IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

CARIBE HOME CENTER, INC. **Plaintiff**)	CASE NO. SX-12-SM-0000459
)	ACTION FOR: DEBT - SMALL CLAIMS
vs)	
LUCY ASCENCIO)	
Defendant	

NOTICE OF ENTRY OF ORDER

TO: CARIBE HOME CENTER, INC.
LUCY ASCENCIO

Please take notice that on November 04, 2013 a(n) ORDER dated October 29, 2013 was entered by the Clerk in the above-entitled matter.

Dated: November 04, 2013

Venetia H. Velazquez, Esq.
Clerk of the Court

ROBYN MOTTA
STUDENT INTERN

SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX

LUCY ASCENCIO, **Petitioner / Defendant,** **v.** **CARIBE HOME CENTER, INC.,** **Defendant / Respondent**	**CASE NO. SX-12-SM-459** **PETITION FOR REVIEW OF A MAGISTRATE DECISION**

OPINION

This matter is before the Court on a petition for review of a decision of the Magistrate Court filed by Petitioner Lucy Ascencio. Respondent Caribe Home Center, Inc., a hardware store operating on St. Croix, filed a complaint against Ascencio in the Small Claims Division of the Superior Court in October 2012 to recover approximately $4,500.00 Ascencio charged on a store credit account in 2007. The Magistrate Court heard testimony from six witnesses over three hearings held in October and November 2012, after which the court found in favor of Caribe Home Center and entered judgment. Ascencio filed a timely petition for review of that decision. For the reasons stated below, the judgment of the Magistrate Court will be affirmed in part and remanded in part.

FACTUAL AND PROCEDURAL BACKGROUND

Lucy Ascencio-Berrios was employed by Caribe Home Center, Inc. and applied for an employee credit account on October 27, 2006. (*See* Pl. Ex. 12, Ascencio Credit Application.[1]) Her application was approved the same day and she was authorized to charge up to $500 on her store credit account. *Id.* On the application form, Ascencio agreed that the credit "account

[1] The Exhibit List prepared by the clerk indicates that the exhibits were not moved into evidence. Because the same documents were attached to Caribe Home Center's Complaint, the Court will reference the documents by exhibit number.

is to be paid within 30 days, unless other arrangement[s] are made." *Id.* Because Ascencio did not pay the full amount within thirty days, but instead carried a balance for over five years, Caribe Home Center filed a complaint against Ascencio in the Small Claims Division of the Superior Court to recover "judgment in the amount of $4,575.94 plus all court costs" related to the past due amount on her account. (Compl., filed Oct. 9, 2012.)

The parties first appeared before the Magistrate Court on October 23, 2012.[2] Leticia Garcia appeared on behalf of Caribe Home Center and testified as to the balance remaining on Ascencio's account. Jesus Garcia also appeared on behalf of Caribe Home Center and testified that he was hired by Ascencio to do repairs around her home. He also testified that Ascencio authorized him to purchase merchandise on her credit account from Caribe Home Center. Ascencio partially corroborated Jesus Garcia's testimony regarding the repair work he did, but she denied authorizing him to purchase goods on her store credit account. The Magistrate Court continued the hearing to November 14, 2012 to allow both parties to call additional witnesses.

At the second hearing, Magda Edwards appeared on behalf of Caribe Home Center and testified that she attended a meeting with Ascencio, Jesus Garcia, and Felix Garcia, the store's general manager, about allowing Jesus Garcia to purchase merchandise on Ascencio's account. Ascencio called her ex-husband, Angel Luis Cadiz, who denied that Ascencio gave Jesus Garcia permission to purchase merchandise on her store credit account. The Magistrate Court then continued the hearing to November 28, 2012 to allow Caribe Home Center to call Felix Garcia.

At the third hearing, Felix Garcia testified that he is the general manager for Caribe Home Center and knows Ascencio as a former employee of the store. (Hr'g Tr. 4:10-19, Nov.

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[2] Although the magistrate court held three hearings in this matter, Ascencio only purchased a transcript from the final hearing held on November 28, 2012. Accordingly, the Court also relies on the record of proceedings prepared by the clerk.

28, 2012.) Ascencio approached him at the store one day and asked if she could send Jesus Garcia to pick up merchandise for a job he was doing on her property. *Id.* at 5:7-19. Jesus Garcia was with Ascencio when she approached Felix Garcia. *Id.* at 6:13-14 & 7:13-16. Based on Ascencio's request, Felix Garcia instructed Edwards to allow Jesus Garcia to obtain merchandise on Ascencio's account. *Id.* at 6:14-18.

Based on all of the evidence presented, the Magistrate Court found that Ascencio had a store credit account with Caribe Home Center, that Ascencio requested that Jesus Garcia be allowed to purchase goods on that credit account, that he made charges to her account, and that the outstanding balance totaled $4,575.94. *See id.* at 13:24-15:8. The court entered judgment in favor of Caribe Home Center on November 28, 2012 for $4,575.94 plus $150.00 in court costs. Ascencio filed a timely petition for review on November 30, 2012. A copy of the transcript of the final hearing was filed on March 26, 2013. In an April 19, 2013 Order, the Court determined that briefing was not required.

DISCUSSION

Before a decision of the magistrate court is final, it must be reviewed and affirmed by a judge of the Appellate Division of the Superior Court or the time to seek review in the Appellate Division must expire. *Brown v. Brown*, S. Ct. Civ. No. 2013-0020, 2013 WL 4780946, *2 (V.I. Sept. 6, 2013) ("a decision rendered by the Magistrate Division of the Superior Court does not constitute a final appealable order under section 32(a) until and unless it has been first appealed to, and considered by, the Appellate Division of the Superior Court."); Super. Ct. R. 322.1(c). For all cases within the magistrate court's original jurisdiction, such as small claims cases, the magistrate court is the finder of fact. *In re Estate of Small*, 57 V.I. 416, 429 (V.I. 2011). New or additional evidence cannot be submitted to the Appellate Division judge. *Id.* In reviewing the magistrate court's decision, the Appellate

Division judge must accept the facts as found by the magistrate court unless the magistrate court's "factual determination . . . is completely devoid of minimum evidentiary support or . . . bears no rational relationship to the supportive evidentiary data." *Id.* at 430 (internal quotation marks and citations omitted).

According to the record before the Court, Ascencio made purchases on her store credit account between October 2006 and September 2007. (*See* Pl. Ex. 11.) The total amount charged in 2007 was $6,317.28. (*See* Caribe Home Ctr., Inc., 2007 Customer Profile, Acct. No. 1216A (Nov. 5, 2012).[3]) A balance of $540.56 carried over from 2006 brought Ascencio's total indebtedness to $6,857.84 as of December 2007. *See id.* From 2007 through 2011, Ascencio paid Caribe Home Center a total of $3,031.85 on her credit account: $2,326.85 in 2007, $275.00 in 2008, $145.00 in 2009, $140.00 in 2010, $125.00 in 2011, and $20.00 in 2012. (*See* 2007-2012 Customer Profiles.) Those payments reduced the total amount Ascencio owed Caribe Home Center down to $3,825.99. (*See* Pl.'s Ex. 11.) The Magistrate Court accepted Caribe Home Center's claim that Ascencio still owed $3,825.99 without conducting an independent determination regarding the amount of goods Ascencio purchased on her credit account, how much she later repaid, and whether the balance remaining was the same amount as Caribe Home Center claimed. In this instance, the record correlates with the amount Caribe Home Center requested, so any error would be harmless. The record supports the Magistrate Court's findings that Ascencio still owes $3,825.99 to Caribe Home Center for goods purchased on her account in 2007.

[3] In the court's file are six "Customer Profiles" Caribe Home Center prepared showing purchases and payments made on Ascencio's credit account from 2007 through 2012. Although the magistrate court referred to these documents at the November 28, 2012 hearing, neither the transcript nor the records of proceeding indicate whether they were formally moved into evidence. (*See* Hr'g Tr. 12:10-13:15, Nov. 28, 2012.) However, Ascencio did not specifically challenge the magistrate court's decision to admit any evidence, but rather the court's findings overall regarding the evidence admitted. Since these Customer Profiles were referenced by the magistrate court, the Court assumes that they were properly admitted into evidence.

On appeal, Ascencio argues that the Magistrate Court "overlooked or disregarded" the evidence she presented and that Caribe Home Center failed to present sufficient evidence that she "granted permission to any person/persons to receive or purchase merchandise under [her] account." (Pet. for Review 1, filed Nov. 30, 2012.) Since Ascencio only disputes the purchases made by Jesus Garcia, the Court finds no dispute regarding the three invoices Caribe Home Center submitted—totaling $2,378.52 (*see* Pl.'s Exs. 1-3)—that bear Ascencio's signature. Of the remaining invoices, however, Ascencio does dispute that she authorized Jesus Garcia to obtain goods on her account. Seven invoices bear Jesus Garcia's signature, totaling $1,483.77. (*See* Pl.'s Exs. 4-10.) Although Ascencio argues that the evidence before the Magistrate Court was insufficient to find that she authorized Jesus Garcia to purchase goods on her account and that the Magistrate Court disregarded her evidence, her arguments lack merit.

Three witnesses—Magda Edwards, Jesus Garcia, and Felix Garcia—testified that they were present with Ascencio at Caribe Home Center when she requested that Jesus Garcia be allowed to purchase goods on her store credit account. The Magistrate Court found their testimony credible and concluded that Caribe Home Center presented sufficient evidence for the court to find in its favor. Although Ascencio and her ex-husband Cadiz disputed the testimony of Caribe Home Center's witnesses, that alone does not render the Magistrate Court's findings clearly erroneous. Moreover, just because the Magistrate Court found Caribe Home Center's evidence more credible than Ascencio's evidence, that does not mean that the court overlooked or disregarded her evidence. Although there were conflicts in the evidence, on appeal this Court cannot resolve such conflicts, weigh the evidence, or assess witness credibility. The Magistrate Court, as the finder of fact, properly made these determinations. *Accord Smith v. People*, 51 V.I. 396, 401 (V.I. 2009).

Based on the deferential standard of review the Court must apply, the Magistrate Court's credibility determinations are not clearly erroneous and, although the court did not independently determine whether the remaining balance on Ascencio's account correlated with what Caribe Home Center claimed, that amount is supported by the record before the Court. Therefore, the judgment will be affirmed as to the balance remaining on Ascencio's store credit account. As to the amount assessed in service charges, however, the Court is unable to determine whether that amount is proper because the Magistrate Court did not make any findings. Therefore, this matter must be remanded for additional findings. *See, e.g.*, *Ricara v. People*, 57 V.I. 659, 668 (V.I. 2012) (remanding where lack of findings renders appellate review impossible) ("meaningful review is not possible where the trial court fails to sufficiently explain its reasoning.").

Beginning in August 2011 and continuing through August 2012, Caribe Home Center assessed Ascencio's credit account a monthly service charge. The record does not explain why Ascencio's account incurred a "service charge" only between 2011 and 2012 whereas in 2007, 2008, 2009, and 2010 no charges were assessed. Although the credit application Ascencio filed out noted that she would have to repay any amount charged within thirty days unless other arrangements were made, (*see* Pl.'s Ex. 11), whether such arrangements were made with Caribe Home Center was not determined by the Magistrate Court. The credit application itself is silent regarding incurring fees or service charges on amounts unpaid after thirty days.

In addition to why Caribe Home Center only assessed service charges in 2011 and 2012, and more importantly, how the store arrived at the amount assessed is also unclear. The amounts assessed in service charges between August 2011 and August 2012 range from $57.39 to $58.36. (*See* 2011 Customer Profile; 2012 Customer Profile.) In total, the monthly service charges for this one-year period come to $749.95.[4] (*See* Pl.'s Ex. 11.) With the service charges added to the outstanding balance Ascencio owed for consumer goods purchased on her account, the total amount increases from $3,285.99 to $4,575.94, the amount the Magistrate Court award to Caribe Home Center. (Jgmt. entered Nov. 28, 2012.) Even if the terms of the store credit account, or later arrangements between the parties, did provide for assessing a monthly service charge on any unpaid balance beyond the thirty-day period provided in the agreement, the amount assessed could not exceed the statutory maximum provided in 11 V.I.C. § 951.

Section 951 of title 11 of the Virgin Islands Code caps the rate of interest that can be assessed on "all monies which have become due" or on "money due . . . where there is a contract and no rate is specified" at nine percent annually. 11 V.I.C. § 951(a)(1),(4). Section 952 further directs that "[n]o person shall . . . receive . . . any greater sum . . . for the use of money" than the nine percent provided by section 951(a). 11 V.I.C. § 952. In *Foreign Commerce v. Tonn*, 789 F.2d 221, 224 (3d Cir. 1986), the United States Court of Appeals for the Third Circuit concluded that a monthly service charge on monies due constituted interest that could not exceed the cap set by section 951(a). Here, in August 2011—the first month that Caribe Home Center assessed a service charge—Ascencio's account balance before the service charge was $3,890.99. (*See* 2011 Customer Profile.) A service charge was then assessed at $58.36. $58.36 is approximately 1.5% of $3,890.99, the unpaid balance Ascencio owed as of August 2011. As the Third Circuit observed, a 1.5% monthly service charge would be roughly equivalent to an 18% annual interest rate—well beyond the statutory maximum. *Foreign Commerce*, 789 F.2d at 222 n.1.

[4] According to the 2012 Customer Profile, the last service charge Caribe Home Center assessed to Ascencio's account was in September 2012. However, that same month, Caribe Service Center credited Ascencio's account the same amount as the service charge. (*See generally* 2012 Customer Profile.)

"While Superior Court Rule 64 requires the Small Claims Division to do substantial justice between the parties, it must do so according to the rules of substantive law" *Mill Harbour Condominium Owners Ass'n v. Marshall*, 53 V.I. 581 (V.I. 2010) (internal quotation marks omitted). Because the amount assessed may violate the Virgin Islands usury laws, this matter must be remanded to the Magistrate Division for the limited purpose of determining whether the service charges Caribe Home Center assessed complies with 11 V.I.C. § 951.

CONCLUSION

For the reasons stated above, Ascencio has not shown that the Magistrate Court's findings are clearly erroneous as to the unpaid balance for goods purchased on her store credit account-- both by herself and by Jesus Garcia. Therefore, the November 28, 2012 Judgment of the Magistrate Court is affirmed as to the $3,825.99 Ascencio owed to Caribe Home Center for purchases made in 2007 as well as $150.00 awarded in court costs. However, this matter must be remanded to the Magistrate Court to determine whether the $749.95 Caribe Home Center assessed in monthly service charges complies with 11 V.I.C. § 951.

DONE and so ORDERED this 29th day of October, 2013.

HAROLD W.L. WILLOCKS
Judge of the Superior Court

ATTEST:
Venetia Harvey-Velazquez, Esq.
Clerk of the Court

By: ____________
Court Clerk Supervisor
Dated: 11/4/13