

LISA MOSLEY,)
)
) **Plaintiff/Respondent**)
) **On Review,**)
))
 vs.) **CASE NO. ST-15-RV-3**
 REYNALDO PENN,)
)
) **Defendant/Petitioner,**)
) **On Review.**)
)

Pending before the Court is Petitioner Reynaldo Penn's appeal of a judgment issued by the Magistrate. For the following reasons, the Magistrate's judgment will be affirmed.

In 2012, Petitioner and Respondent began to correspond via Facebook. At the time, Respondent was residing in New York and Petitioner was residing on St. Thomas. Respondent relocated to St. Thomas in April 2013 to work for Petitioner's bakery and retail business, Rudy's Delight. From April 2013 to January 2015, Respondent "took on virtually all of the administrative, marketing, and financial tasks related to the business."¹ During this period, Respondent resided in Petitioner's home. After Petitioner purportedly assaulted Respondent on January 6, 2015, Respondent drafted a written contract on January 9, 2015,

¹ Page 4 of Petitioner's appellate brief. Respondent is experienced in performing administrative work and in branding, which includes designing logos, graphics, and websites. See Hearing Transcript, at page 165.

to memorialize the parties' business arrangement. Another altercation occurred on January 13, 2015, and Respondent moved out of Petitioner's home. On January 28, 2015, Respondent filed a complaint in the Magistrate's Division of the Superior Court, and Petitioner filed an answer and counterclaim on February 24, 2015. The Magistrate held a hearing on April 14, 2015, and issued a judgment on May 15, 2015, in favor of Respondent for \$10,000.00 plus court costs. The Magistrate also dismissed Petitioner's counterclaim with prejudice. Petitioner timely filed an appeal on May 29, 2015.

STANDARD

The Appellate Division of the Superior Court "has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrate ... exercising [his or her] original jurisdiction as provided for at 4 V.I.C. § 123."² The Appellate Division reviews a Magistrate's factual determinations for "clear error" and legal findings are "afforded plenary review."³

ANALYSIS

A) Respondent's Breach of Contract Claim

Petitioner challenges the Magistrate's judgment in favor of Respondent on her breach of contract claim, asserting that Respondent's Exhibit 1 was not a valid contract and was not a credible basis for a judgment.

² *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

³ Super. Ct. R. 322.3(b). "Plenary review means applying the same legal standard as the trial court to the same record." *Henry v. Dennery*, 55 V.I. 986, 991 (V.I. 2011).

On the outset, the Court notes that the Magistrate's credibility findings will not be disturbed in the absence of a showing of clear error. An appellate court is "not at liberty to substitute [its] own credibility determinations for those of ... [the trial court]."⁴

Petitioner asserts that Exhibit 1, the written contract dated January 9, 2015, is not valid because it was not supported by consideration and was not signed by Petitioner. Petitioner contends that Respondent may have forged Petitioner's signature considering that she is experienced in manipulating graphics and creating documents.

Petitioner's forgery argument is raised for the first time on appeal and is waived.⁵ During the hearing, Petitioner only asserted that he did not recall signing the contract⁶ and claimed he would not have signed the document.⁷ Conversely, Respondent testified that, after the assault on January 6, 2015, Respondent prepared the written contract because Petitioner was "acting sporadic," and she wanted to protect herself because the parties only had a verbal agreement.⁸ Respondent testified that both she and Petitioner signed the document,⁹ and Petitioner acknowledged that his signature was on the written contract.¹⁰

This Court finds that the Magistrate had sufficient grounds for determining that Petitioner's signature on the written contract was authentic.¹¹ Petitioner has failed to

⁴ *Nanton v. People of the Virgin Islands*, 52 V.I. 466, 486, 2009 V.I. Supreme LEXIS 49, *33-34, 2009 WL 5449226 (VI. 2009) (citing *United States v. Dillon*, 532 F.3d 379 n.9 (5th Cir. 2008)).

⁵ *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 566-567, 2012 V.I. Supreme LEXIS 35, *15 (V.I. 2012) ("Appellate courts generally refuse to consider issues that are raised for the first time on appeal").

⁶ Hearing Transcript, at page 13.

⁷ *Id.*, at page 81 and 82.

⁸ *Id.*, at page 43.

⁹ *Id.*

¹⁰ Hearing Transcript, at page 13.

¹¹ The authenticity of Petitioner's signature is a question of fact, and the Magistrate's ruling on this issue will only be overturned upon a showing of clear error. See, e.g., *People of the Virgin Islands v. Todmann*, 53 V.I. 431, 450, 2010 V.I. Supreme LEXIS 5, *33, 2010 WL 684009 (VI. 2010) ("The question of fact that is in issue is the authenticity of Farrow's signature").

demonstrate that the Magistrate committed clear error by finding that Respondent's testimony regarding the execution of the contract was more credible than Petitioner's testimony.

Petitioner also argues that the contract is invalid because it was not supported by consideration. Contract "consideration requires a performance or a return promise that has been bargained for."¹² In general, "[w]hether a contract is supported by consideration is a question of law."¹³

The contract states that Petitioner agreed "to allow [Respondent] to hold \$1,000[.00] monthly ... effective December 2014 in her own account to save for the vehicle that [Petitioner] agreed to purchase for her [for] 21 months of assisting [Petitioner] without pay from April 2013 [to] December 2014."¹⁴ Petitioner contends that the contract is invalid because, by its terms, Petitioner did not receive present or future consideration in exchange for his promise to make monthly payments to Respondent starting in January 2015.

As a general rule, "past consideration is insufficient to support a promise."¹⁵ On the other hand, "any benefit conferred . . . upon the promisor ... to which the promisor is not lawfully entitled . . . is a good consideration for a promise."¹⁶ Similarly, "[c]onsideration

¹² *Castolenia v. Crafa*, 2014 V.I. LEXIS 1, *7, 2014 WL 239427 (V.I. Super. Ct. Jan. 15, 2014).

¹³ See, e.g., *Lokan & Assocs. v. Am. Beef Processing, LLC*, 177 Wn. App. 490, 496, 311 P.3d 1285, 1288, 2013 Wash. App. LEXIS 2605, *7-8, 2013 WL 5883787 (Wash. Ct. App. 2013).

¹⁴ Plaintiff's Exhibit 1.

¹⁵ See, e.g., *Sawyer v. Mills*, 295 S.W.3d 79, 86, 2009 Ky. LEXIS 195, *14 (Ky. 2009) (citing 17A Am. Jur. 2d Contracts § 152 (2009)).

¹⁶ *Desny v. Wilder*, 46 Cal. 2d 715, 737, 299 P.2d 257, 269, 1956 Cal. LEXIS 226, *32-33, 110 U.S.P.Q. (BNA) 433, 441 (Cal. 1956).

necessary to support a contract may be founded upon services theretofore rendered, but as yet unpaid.”¹⁷

The Magistrate determined that the parties had a relationship that was “strictly business” and that Respondent worked for Petitioner’s business from April 2013 to December 2014 “without receiving any salaries for the work she did.”¹⁸ As a result, Petitioner owed a debt to Respondent for services rendered, which is valid consideration for Petitioner’s promise to pay that debt.

Irrespective of the written contract, the Magistrate also made factual findings that would support a determination that the parties had an oral or implied-in-fact contract.¹⁹ The Magistrate found that Petitioner “asked [Respondent] to move from New York to the Virgin Islands to be partners in [Petitioner’s] business.”²⁰ This finding is supported by Petitioner’s testimony wherein he stated that he told Respondent that he “would purchase her a ticket to come home [to St. Thomas] ... [be]cause [he] wanted to develop [his] business.”²¹ Respondent accepted Petitioner’s offer by moving to St. Thomas and working for Petitioner’s business.²² While Petitioner argues that Respondent received compensation

¹⁷ *Hydrick v. Hydrick*, 142 S.C. 531, 543, 141 S.E. 156, 160, 1927 S.C. LEXIS 214, *16 (S.C. 1927).

¹⁸ Hearing transcript, at page 167. While Petitioner argues that his “version of the nature of the relationship is ... more credible,” this Court will not disturb the Magistrate’s credibility determinations. See Petitioner’s appellate brief, at page 9.

¹⁹ An agreement is “a promise that is either stated in oral or written words (express contract), or a promise that can be inferred wholly or partially by conduct (implied contract).” *Peppertree Terrace v. Williams*, 52 V.I. 225, 241, 2009 V.I. Supreme LEXIS 36, *27-28, 2009 WL 2043870 (V.I. 2009) (citing Restatement (Second) of Contracts § 4 cmt. a (1981)).

²⁰ Hearing Transcript, at page 165.

²¹ *Id.*, at page 77.

²² An “enforceable contract requires an offer and acceptance, ... consideration, (the bargained-for legal benefit and/or detriment), and a manifestation of mutual assent.” *Peppertree*, 52 V.I. at 241.

for her work by living for free in his home, the Magistrate found Respondent's testimony credible that Petitioner also promised Respondent a vehicle.²³

As a result, there was sufficient evidence in the record establishing that (1) the parties had an agreement and duties arising from that agreement, (2) that Petitioner breached the agreement, and (3) that Respondent was damaged by Petitioner's breach.

b) Petitioner's Counterclaim.

Petitioner challenges the Magistrate's dismissal of his counterclaim, asserting that the Magistrate relied on an incorrect legal standard for the burden of proof. Petitioner contends that because Respondent "had complete access to ... and controlled [Petitioner's] finances ... it is clear that [Respondent] was in a confidential relationship with [Petitioner] ... [and] had the burden of proving that she took no unfair advantage of him."²⁴

"A confidential relation exists between two persons when one has gained the confidence of the other and purports to act or advise with the other's interest in mind."²⁵ However, "[t]he existence of a confidential relationship does not automatically give rise to the imposition of a constructive trust."²⁶ Instead, "its effect is simply to impose a burden upon the party benefiting from the transaction of proving that he took no unfair advantage

²³ Respondent testified that Petitioner promised to "compensate [her] by providing [her] with a vehicle because he couldn't afford to pay [her] for [her] services." Hearing Transcript, at page 41.

²⁴ Petitioner's appellate brief, at page 10. In support of his argument, Petitioner cites *Ross v. Hodge*, 58 V.I. 292, 304, 2013 V.I. Supreme LEXIS 8, *18-19 (VI. 2013).

²⁵ *Ross v. Hodge*, 58 V.I. 292, 303, 2013 V.I. Supreme LEXIS 8, *16-17 (VI. 2013) (citing *Francois v. Francois*, 599 F.2d 1286, 1291, 16 V.I. 130 (3d Cir. 1979)). See also Restatement (Second) of Trusts § 2 cmt. b (1959).

²⁶ *Francois*, 599 F.2d at 1292. A constructive trust results "[w]here a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it...." *Queeley v. Charles*, 16 V.I. 263, 269, 1979 V.I. LEXIS 20, *9 (V.I. Terr. Ct. 1979).

of his relationship with the other.”²⁷ If “the party benefitting from the transaction cannot show, by clear and convincing evidence, the absence of undue influence, a constructive trust will be imposed to prevent unjust enrichment.”²⁸ When “determining whether a transaction is free from undue influence the Restatement (Second) of Contracts instructs courts to analyze multiple factors, including ‘the unfairness of the resulting bargain, the unavailability of independent advice, and the susceptibility of the person persuaded’”²⁹

Foremost, Petitioner never argued before the Magistrate that he and Respondent had a confidential relationship. Instead, this issue is raised for the first time on appeal and is waived.³⁰

Even if this Court were to assume, *arguendo*, that the Magistrate should have inferred that Petitioner and Respondent had a “confidential relationship,” based on the evidence that Respondent controlled the business’s finances and maintained the business records and receipts, there were no facts in the record suggesting that Respondent exercised undue influence over Petitioner or took unfair advantage of him. While Petitioner argues that the Magistrate erred by “giving complete credence to” Respondent’s documents that were submitted into evidence and by “accept[ing] at face value [Respondent’s] claim that she paid for the freezer,”³¹ it is evident that Petitioner is merely challenging the

²⁷ *Id.* (quoting *Stauffer v. Stauffer*, 465 Pa. 558, 351 A.2d 236, 242 (1976)).

²⁸ *Ross*, 58 V.I. 303 (citing *Francois*, 599 F.2d at 1292-93).

²⁹ *Ross*, 58 V.I. 303 (quoting Restatement (Second) of Contracts § 177 cmt. b (1981)); see also *Banks v. Int’l Rental & Leasing Corp.*, 55 V.I. 967, 976 (V.I. 2011) (explaining that although 1 V.I.C. § 4 does not incorporate all of the Restatement provisions as if they were actual statutory text, those provisions are nevertheless persuasive authority).

³⁰ *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 566-567, 2012 V.I. Supreme LEXIS 35, *15 (VI. 2012). (“Appellate courts generally refuse to consider issues that are raised for the first time on appeal”).

³¹ Petitioner’s appellate brief, at page 11.

Magistrate's credibility determinations, which this Court will not disturb in the absence of clear error.

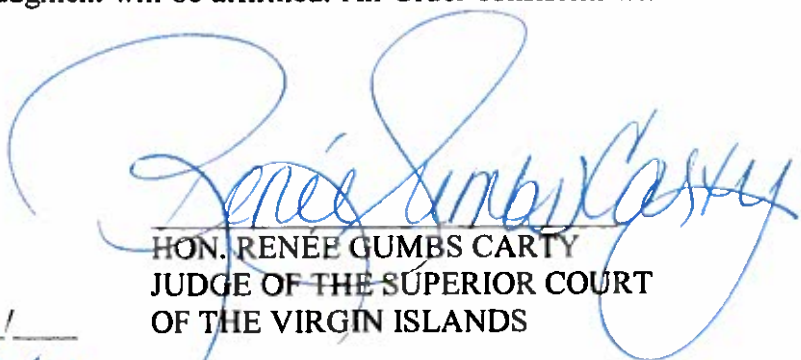
Petitioner also asserts that the Magistrate erred by putting the burden on him to prove that Respondent had taken his internet router, business supplies, file cabinet, receipts, passport, birth certificate, social security card, and other personal documents. However, Petitioner alleged that Respondent took these items from him in his counterclaim and, as the proponent of the counterclaim, Petitioner had the burden of proof to establish his claims.³²

Given that Petitioner has not presented an adequate basis for this Court to overturn the Magistrate's judgment, the judgment will be affirmed. An Order consistent with this Opinion shall follow.

Dated: September 7, 2016

ATTEST: Estrella George
Acting Clerk of Court

by: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor


HON. RENEE GUMBS CARTY
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

³² See, e.g., *Beachside Assocs. v. Bayside Resort, Inc.*, 2011 V.I. LEXIS 68, *4 (V.I. Super. Ct. Nov. 25, 2011).