

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

EVELYN FREEMAN,	)	
	)	ST-12-CV-59
Plaintiff,	)	
	)	ACTION FOR
vs.	)	FORCIBLE ENTRY,
	)	DETAINDER AND
JOSEPH PLUMMER and	)	RESTITUTION
OCCUPLANTS OF 394-116 ANNA'S RETREAT,	)	
	)	
Defendants.	)	
_____	)	

SMITH, ALAN D., Magistrate

MEMORANDUM OPINION
(Filed: March __, 2012)

Summary

Evelyn Freeman filed this Forcible Entry and Detainer ("FED") action against Joseph Plummer and other occupants of 394-116 Anna's Retreat. When the matter came on for trial, Freeman attempted to appear "*pro se*" through Daina Collazo, pursuant to an executed power of attorney (the "POA"). Virgin Islands law only allows individuals admitted to practice law and in good standing with the Virgin Islands Bar Association to represent others in court. A power of attorney cannot be used to circumvent this rule. Collazo is not an attorney admitted to practice law in the Virgin Islands and therefore cannot appear on behalf of Freeman. In order for Freeman to litigate this matter, she may appear personally, she may retain an attorney-at-law, or Collazo, pursuant to her power of attorney, may retain an attorney-at-law.

Facts

On or about February 8, 2012, Freeman filed a complaint against Plummer in which she seeks restitution of the premises at 394-116 Anna's Retreat, St. Thomas, U.S. Virgin Islands. Freeman's signature appears at the bottom of the complaint. When the matter came on for trial on February 28, 2012, however, Freeman did not appear before the Court. Instead, Collazo appeared pursuant to the POA. Collazo asserted that the POA granted her broad powers to manage Freeman's affairs, including the lease with Plummer. Although the caption of the complaint lists both Freeman and Collazo as plaintiffs, Collazo indicated that Freeman is the only owner of 394-116 Anna's Retreat. Furthermore, the residential lease agreement with Plummer, clearly lists Freeman as the only landlord.

Discussion

The Court is faced with the question of whether a non-attorney agent may maintain an FED action and appear in court on behalf of a *pro se* litigant under the authorization of a power of attorney. In order to resolve the issue, the Court will consider it in two parts. The first issue is whether Collazo representing Freeman in court is "practicing law". As Freeman personally signed the complaint in compliance with court rules,¹ the Court need not determine whether drafting, signing or filing a complaint for another person is practicing law. If the Court

¹ See FED. R. CIV. P. 11(a).

determines that Collazo appearing in court for Freeman would constitute the practice of law, it must then decide whether Virgin Islands law allows Collazo to do so pursuant to the POA.

Practice of Law

In determining whether Collazo representing Freeman in an FED action would constitute the practice of law in the Virgin Islands, the Court will first look to the codified definition of “unauthorized practice of law”, which reads as follows:

Except as otherwise provided by law or rule of court . . . the unauthorized practice of law shall be deemed to mean the doing of any act by a person who is not a member in good standing of the Virgin Islands Bar Association for another person usually done by attorneys-at-law in the course of their profession, and shall include but not be limited to . . . the appearance, acting as the attorney-at-law, or representative of another person, firm or corporation, before any court, board, judicial person or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation and/or filing of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the same.²

This definition specifically controls in actions for injunctive relief and for fines³ as well as for investigations by the Attorney General⁴ against those suspected of practicing law without a license. Nevertheless, this definition is very useful for determining what the practice of law entails in other contexts, including the one now before the Court. When faced with this same issue, the Alaska Supreme Court held that the “practice of law” definition found in a criminal statute “necessarily defines the conduct that, at a minimum, constitutes the unlicensed practice of law for non-criminal purposes.”⁵ The Court finds this reasoning persuasive and will give great weight to the statutory definition found in the Virgin Islands Code. Although other acts that may constitute the practice of law are not specifically listed in this definition, the conduct attempted by Collazo, if allowed by the Court, would clearly be “the appearance, acting as the attorney-at-law, or representative of another person . . . before any court.”

Looking outside of Virgin Islands law, advocating for another person in court appears to be universally accepted as practicing law. For example, Black’s Law Dictionary defines the “practice of law” as follows:

The professional work of a duly licensed lawyer, encompassing a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate-planning documents and advising clients on legal questions.⁶

While the Black’s definition encompasses many more acts than the Virgin Islands statutory definition, “conducting cases in court” is clearly listed as one of these acts. Additionally, the

² VI CODE ANN. tit. 4, § 443(a) (1997).

³ § 443(b).

⁴ § 443(c).

⁵ *Christiansen v. Melinda*, 857 P.2d 345, 346 n.4 (Ala. 1993).

⁶ BLACK’S LAW DICTIONARY 1291 (9th ed. 2009).

many definitions of “practice of law”, found in those jurisdictions where the term is codified, explicitly include court appearances.⁷ Therefore, the Court concludes that if Collazo were to appear before the Court and prosecute the FED matter on behalf of Freeman, she would be engaging in the practice of law as understood in the Virgin Islands and throughout the United States.

Power of Attorney as Authorization

Now that the Court has determined that Collazo representing Freeman in an FED action would be practicing law, it must decide whether the POA executed by Freeman is sufficient authorization for Collazo to do so. For the following reasons, the Court concludes that the POA is not sufficient: (1) “private attorneys” and “public attorneys” have been distinguished for centuries and continue to be so today; (2) allowing one to practice law pursuant to a power of attorney would circumvent the unauthorized practice of law statute and the Supreme Court’s exclusive power to regulate admission to the practice of law; and (3) agency law recognizes that there are certain acts that a principal cannot delegate to an agent.

History

Attorneys formally admitted to the practice of law have long been distinguished from those individuals merely holding powers of attorney. The Ohio Supreme Court notes that this has been the case for centuries.

[P]ersons holding powers of attorney have historically not been considered attorneys who can appear in the courts. When a principal through the execution of a “power of attorney” designates another to transact some business that could have been transacted by the principal, he appoints an agent to act for him as an “attorney in fact” or “private attorney.” . . . An “attorney in fact has been consistently distinguished from an “attorney at law” or “public attorney” since at least 1402 when certain attorneys in England were examined by Justices and “their names be entered on the roll” of those permitted to practice in the courts. . . . Thus, a person holding a power of attorney, but whose name is not entered on the roll, is an attorney in fact, but not an attorney at law permitted to practice in the courts.⁸

Other courts have pointed out that, by definition, a “private attorney” acting under a power of attorney is necessarily limited to conduct acts “not of a legal character”⁹ and business “out of court”.¹⁰ Also, the Court must emphasise that modern courts in the several jurisdictions to have considered this issue have all held that a power of attorney is not sufficient authorization to practice law.¹¹

⁷ E.g. ALA. CODE § 34-3-6(b)(1) (1975); LA. REV. STAT. Ann. § 212(A)(1) (2007); MD. CODE ANN., BUS. OCC. & PROF. § 10-101(h)(1)(ii); MO. REV. STAT. § 484.010(1) (2004); R.I. GEN. LAWS ANN. § 11-27-2(1); TENN. CODE ANN. § 23-3-101(3); WIS. STAT. ANN. § 757.30(2) (2001).

⁸ *Coleman*, 724 N.E.2d 402, 404 (Ohio 2000).

⁹ *Delarosa*, 1995 WL 50275, *2-*3 (Conn. Super. Ct. Jan. 30, 1995) (quoting 2A C.J.S. Agency § 23; BLACK’S LAW DICTIONARY 164 (4th ed. 1968)).

¹⁰ *Delarosa*, 1995 WL 50275, at *2 (quoting 2A C.J.S. Agency § 23).

¹¹ E.g. *Christiansen*, 857 P.2d at 349; *Delarosa*, 1995 WL 50275, at *5; *Snyder v. Martin*, 820 A.2d 390, 394 (Del. Fam. Ct. 2001); *Haynes v. Jackson*, 744 A.2d 1050, 1054 (Maine 2000); *Lazaryan v. City of St. Paul*, 2009 WL 4251058, *3 (Minn. Ct. Ap. Dec. 1, 2009); *In re Welsh*, 860 N.Y.S.2d 639, 640 (App. Div. 2008); *Smolenski v. T.G.I. Friday’s, Inc.*, 834 N.Y.S.2d 436, 437 (Sup. Ct. 2007); *Estate of Friedman*, 482 N.Y.S.2d

Unauthorized Practice of Law Statute and Supreme Court Regulation of Attorneys

The Court will again look at the unauthorized practice of law statute. That statute specifically states that the practice of law, including representing another person in court, is unauthorized unless the person practicing law is “a member in good standing of the Virgin Islands Bar Association”¹² There is no exception made for those having been granted permission through a power of attorney.

Similarly, under Virgin Islands law, “the Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the practice of law.”¹³ Accordingly, it is appropriate for this Court to review the rules promulgated by the Supreme Court regarding admission. There are three types of admission in the Virgin Islands: (1) *pro hac vice* admission,¹⁴ (2) special admission,¹⁵ and (3) regular admission.¹⁶ The relevant rule for each type lays out a very specific process that an applicant must complete in full before being admitted. This Court can find no Supreme Court rule that allows one to practice law simply by having been granted permission through a power of attorney.

If this Court was to conclude that the POA is sufficient for Collazo to represent Freeman in court, then any person could practice law in the Virgin Islands by simply being granted permission through a power of attorney. “This interpretation would effectively abrogate [the statutory] prohibition against the unlicensed practice of law”¹⁷ as well as the Supreme Court’s exclusive authority to regulate admission of persons to the practice of law. This Court, like others, agrees that to conclude a power of attorney to be sufficient and render these statutes meaningless, would create an “absurd” result.¹⁸ Simply stated, “[a] private contract cannot be used to circumvent a statutory prohibition on public policy.”¹⁹

Although the unauthorized practice of law and attorney admission statutes clearly forbid one from practicing law pursuant to a power of attorney, there are also policy reasons to support this conclusion. Those seeking regular admission to practice law in the Virgin Islands must fulfil many requirements, which include graduating from law school, completing written applications, paying several fees, sitting and passing three exams, and undergoing background investigations.²⁰ Virgin Islands courts have consistently recognized that “the Virgin Islands Bar Examination ‘supplies an objective standard for testing the minimum legal competence required for the regular practice of law in the Virgin Islands.’”²¹ In addition to

686, 687 (Sur. Ct. 1984); *Parkchester Preservation Co., LP v. Feldeine*, 922 N.Y.S.2d 744 (Civ. Ct. 2011); *Richstone v. Bell Atlantic*, 2001 WL 1537394, *2 (N.Y. Civ. Ct. July 5, 2001); *Fravel v. Stark Cnty. Bd. of Revision*, 728 N.E.2d 393, 394-95 (Ohio 2000); *Coleman*, 724 N.E.2d at 404; *Marin v. Kandpal*, 2010 WL 3596043, *2 (Ohio App. Sept. 16, 2010); *Kohlman v. W. Pennsylvania Hosp.*, 652 A.2d 849, 853 (Pa. Super. Ct. 1994); *Dude v. Lesperance*, 2002 WL 181276, *3 (Wis. Ct. App. Feb. 5, 2002).

¹² VI CODE ANN. tit. 4, § 443(a).

¹³ § 32(e) (1997 & Supp. 2010).

¹⁴ See SUP. CT. R. 201.

¹⁵ R. 202.

¹⁶ R. 204.

¹⁷ *Christiansen*, 857 P.2d at 348.

¹⁸ *Coleman*, 724 N.E.2d at 404; *Lazaryan*, 2009 WL 4251058, at *3.

¹⁹ *Coleman*, 724 N.E.2d at 404.

²⁰ SUP. CT. R. 204(c).

²¹ *In the Matter of the Application of Payton*, S. Ct. BA No. 2007-146, 2009 V.I. Supreme LEXIS 17 (March 20, 2009) (quoting *Application No. 00017*, 2008 WL 3874283, *4 (App. Div. 2008)).

having to be admitted to the practice of law in the Virgin Islands, the Supreme Court requires all practicing lawyers to participate in continuing professional education.²² The Supreme Court believes that “[r]egular participation in Continuing Legal Education programs will enhance the professional skills of practicing lawyers, afford them periodic opportunities for professional self-evaluation, and improve the quality of legal services rendered to the public.”²³ Courts in other jurisdictions also recognize that a regulated legal profession is “to insure that the public will enjoy the representation of individuals who have been found to possess the necessary skills and training to represent others.”²⁴ In particular, Pennsylvania courts have stated the following:

While, in order to acquire the education necessary to gain admission to the bar and thereby become eligible to practice law, one is obliged to ‘scorn delights, and live laborious days,’ the object of legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexpert and unlearned persons in the practice of law, to assure to the public adequate protection in the pursuit of justice, than which society knows no loftier aim.²⁵

Similarly, a New York court made the following reasoning:

[A]ttorneys in fact, as pro se litigants, however well meaning, are indistinguishable from unscrupulous individuals who intend to practice law without a license. Opening the Pandora’s Box of allowing non-lawyers to make legal as well as factual arguments without any of the protections afforded clients of attorneys admitted to the bar would result in great harm, however unintentional, to a pro se litigant’s meritorious claim or defense.²⁶

This reasoning helps explain why, like in other jurisdictions, the Virgin Islands chose to strictly regulate the legal profession. Therefore, based on a clear reading of the statutes and their underlying policies, the Court must conclude that a power of attorney is insufficient authorization to practice law in the Virgin Islands.

Representing Oneself “*pro se*” is a Nondelegable Act

The Restatement (Third) of Agency provides as follows: “If performance of an act is not delegable, its performance by an agent does not constitute performance by the principal.”²⁷ The comments further provide that “[a] person may delegate performance of an act if its legal consequences for that person are the same whether the act is performed personally or by another. If personal performance is required, performance by the agent does not constitute performance by the principal.”²⁸ As already discussed, Virgin Islands statutes and public policy do allow the delegation of legal representation before the courts to anyone except a licensed attorney-at-law. Agency law recognizes that there are certain acts that a principal cannot delegate to any agent of his choice. *Pro se* representation is such an example.

²² SUP. CT. R. 208.

²³ *Id.*

²⁴ *Snyder*, 820 A.2d at 393 (quoting *In re M. Arons*, 756 A.2d 867, 874 (Del. 2000)).

²⁵ *Kohlman*, 652 A.2d at 851 (quoting *Shortz v. Farrell*, 193 A. 20, 24 (Pa. 1937)).

²⁶ *Richstone*, 2001 WL 1537394, at *2.

²⁷ RESTATEMENT (THIRD) OF AGENCY § 3.04(c) (2006).

²⁸ § 3.04 cmt. c.

While a *pro se* principal cannot delegate the actual act of legal representation to anyone except a public attorney, a duly executed power of attorney can allow the agent to retain legal counsel on behalf of the principal. Other courts have described the agent's powers as those of "the client in an attorney-client relationship . . . to make decisions and undertake acts that are the traditional province of a client. . . . The agent, then while lacking authority to litigate *pro se* in his principal's place, creates and controls the attorney-client relationship as fully as if he were the principal."²⁹ Therefore, while Collazo may not appear before the Court and personally represent Freeman, she may choose, pursuant to powers granted to her in the POA, to retain counsel on behalf of Freeman. Then, under agency law, Collazo would enjoy certain powers and privileges as the client in the attorney-client relationship.

No Exception for FED Actions

The Court is under the impression that in FED actions, unlike with other civil actions, Virgin Islands courts in the past have tolerated the practice of parties appearing through non-attorney agents with authority granted by powers of attorney. It is true that FED actions are different from other civil actions in a number of ways. They have long been described as "summary proceedings"³⁰ where issues are restricted³¹ and strict time lines are imposed.³² They also can be tried in the Magistrate Division of the Superior Court. Nevertheless, the Court cannot find any legal basis for making an exception for FED matters to the rule that a power of attorney cannot be used to authorize a non-attorney to practice law.

The "unauthorized practice of law" statute begins with the following: "Except as otherwise provided by law or rule of court . . ."³³ The Court is only aware of one exception to this general rule. In matters before the Small Claims Division, "[n]either party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, associations and partnerships which may appear by a personal representative."³⁴ Not only is there an absence of a statute or rule making an exception for FED actions, but Virgin Islands law provides that "an action for forcible entry and detainer shall be conducted in the same manner as other civil actions."³⁵

When the Magistrates Division was created, the Legislature stated that its "procedure, unless otherwise specified, [would be] in accordance with the rules governing the Superior Court of the Virgin Islands."³⁶ Other than having magistrates preside over cases instead of judges, it does not appear that any other procedure was altered. The procedure in FED actions is no different today than it was when judges of the Superior Court regularly heard them. Furthermore, there are no special statutes or rules regarding the appearance of attorneys before magistrates. As mentioned previously, the unauthorized practice of law statute not only prevents non-attorney from representing other persons in courts but also prevents them from doing the same before boards and other adjudicatory bodies.³⁷ If there is no exception

²⁹ *Christiansen*, 857 P.2d at 347; *Delarosa*, 1995 WL 50275, at *4 (quoting *Christiansen*, 857 P.2d at 347); See *Kohlman*, 652 A.2d at 852.

³⁰ E.g., *V.I. Port Authority v. Joseph*, 49, V.I. 424, 427 (S. Ct. 2008); *Estate of Thomas Mall, Inc. v. Territorial Court*, 923 F.2d 258, 259 (3d. Cir. 1991); *Inter Car Corp. v. Discount Car Rental*, 21 V.I. 157, 158 (Terr. Ct. 1984); *Suarez v. Christian*, 18 V.I. 581, 586 (D.V.I. 1981).

³¹ See VI CODE ANN. tit. 28, § 782(a) (1996).

³² See e.g. §§ 785, 786.

³³ VI CODE ANN. tit. 4, § 443(a).

³⁴ § 112(d).

³⁵ VI CODE ANN. tit. 28, § 784.

³⁶ VI CODE ANN. tit. 4, § 120 (1997 & Supp. 2010).

³⁷ § 443.

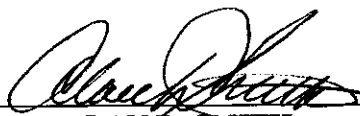
for tribunals outside of the judiciary, there certainly cannot be an exception for matters before magistrates of the Superior Court.

Finally, the Court notes that other courts across the country have consistently declined to make exceptions to the rule against practicing law pursuant to a power of attorney for certain special types of matters including landlord-tenant actions,³⁸ matters before family courts,³⁹ small claims actions,⁴⁰ matters before probate courts,⁴¹ and cases before administrative boards.⁴² Although this Court, recognizes, like other courts have, that plaintiff-landlords are often capable and successful in prosecuting FED matters *pro se*, this Court cannot make a judicial exception to the rule barring non-attorneys from practicing law.⁴³

Conclusion

Freeman has attempted to prosecute this FED action pursuant to the POA granting powers to Collazo, a non-attorney. Representing another person in court constitutes the practice of law. Therefore, based on the statute prohibiting the unauthorized practice of law and the statute granting the Supreme Court the exclusive authority to regulate admission of attorneys at law, the Court reaches the conclusion that a duly executed power of attorney cannot authorize an individual to practice law. To hold otherwise would circumvent the purpose of the statutes, result in them being meaningless, and create an absurd result. This holding is consistent with those in jurisdictions nationwide. Furthermore, the Court finds no exception due to the fact that FED actions are summary proceedings usually held before magistrates. While the POA does not permit Collazo to personally advocate on behalf of Freeman in court, it does permit her to retain an attorney-at-law for Freeman and then act as the client in the attorney-client relationship.

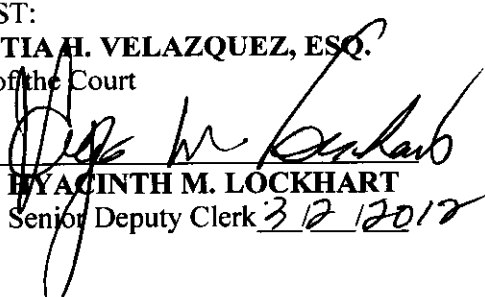
DATED: March 2, 2012


ALAND D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:


HYACINTH M. LOCKHART
Senior Deputy Clerk 3/2/2012

³⁸ E.g. *Delarosa*, 1995 WL 50275, at *1; *Parkchester Preservation*, 922 N.Y.S.2d at 744.

³⁹ E.g. *Snyder*, 820 A.2d at 392.

⁴⁰ E.g. *Christiansen*, 857 P.2d at 346; *Geoffey*, 1001 WL 1537394, at *1; *Lesperance*, 2002 WL 181276, at *1.

⁴¹ E.g. *In re Estate of Friedman*, 482 N.Y.S.2d at 686.

⁴² E.g. *Fravel*, 782 N.E.2d at 394.

⁴³ E.g. *Delarosa*, 1995 WL 50275, at *5.