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* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

I. BACKGROUND[1]

Virgin Grand is a homeowners' association for property located in St. John, United States Virgin Islands ("Property"). As early as 2011, Virgin Grand used broker Inter-Ocean Insurance Agency, St. Thomas, LLC ("Inter-Ocean") to procure insurance. Inter-Ocean transacted with Red Hook, Lloyd's coverholder,[2] to obtain an annual commercial general liability insurance policy for Virgin Grand. The policy was typically renewed by a series of communications. Lloyd's would inform Red Hook of its willingness to renew Virgin Grand's policy ahead of the annual renewal deadline. Red Hook would then notify Inter-Ocean, who would then inform, and provide a renewal application to, Cimmaron Property Management, Virgin Grand's property manager. Cimmaron would in turn request Virgin Grand's authorization to renew the policy and, upon receiving authorization, would sign the renewal application and remit payment to Inter-Ocean. Inter-Ocean would then send the completed application and payment to Red Hook, which, after reviewing the application, would forward it to Lloyd's for issuance of the renewed policy upon final approval. In January 2017, Lloyd's approved renewal of Virgin Grand's policy in accordance with this custom. The resulting policy was effective from February 1, 2017 to February 1, 2018 ("February 2017 policy").

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[1] Because we write for the parties, we assume familiarity with the factual and procedural history and recite only the facts pertinent to our decision.

[2] A coverholder "is a company or partnership authorized by a managing agent to enter into a contract or contracts of insurance to be underwritten by the members of a syndicate managed by it … Coverholders allow Lloyd's syndicates to operate in a region or country as if they were the local insurer." JA318.

Consistent with that practice, Red Hook advised Inter-Ocean on January 10, 2018 that Lloyd's was willing to renew the policy and that the new policy would have an effective date of February 1, 2018, the date that the February 2017 policy ceased to be in effect. But Inter-Ocean waited until March 6—nearly two months later—to relay the renewal offer to Cimmaron. Virgin Grand authorized renewal, and Cimmaron completed the renewal application and returned it to Inter-Ocean along with a check for the renewal premium on March 8. Red Hook then made a handwritten notation striking the checkmark next to "Renewal" and inserted a checkmark next to "New" on Virgin Grand's application paperwork. JA350 at ¶ 190, citing JA430.[3]

Meanwhile, on February 23, 2018, a worker was injured on the Property and later sued Virgin Grand. When Virgin Grand submitted a claim to Lloyd's seeking defense and indemnity, Lloyd's denied the claim stating the Property had no coverage between February 2, 2018 and March 11, 2018.

Virgin Grand then sued Lloyd's, Inter-Ocean, and Red Hook.[4] In the FAC, Virgin Grand asserted claims against Lloyd's for breach of contract, breach of the implied covenant of good faith and fair dealing, and insurer bad faith. As against Red Hook, Virgin Grand brought claims for negligence, breach of fiduciary duty, fraudulent concealment,

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[3] The FAC refers to this document both as an application and as "application/underwriting forms." JA350 at ¶ 190; JA370 at ¶ 294.

[4] Virgin Grand accepted Inter-Ocean's Second Amended Offer of Judgment on August 29, 2024, and judgment was entered against Inter-Ocean on January 31, 2025, though the District Court retained jurisdiction to determine Virgin Grand's entitlement to pre-judgment interest and attorney's fees.

and aiding and abetting of fraudulent concealment. Virgin Grand also brought RICO claims against all Defendants. Lloyd's and Red Hook moved to dismiss Virgin Grand's claims and the District Court granted their motions in orders dated September 22 and October 12, 2022. Virgin Grand thereafter moved for reconsideration and leave to amend, which the District Court denied.

Virgin Grand filed a notice of appeal,[5] and challenges the dismissal of its FAC and denials of its motions for reconsideration and for leave to amend.

II. JURISDICTION[6]

Lloyd's and Red Hook assert that Virgin Grand lacks standing to bring this appeal or, in the alternative, that its appeal has been mooted. The reason that Virgin Grand lacks standing as an aggrieved party and that a successful appeal would not provide it relief because Virgin Grand's settlement with Inter-Ocean has fully compensated it for its losses. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (holding that, to have standing, a party must have suffered a concrete and particularized harm, redressable by a favorable decision); *Ordonez-Tevalan v. Att'y Gen.,* 837 F.3d 331, 339-40 (3d Cir. 2016) ("[A]n issue

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[5] Virgin Grand's notice of appeal addresses a discovery order regarding the Rule 30(b)(6) deposition of Red Hook but omits any discussion of this order in its opening brief. Likewise, Virgin Grand does not address the dismissed RICO claims and the aiding and abetting of fraudulent concealment claim against Red Hook. Thus, Virgin Grand forfeited its challenges to the discovery order and to the dismissal of its claims for RICO and aiding and abetting of fraudulent concealment, and there are no exceptional circumstances that would justify reaching these arguments. *See Altman v. Altman*, 653 F.2d 755, 758 (3d Cir. 1981).

[6] The District Court had jurisdiction under 28 U.S.C. § 1332(a), and we have jurisdiction under 28 U.S.C. § 1291. *See* Fed. R. Civ. P. 54(b); Dist. Ct. Dkt. 305.

is moot if changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." (quoting *Thomas v. Att'y Gen.*, 625 F.3d 134, 140 (3d Cir. 2010)). We disagree. Virgin Grand's settlement with Inter-Ocean did not resolve Virgin Grand's claim for punitive damages against Lloyd's and Red Hook. Accordingly, Virgin Grand has standing, and we may exercise jurisdiction over its appeal.

III. The District Court Did Not Err in Dismissing Virgin Grand's Claims[7]

A motion to dismiss will be granted when the complaint's factual allegations, with the presumption of truth, fail to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678w (2009). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a plaintiff must offer "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The court "draw[s] all reasonable inferences in favor of the non-moving party." *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 215 (3d Cir. 2002).

A. Breach of Contract and Insurer Bad Faith Claims Against Lloyd's

To state a breach of contract claim or an insurer bad faith claim under Virgin Islands law, a plaintiff must establish, among other things, that a defendant breached the terms of a contract. *See George v. V.I. Lottery Comm'n,* 54 V.I. 533, 539 (2010) (stating elements

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[7] We review the dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6) de novo. *Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010). We review denial of reconsideration for abuse of discretion, and predicate issues of law de novo. *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999). Finally, denial of leave to amend is likewise reviewed for abuse of discretion. *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175 (3d Cir. 2010).

of a breach of contract claim); *Justin v. Guardian Ins. Co.*, 670 F. Supp. 614, 617 (D.V.I. 1987) (stating elements of insurer bad faith claim).

Virgin Grand claims that Lloyd's breached the policy's terms by denying coverage. Virgin Grand relies upon a provision requiring Lloyd's to provide notice "thirty days prior to the effective date for non-renewal or cancellation." JA101. Virgin Grand alleges that, because it never received proper notice, the policy was in effect on February 23, 2018, the date the worker was injured. Crucially, though, that section was labeled "Cancellation and Nonrenewal by Underwriters," *id.*, and addressed situations where *Lloyd's* elected to cancel or to not renew the insurance policy.[8]

Even construing the FAC in the light most favorable to Virgin Grand, Lloyd's did not do so. To the contrary, Lloyd's, through Red Hook, conveyed its willingness to renew Virgin Grand's insurance policy to Inter-Ocean on January 10, 2018. Inter-Ocean failed to relay this to Virgin Grand until March 6, 2018. When Virgin Grand did not timely accept Lloyd's offer, the policy expired. Stated differently, the nonrenewal was by Virgin Grand, not Lloyd's. Because the FAC's factual allegations do not reasonably support an inference that any policy was in effect on the date of the accident, Virgin Grand has not plausibly alleged that Lloyd's denial was a breach. We will thus affirm the District Court's dismissal of Virgin Grand's breach of contract and insurer bad faith claims.

B. Breach of Implied Covenant of Good Faith and Fair Dealing Claim Against Lloyd's

[8] Virgin Grand further argued that this was an affirmative nonrenewal in its motion to reconsider. We address that argument below.

To state a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must show "that, in the performance or enforcement of an existing contract between two parties, the opposing party engaged in conduct that was fraudulent, deceitful, or otherwise inconsistent with the purpose of the agreement or the reasonable expectations of the parties." *Agueda v. Marcano*, 79 V.I. 533, 552 (2024).

The FAC lacks factual allegations supporting an inference that Lloyd's deceived Virgin Grand or acted inconsistently with the parties' expectations. Instead, the FAC supports an inference that Virgin Grand reasonably expected Lloyd's and Red Hook to provide Inter-Ocean a renewal application in January 2018. Lloyd's and Red Hook did so, but Virgin Grand did not receive the renewal offer because of Inter-Ocean's mistake. Because Virgin Grand has not plausibly alleged that Lloyd's acted "inconsistently with … the reasonable expectations of the parties," *Agueda*, 79 V.I. at 552, we will affirm the District Court's dismissal of Virgin Grand's claim for breach of the implied covenant of good faith and fair dealing.

C. <u>Claims Against Red Hook for Negligence, Breach of Fiduciary Duty, and Fraudulent Concealment</u>

Virgin Grand brought claims against Red Hook for negligence, breach of fiduciary duty per 22 V.I.C. § 2, and fraudulent concealment. Stating a claim for negligence or breach of fiduciary duty requires Virgin Grand to plausibly allege Red Hook violated a duty, causing harm to Virgin Grand. *See Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (2014); *Roebuck v. V.I. Hous. Auth.,* 60 V.I. 137, 147 (Super. Ct. 2014). Stating a fraudulent concealment claim requires Virgin Grand to plausibly allege that Red Hook engaged in material misrepresentation causing harm. *See Gov't of United States Virgin Islands v. Takata Corp.*, 67 V.I. 316, 417 (Super. Ct. 2017).

Virgin Grand first claims that Red Hook violated a duty it owed to Virgin Grand, or concealed a material fact from it, by altering Virgin Grand's renewal application without first providing notice. But from these facts it would not be a reasonable inference that the change to the untimely form was false. And were we to nevertheless conclude that falsity was plausibly alleged, Virgin Grand offers on appeal only its general belief that the handwritten change was material or harmful. The FAC does not aver any facts from which it can be reasonably inferred that the change created the coverage gap. Accordingly, these facts do not state a claim for fraudulent concealment, negligence, or breach of fiduciary duty.

Next, Virgin Grand claims that Red Hook violated a duty it owed to Virgin Grand, or concealed a material fact from it, by failing to verify that Inter-Ocean had sent a renewal notice, inform Virgin Grand that coverage expired, and that Virgin Grand had issued a new policy instead of renewing the existing policy, thereby creating a gap in coverage. Virgin Grand does not cite any facts to support the proposition that Red Hook's silence, in the face of Virgin Grand's own failure to renew, was tantamount to concealment and so it failed to state a claim for fraudulent concealment on these facts.

In support of its negligence and breach of fiduciary duty claims, Virgin Grand asserts that "Red Hook's breaches [of its duty] are (a) inconsistent with Virgin Grand's reasonable expectations, (b) contrary to established claims practices and legal requirements, (c) contrary to insurance industry custom and practice, and (d) contrary to the express terms of the Subject Policy." JA367, JA371. Assuming that Red Hook owed Virgin Grand a duty, these claims still fail. We concluded in Part B that the FAC does not support a reasonable inference that Red Hook acted inconsistently with Virgin Grand's reasonable expectations. Moreover, Red Hook is not a party to the policy.[9] The FAC also does not aver facts supporting a reasonable inference that Red Hook acted contrary to industry norms or legal requirements. Therefore, Virgin Grand also fails to state a claim under this theory.

Based on the foregoing, we will affirm the District Court's order of dismissal.

IV. The District Court Did Not Abuse Its Discretion in Denying Virgin Grand's Motions for Reconsideration and for Leave to Amend

A. Motions for Reconsideration

Virgin Grand moved the District Court to reconsider its dismissals. A party may move a district court to reconsider its orders pursuant to Federal Rules of Civil Procedure 59(e) or 54(b). A Rule 59(e) motion "must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice." *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010). Rule 54(b) permits reconsideration pursuant to a district court's "inherent power" when reconsideration is "consonant with justice to do so." *United States v. Jerry*, 487 F.2d 600, 605 (3d Cir. 1973), *abrogated on other grounds by Ohio v. Johnson*, 467 U.S. 493 (1984).

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[9] Even if it were, the FAC does not support a conclusion that Red Hook acted contrary to the terms of the policy for the same reasons set forth in Part A as to Lloyd's.

Virgin Grand contends that the District Court incorrectly applied Rule 59(e)'s standard to its Rule 54(b) motions. The District Court did not abuse its discretion in denying Virgin Grand's motions for reconsideration, whether brought under Rule 59(e) or Rule 54(b). As to Rule 59(e), Virgin Grand argued that newly discovered evidence justified reconsideration, relying on: (1) a "[l]iability [r]enewal [q]uote" which included language that "this policy will be non-renewed if renewal has not been requested by the expiration date," Virgin Grand's Opening Br. at 57 (citation modified); and, (2) deposition testimony by Leroy Walker, Vice President of Inter-Ocean, that "[i]f [Inter-Ocean] did not send in a renewal, [Red Hook] automatically said this policy is not renewed,"[10] Virgin Grand's Opening Br. at 55. Virgin Grand asserts that Walker's testimony "shows Red Hook engaged in an affirmative nonrenewal action that created notice obligations under the policy, yet failed to provide the notice." Virgin Grand's Opening Br. at 57-58. Virgin Grand further asserts that its new evidence conflicts with the pre-dismissal deposition statement of the President of Red Hook, Tami Noel, taken in the personal injury suit brought by the injured worker. There, Noel stated that the February 2017 policy expired when Virgin Grand failed to renew by February 1, 2018.

We disagree. The facts alleged in the FAC and the new evidence offered by Virgin Grand support a reasonable inference that Lloyd's, through Red Hook, offered to renew. In contrast, no reasonable inference can be drawn that the insurance policy expired due to

[10] In its motions for reconsideration, but not Opening Brief, Virgin Grand also addressed the testimony of Inter-Ocean employee Joycelyn Claxton. As a result, it has forfeited any argument related to Claxton.

an affirmative decision by Lloyd's or Red Hook not to renew the policy. Walker's testimony and the liability renewal quote simply reflect the obvious consequence when Lloyd's offer was met with silence: a nonrenewal by Virgin Grand, not Lloyd's. That is consistent with, not contradicted by, Noel's testimony and hence does not call for reconsideration under Rule 59(e). For the same reasons, under Rule 54(b), reconsideration of the dismissal was not consonant with justice as the new evidence offered by Virgin Grand did not support its argument that Lloyd's failed to provide it notice in breach of the contract and other similar arguments, nor support its tort claims against Red Hook. We will thus affirm the District Court's denial of Virgin Grand's motions for reconsideration.

B. Motion to Amend

Leave to amend "generally must be granted unless the amendment would not cure the [complaint's] deficiency." *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). An amendment is futile if the amended complaint "would fail to state a claim upon which relief could be granted." *Id*. The District Court did not err in denying Virgin Grand's motion for leave to amend. For the same reasons set forth above, the proposed amendments do not support a reasonable inference that Red Hook, on behalf of Lloyd's, made a decision not to renew the insurance policy or made a material misrepresentation. Because the proposed amendments fail to remedy the FAC's deficiencies, we will affirm the District Court's denial of Virgin Grand's motion for leave to amend.

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For the reasons stated above, we will AFFIRM the District Court's orders.

Counsel for Appellant
Kenneth R. Behrend [ARGUED]
BEHREND LAW GROUP

Douglas B. Chanco
JD LAW GROUP

Counsel for Appellees
Gregory L. Mast [ARGUED]
John P. Golden
Emma Han
FIELDS HOWELL, LLP

Edward L. Barry