

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

CARBANA ENSEMBLE THEATER	)	
CO., INC.,	)	CASE NO. ST-12-SM-414
	)	
Plaintiff,	)	
vs.	)	
	)	ACTION FOR DEBT
V.I. DEPARTMENT OF HUMAN	)	
SERVICES,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant Virgin Islands Department of Human Services' Motion to Dismiss, filed with this Court on October 5, 2012. The Government's motion contends that this action should be dismissed, because the Government, as an executive entity in the Government of the Virgin Islands, must be represented by the Attorney General and the Government cannot, by virtue of statute, be represented in small claims court. The Motion to Dismiss will be denied, and *sua sponte*, the Court will transfer this case to the General Civil Division of the Superior Court of the Virgin Islands, Division of St. Thomas – St. John.

I. Discussion

The purpose of the Small Claims Division is to afford litigants, whose claims do not exceed ten thousand dollars (\$10,000.00), inexpensive, expeditious and simple access to judicial relief. It is well established that under 4 V.I.C. § 112(d), no party to a small claims action may be represented by counsel. However, the statute does not define "party" nor does it address representation of the Government of the United States Virgin Islands. The Government, in support of its contention that it is entitled representation by the Attorney General in this action, relies on 3 V.I.C. § 114(a)(1). This section delineates the powers and duties of the Attorney General and states, in pertinent part, that the Attorney General "shall...appear for and represent the executive branch of the Government of the United States Virgin Islands before the courts in all civil proceedings...."¹ Title three of the Virgin Islands Code establishes the Virgin Islands

¹ 3 V.I.C. § 114(a)(1).

Department of Human Services as “an executive department in the Government of the United States Virgin Islands.”²

Accordingly, the issues in this case are whether (1) the Government, as the Defendant in a small claims action, has the right to representation by the Attorney General, and if it does, (2) should this action be transferred to the General Civil Division of the Superior Court. Application of the general rules of statutory construction leads this Court to conclude that the Government is entitled to representation by the Attorney General in all civil actions, including small claims, and that this matter should be transferred to the General Civil Division of the Superior Court.

Under general rules of statutory construction, “[a]mendments by implication, like repeals by implication, should be based upon the Legislature’s clear and manifest intention.”³ Furthermore, as it appears in the instant case, “[w]here provisions of two Acts are in conflict, standard statutory construction requires that a court adopt as controlling that provision more closely associated with the specific substance of the controversy.”⁴ 3 V.I.C. 114(a)(1) was enacted on March 29, 1962 and 3 V.I.C. 112(d) was enacted on or about February 9, 1967. Therefore, it is presumed that the Legislature was aware that the Government was entitled to representation by the Attorney General in all legal proceedings when it enacted the provision of the small claims statute that prohibits representation by an attorney in such actions.

In the instant case, there is a conflict between 3 V.I.C. 114(a)(1) (“Attorney General statute”) and 3 V.I.C. 112(d) (“small claims statute”). The substance of this conflict is the Government’s right to representation in “all civil proceedings,”⁵ including the instant small claims proceeding. To facilitate purpose of the Small Claims Division, the Legislature determined, among other things, that certain practices and procedures provided for in the court rules do not apply, the defendant is not required to file a written answer, and that parties cannot be represented by counsel. On the other hand, the Legislature’s mandate that the Attorney General represent the Government arises from the fact that the Government is an entity that cannot appear *pro se*. The Government can only act through an authorized representative. In all

² 3 V.I.C. 430(a).

³ *In re Guardianship of Penn*, 15 F.3d 292, 295 (3d Cir. 1994) (*aff’g In re Guardianship of Penn*, 1993 WL 664443, at *1 (D.V.I. 1993)).

⁴ *Bowman v. Tex. Educ. Found. Inc.*, 454 F.2d 1097, 1101 (5th Cir. 1972).

⁵ 3 V.I.C. 114(a)(6)

legal actions, the Attorney General statute mandates that the authorized representative shall be the Attorney General. The Legislature did not, with the passage of the small claims statute, manifest a clear and express intention to amend the statutory mandate of the Attorney General to represent the Government in all legal matters.

The fairest and most reasonable construction of the small claims statute is that the Legislature intended for the Attorney General statute to control. The plain language of the Attorney General statute makes it clear that the Attorney General is to appear for the Government in all legal matters, hearings, or proceedings. All legal matters would unquestionably include small claims matters, despite not being specifically mentioned. Furthermore, the small claims statute requires parties to appear in person. The small claims statute sets out clear exceptions for certain parties which cannot appear in person, including corporations, associations, and partnerships and allows those parties to be represented by personal representatives.⁶ The Government of the United States Virgin Islands is similar to corporations, associations, and partnerships in that, as an entity, it cannot appear in court personally. The Government must be able to represent itself in court. Because the personal representative required to represent the Government is the Attorney General, the Legislature intended to have all small claims proceedings involving the Government be brought in or transferred to the General Civil Division of the Superior Court. The Court will not read a requirement into the small claims statute that the Government relinquish its right to be represented by the Attorney General in small claims actions. To do so would undercut the Legislature's clear mandate that the Attorney General represent the Government in all civil proceedings.

II. Conclusion

Accordingly, 3 V.I.C. § 114(a)(1) is the controlling statute, as is it more closely associated with the specific substance of this conflict. Therefore, the Government is entitled to representation in this matter, currently pending in the Small Claims Division of the Superior Court of the Virgin Islands. Having concluded that the Government is entitled to representation by the Attorney General in all civil proceedings, including small claims proceedings, it follows that this matter should be transferred to the General Civil Division of the Superior Court, rather

⁶ See 4 V.I.C. 112(d).

than being dismissed, because neither party can be represented by an attorney in the Small Claims Division. The Plaintiff will not be prejudiced in any way because it has the right, upon transfer, to appear *pro se* or to be represented by counsel.

Accordingly, it is hereby

ORDERED that the Defendant's Motion to Dismiss is **DENIED**; and it is further

ORDERED that this action is transferred to the General Civil Division of Superior Court of the Virgin Islands, District of St. Thomas – St. John; and it is further

ORDERED that a copy of this Order shall be served on the Plaintiff and directed to Ariel M. Smith-Francois, Esq., Assistant Attorney General.

DATED: October 16, 2012



ALAN D. SMITH

Magistrate of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Court

By:


for **HYACINTH M. LOCKHART**
Senior Deputy Clerk 10/16/12