

**SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS AND ST. JOHN**

**GOVERNMENT OF THE VIRGIN ISLANDS,** )  
**DEPARTMENT OF PROPERTY AND PROCUREMENT,** )

**Plaintiff/Respondent on Review,** )

**vs.**

**FELIX SANTANA, FELIX SANTANA AUTO BODY** )  
**REPAIRS, and SUBBASE WRECK SHOP,** )

**Defendants/Petitioners on Review.** )

) **CASE NO. ST-16-RV-10**  
) **(formerly CASE NO.**  
) **ST-16-CV-339)**

**MEMORANDUM OPINION**

Pending before the Court is Petitioners' appeal of a Judgment entered by the Magistrate Judge on October 13, 2016. For the following reasons, the Magistrate Judge's judgment will be affirmed.

**FACTUAL AND PROCEDURAL HISTORY**

On April 30, 1986, Petitioner Felix Santana Auto Body Repairs and Respondent Government of the Virgin Islands, Department of Property and Procurement, entered into a five year lease agreement concerning Parcel No. 130-B in Sub Base, St. Thomas.<sup>1</sup> The 1986 lease agreement was amended on or about December 13, 1988, to add, among other terms, an option to renew.<sup>2</sup>

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<sup>1</sup> Petitioners/Defendants' Exhibit 1.

<sup>2</sup> Petitioners/Defendants' Exhibit 2. At the hearing before the Magistrate, Petitioner Felix Santana testified that he did not exercise the option under the 1986 amendment. See Hearing Transcript, at page 40. (Magistrate: "Anything else, Mr. Santana? Did you exercise any of the options under Amendment Number 1 which is Defendant's Exhibit Number 2?" Felix Santana: "No. I didn't use that." Magistrate: "You didn't exercise any of the options?" Felix Santana: "No.")

On March 15, 1990, the parties entered into a new lease agreement relating to Parcel No. 130-B for a period of twenty-five years.<sup>3</sup> Article 1 of the 1990 lease states that “the prior lease agreement between the parties hereto is terminated upon the approval of this lease agreement.”<sup>4</sup> On January 23, 2004, the parties executed an amendment to the 1990 lease to include Parcel No. 128-B Sub Base within the leased premises and to add an option clause permitting renewal of the lease for another five years provided that Felix Santana Auto Body Repairs was “not in default ... of [the] Lease Agreement at the expiration of the initial or any renewal term.”<sup>5</sup>

In 2014, Felix Santana Auto Body Repairs fell behind in its rental payments, and Respondent sent Petitioners a notice to cure on June 18, 2014.<sup>6</sup> Thereafter, on August 27, 2014;<sup>7</sup> September 1, 2015;<sup>8</sup> and December 14, 2015, Respondent sent Petitioners notices to “quit and vacate the premises located at Parcel No. 130-B.”<sup>9</sup> On August 18, 2016, Respondent filed a forcible entry and detainer action in the Magistrate Division of the Superior Court, and a hearing was held on the matter on September 23, 2016. The Magistrate Judge found in favor of Respondent and issued a written judgment on October 13, 2016. Petitioners filed a notice of appeal on November 14, 2016.

## STANDARD

The Superior Court “has jurisdiction to review judgments and orders issued by a Magistrate [Judge], as a result of the Magistrate [Judge]s exercising their original

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<sup>3</sup> Respondent/Plaintiff's Exhibit A.

<sup>4</sup> *Id.*

<sup>5</sup> Respondent/Plaintiff's Exhibit B.

<sup>6</sup> Respondent/Plaintiff's Exhibit D. Respondent's notice to cure references Parcel No. 130-B only.

<sup>7</sup> Respondent/Plaintiff's Exhibit E.

<sup>8</sup> Respondent/Plaintiff's Exhibit F.

<sup>9</sup> Respondent/Plaintiff's Exhibit G.

jurisdiction as provided for at 4 V.I.C. § 123.”<sup>10</sup> The Superior Court reviews a Magistrate Judge’s factual determinations for “clear error” and legal findings are “afforded plenary review.”<sup>11</sup>

### ANALYSIS

Petitioners’ appeal is untimely, as it was filed a month after the Magistrate Judge issued his written Judgment. V.I. Super. Ct. Rule 322.1(b)(2)(A) provides that “[p]etitions for review under this section must be filed with the Clerk of the Court within ten (10) days after entry of the order sought to be reviewed, and a copy served on the opposing party.” Moreover, Petitioners did not file their brief within 14 days of the filing of the transcript as set by the Clerk in her November 15, 2016, correspondence to Mr. Santana.

Regardless, Petitioners’ appeal also fails on its merits. Petitioners’ sole argument for reversing the judgment is their contention that Felix Santana was not allowed to “present certain documents” at the hearing before the Magistrate Judge.<sup>12</sup> The record reflects that Felix Santana submitted the 1986 lease and the 1988 amendment to the lease into evidence. Petitioners did not offer any other documents at trial, and, on appeal, they do not identify any documents that they were precluded from presenting at trial.

“[A]n appellant is bound to submit arguments in support of the issues presented, supported by legal authorities and applied to the facts reflected on the record.”<sup>13</sup> Petitioners have failed to demonstrate that the Magistrate Judge committed reversible error relating to the presentation of evidence at trial.

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<sup>10</sup> *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

<sup>11</sup> Super. Ct. R. 322.3(b). “Plenary review means applying the same legal standard as the trial court to the same record.” *Henry v. Dennerly*, 55 V.I. 986, 991 (V.I. 2011).

<sup>12</sup> Petitioners’ letter/brief dated February 15, 2017.

<sup>13</sup> *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 239, 2013 V.I. Supreme LEXIS 36, \*18, 2013 WL 3367302 (VI. 2013) (quoting *Ibrahim v. Gov’t of the V.I.*, 47 V.I. 589, 594 (D.V.I. App. Div. 2005)).

Upon a review of the record, the Court also determines that the Magistrate Judge had a substantial basis for granting restitution of Parcel No. 130-B to Respondent. The lease expired in 2015 and was not renewed by the parties. Petitioners were ineligible to exercise the option clause in the 2004 lease amendment because they had not paid rent since 2014 and were in arrears on their rental obligations. At trial, Felix Santana acknowledged that the last rental payment was made in March 2014 and that his business owed Respondent \$35,642.31 in unpaid rent.<sup>14</sup>

Finally, the Magistrate Judge did not commit error by restoring only Parcel No. 130-B to Respondent. While Respondent sought to evict Petitioners from Parcels Nos. 130-B and 128-B in the Complaint, the notice to cure and notices to quit mentioned only Parcel No. 130-B.

“Before an action for possession may be maintained, a notice to quit is necessary.”<sup>15</sup> Here, Respondent’s notices to quit were defective as to Parcel No. 128-B because the notices demanded restitution only of Parcel No. 130-B. In addition, Respondent did not appeal the Magistrate Judge’s Judgment that granted restitution of Parcel No. 130-B to Respondent. As a result, any objection Respondent may have had to the Judgment is waived,<sup>16</sup> and the Judgment of the Magistrate Judge is affirmed.

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<sup>14</sup> See Hearing Transcript, at pages 30, 31, 40, and 41. (Respondent: “The last date marked on the account audit is July 1, 2016 showing a delinquent balance of \$35,642.31.” Magistrate: “And does it say anywhere in the audit report when [Petitioner] made his last payment?” Respondent: “The last payment that [Petitioner] made was March 14<sup>th</sup> (sic) in the amount of \$9,000.00.” .... Magistrate: “Mr. Santana, do you dispute that you do not owe the rent that the Government of the Virgin Islands claim that you owe for the property?” Felix Santana: “No.” .... Magistrate: “Is it correct from the testimony of [Respondent’s] representative that the last payment that you made for this property for the use and occupancy of was in March 2014?” Felix Santana: “That’s correct.”) The audit report (Respondent’s Exhibit 6) indicates that Petitioners’ last rental payment was on March 4, 2014, for the amount of \$9,000.00.

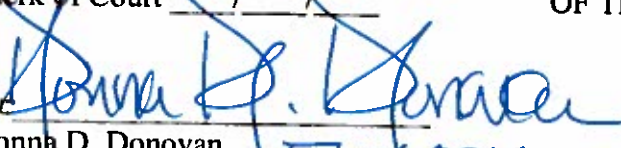
<sup>15</sup> *Malling-Holm v. Feiner*, 1962 V.I. LEXIS 1, \*12-13, 4 V.I. 341, 349 (V.I. Mun. Ct. 1962) (citing 28 V.I.C. §§ 752, 789).

<sup>16</sup> *Francis v. People of the Virgin Islands*, 57 V.I. 201, 251, 2012 V.I. Supreme LEXIS 58, \*97, 2012 WL 3183823 (VI. 2012) (“Even if a lower court made a noticeable error at trial, the error is waived if it is not raised on appeal”). The Court notes that Respondent also did not raise this issue in its brief; in fact, it appears Respondent did not file a brief at all.

An Order consistent with this Opinion shall follow.

Dated: May 8, 2017

ATTEST: Estrella George  
Clerk of Court

by   
Donna D. Donovan  
Court Clerk Supervisor

5/8/2017



HON. MICHAEL C. DUNSTON  
JUDGE OF THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS