

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

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-15-CR-F403
Plaintiff,	)	CASE NO. ST-15-CR-F404
	)	
v.	)	JURY TRIAL DEMANDED
	)	
KIMBERLY CLAYTON, and	)	
DAMIEN L. HENDRICKSON,	)	
	)	
Defendants.	)	

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CHRISTIAN, ADAM G., Judge

KIMBERLY CLAYTON, *PRO SE*
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Defendant

DAMIEN L. HENDRICKSON, *PRO SE*
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Defendant

MEMORANDUM OPINION

(Filed: April 19, 2016)

Defendants Damien L. Hendrickson and Kimberly Clayton orally suggested at the discovery conference held on February 18, 2016, that this Court lacks jurisdiction over them and the criminal cases filed by the People of the Virgin Islands. These Defendants subsequently jointly filed a "Notice of Intent to Come Before the Court on Special Appearance" ("Special Appearance") and a "Demand for Examination for Fraud on the Court, Motion to Dismiss the Matter due to Evidence of Fraud and Judicial Misconduct, and the Violation of the Declaration (sic) of Human Rights" ("Motion to Dismiss"). They each also filed an "Affidavit of Truth." These oral and written requests are all denied for the reasons set forth below. In addition, the Court held Defendant Kimberly Clayton and Defendant Damien L. Hendrickson in direct summary contempt of court, and sentenced them to serve forty eight (48) hours in the custody of the Virgin Islands Bureau of Corrections. The Court detailed its reasons for these actions from the bench at said discovery conference, and issued a written Order dated February 19, 2016. This memorandum opinion also restates those explanations, and completes the record as to the contempt findings.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Defendants Clayton and Hendrickson are each charged with a single count of aiding and abetting a third degree assault allegedly perpetrated on Lenny Hedrington on November 9, 2015. The above-captioned cases came before the Court on February 18, 2016, for a second discovery conference, which was a continuation of the discovery conference convened on January 8, 2016. The People of the Virgin Islands (the "People") were represented by Eugene James Connor, Jr., Esquire, Assistant Attorney General. Defendant Kimberly Clayton personally appeared and was represented by Assistant Territorial Public Defender Florence Kahugu, Esquire.¹ Defendant Damien L. Hendrickson appeared *pro se*.

When the case was called, Defendants Clayton and Hendrickson entered the courtroom from the rear holding open a large multi-colored flag bearing a crowned lion thereon. Defendants came forward only to the swinging gate which separates the general audience from the well of the courtroom where the counsel's and litigant's tables are located. The Court advised Defendants that the flag was inappropriate for the courtroom, and to fold the flag, failing which, it would be removed from their possession. When they failed to comply, the flag was seized by the Superior Court Marshals. Defendants refused to approach and be seated at the litigant's/counsel's tables, even after being directed to do so by the Court. They then challenged the Court's jurisdiction over them, repeatedly questioned the undersigned's authority, spoke loudly and out of turn over the trial judge's voice, and caused a great deal of disruption to the proceedings. After the Court warned them to cease and desist from their conduct, Defendants Clayton and Hendrickson continued their unruly conduct in open court. Therefore, the Court held both Defendant Clayton and Defendant Hendrickson in direct summary contempt of court and sentenced them to serve forty eight (48) hours in the custody of the Virgin Islands Bureau of Corrections. After Defendants were removed from the courtroom by the Superior Court Marshals, the Court stated on the record what occurred in the presence of the judge,² the contempt order, and the punishment therefor. The Court also addressed the reasons why Defendants' invocation of the Uniform Commercial Code to defeat this tribunal's jurisdiction was inapt.

Defendants Clayton and Hendrickson have since supplemented their positions with their Affidavits of Truth, Motions to Dismiss, and Special Appearance. Liberally construing their oral and written arguments,³ it appears that Defendants Clayton and Hendrickson contend that this

¹ The Court has since allowed Attorney Kahugu to withdraw as Defendant Clayton's appointed attorney. After a hearing, the Court granted Defendant Clayton leave to represent herself *pro se*. Previously, Defendant Hendrickson's prior appointed counsel also moved to withdraw, and he indicated a desire to represent himself. At a separate hearing, the Court granted Defendant Hendrickson leave to represent himself *pro se*. In both instances, and with some difficulty in Defendant Clayton's case, the Court substantially followed a colloquy approved by the United States Court of Appeals for the Third Circuit for determining whether a criminal defendant has knowingly and voluntarily waived his or her right to be represented by counsel and to elect self-representation. See *United States v. Peppers*, 302 F.3d 120, 136-137 (3d Cir. 2002), *cert. denied*, 537 U.S. 1062 (2002).

² In accordance with Rule 138 of the Rules of the Superior Court, I certify that the conduct for which Defendants were held in direct summary contempt occurred in my presence in Courtroom II at the Superior Court of the Virgin Islands, Alexander A. Farrelly Justice Complex, St. Thomas, Virgin Islands.

³ See *Smith v. Emps. of the Bureau of Corrs.*, S. Ct. Civil No. 2015-0034, 2016 V.I. Supreme LEXIS 6 at * 15 (Mar. 7, 2016) ("...a pleading 'filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'") (citation omitted).

Court lacks jurisdiction, and, alternatively, this case should be dismissed pursuant to the Uniform Commercial Code.

II. LEGAL DISCUSSION.

a. The Superior Court has Jurisdiction Over Defendants Clayton and Hendrickson and Their Criminal Cases.

The Court first overrules Defendants Clayton's and Hendrickson's objection to the exercise of jurisdiction over them and their cases. They rely upon a host of sources to support the contention that this Court lacks jurisdiction to proceed with these cases against them. They also argue, most conveniently for them, that because they have challenged the jurisdiction of this Court, this tribunal lacks any ability to determine otherwise. This is a fallacy that is refuted by precedents from federal and state courts alike.⁴ Categorically, a court always has the authority to determine its own jurisdiction. Indeed, when a court's jurisdiction is challenged it has an obligation to first determine whether it has jurisdiction before deciding a case on the merits.⁵

It is beyond dispute that the Superior Court of the Virgin Islands has subject matter jurisdiction over all cases involving alleged violations of the Virgin Islands Criminal Code.⁶ And, because Defendants Clayton and Hendrickson are alleged to have committed certain criminal offenses in the Virgin Islands, personal jurisdiction exists over them.⁷ The various legal sources cited by Defendants Clayton and Hendrickson are of no moment in this matter. While these include some worthy, and even sacred documents, including, but not limited to, select verses from the Bible, ecclesiastical canons, the Constitution of the Ethiopian World Federation, Inc., and the Universal Declaration of Human Rights, they neither confer upon, nor subtract from, the jurisdiction over criminal cases and defendants vested in the Superior Court of the Virgin Islands. Therefore, Defendants Clayton's and Hendrickson's contention that the Court lacks jurisdiction is rejected.⁸

⁴ See, e.g., *United States v. Ruiz*, 536 U.S. 622, 628 (2002) ("...a federal court always has jurisdiction to determine its own jurisdiction. (citation omitted); *United States v. Roark*, 288 F. Appx. 182, 185 (5th Cir. 2008) ("This Court necessarily has the inherent jurisdiction to determine its own jurisdiction.") (citations, quotation marks, and insertion omitted); *Jefferson Cnty. Comm'n v. Edwards*, 32 So.3d 572, 583 (Ala. 2009) ("The authority is clear to the effect that every court of general jurisdiction has judicial power to determine the question of its own jurisdiction.") (citations, quotation marks, and insertion omitted); *Dept. of Admin. Servs. v. State Emp't Relations Bd.*, 562 N.E.2d 125 (Ohio 1990) ("...courts of general jurisdiction have authority to determine their own jurisdiction...") (citations omitted).

⁵ *Brunn v. Dowdye*, 59 V.I. 899, 904 (V.I. 2013) ("Prior to considering the merits of a matter before it, a court is obligated to examine whether it has subject matter jurisdiction over the dispute.") (citations omitted); *People v. Miller*, 53 V.I. 162, 167-68 (V.I. Super. Ct. 2010) ("Trial courts have a duty to examine their jurisdiction to hear a matter *sua sponte*.") (citations omitted).

⁶ V.I. CODE ANN. tit. 4, § 76(b). See *People v. Tindell*, 56 V.I. 138, 147-48 (V.I. 2012) ("...the Superior Court has subject matter jurisdiction to hear criminal cases that (1) arise from the Virgin Islands and (2) involve violations of Virgin Islands criminal statutes.").

⁷ 14 V.I.C. § 81(1). See *In re K.J.F.*, 59 V.I. 333, 341-42 (V.I. 2013) ("...section 81 permits the prosecution and punishment of any person who commits any offense in whole or in part in the Virgin Islands.").

⁸ See *United States v. Cousins*, Criminal Action No. 5:06 CR 00008, 2007 U.S. Dist. LEXIS 59385 at * 3-6 (W.D. Va. Aug. 14, 2007) (denying the defendant's motion to dismiss for lack of jurisdiction, which was based on the same straw man and UCC arguments), *aff'd* 291 F. Appx. 497 (4th Cir. 2008).

b. Neither the Uniform Commercial Code nor the “Redemptionist” Theory Support the Dismissal of These Cases.

Notwithstanding the din created by Defendants Clayton and Hendrickson while they were still in the courtroom at the February 18, 2016, discovery conference, the Court noted on the record that it appeared they were challenging the jurisdiction pursuant to a not uncommon application of the Uniform Commercial Code (“UCC”). When raised by the Court, said Defendants, and Defendant Hendrickson in particular, impliedly acknowledged that they were relying on the “straw man theory”⁹ of the UCC, which has been popularized on the internet. This notion advocates that when the United States abandoned the gold standard, all persons in the country developed a “split personality” made up of the real, natural person and the “straw man.”¹⁰ Moreover,

The theory provides that the government owns each citizen's public side or “straw man” by holding title to each citizen's birth certificate. By filing UCC-1 financing statements and their birth certificates in a state that accepts such filings, followers of this theory believe they can “redeem” their birth certificates. Redemption theorists view the redeemed birth certificate as an asset on which they place a value of up to \$ 2 million and assert the U.S. Treasury Department acts as a clearinghouse for the funds. Under this theory, they then create money orders and sight drafts drawn on their Treasury Direct Accounts to pay for goods and services.¹¹

Followers of this credo, sometimes called “Redemptionists,” further contend, as Defendants Clayton and Hendrickson appear to argue, that the government, including the courts, only have authority over the straw man, but not over the “living entity”¹² which, allegedly, is the real person. Consistent with this theory, in their written Motion to Dismiss, these Defendants purport to: 1) terminate Assistant Attorney General Connor as their “executor,” and nullify the “contract” for which the undersigned is allegedly the “trustee.”¹³ They also “dissolve” an alleged trust, rescind any “contracts” which have their signatures,¹⁴ and disavow host of “compelled and

⁹ The Court did, perhaps inappropriately, on the record refer to Defendants’ unsupportable claim as nonsense. This prompted Defendant Hendrickson to become agitated and very loudly respond that the theory was not nonsense. Defendant Hendrickson first raised the principles underlying this concept at the December 22, 2015, hearing on Attorney Vogel’s request to withdraw as his court-appointed counsel.

¹⁰ See *Monroe v. Beard*, 536 F.3d 198, 203 n. 4 (3d Cir. 2008), cert. denied, 556 U.S. 1135 (2009). Defendants Clayton and Hendrickson more expressively describe the “straw man” and the alleged separation of the “fake juristic or judicial persons” and the “LIVING, BREATHING, flesh and blood man and woman” in their Motion to Dismiss at pp. 3-4 (capital letters in original).

¹¹ *United States v. Getzschman*, 81 F. Appx. 619, 620 (8th Cir. 2003). In this case, there is no allegation that Defendants filed any UCC-1 forms or their birth certificates with any government agency. However, the substance, as it were, of their argument essentially tracks the Redemptionist theory.

¹² This is the term sometimes used by Defendants Clayton and Hendrickson at court hearings when referring to themselves.

¹³ Defendants’ Motion to Dismiss at p. 4.

¹⁴ Special Appearance at p. 1.

pretended benefits.”¹⁵ Taking their *pro se* written submissions liberally, Defendants Clayton and Hendrickson believe that these cases should be dismissed because of the provisions of the UCC.

However, these Defendants overlook the canons of statutory construction. Importantly, courts give effect to the plain language employed in the statutes adopted by the Virgin Islands Legislature.¹⁶ The pertinent purposes of the UCC, as adopted in the Virgin Islands are: “(1) to simplify, clarify, and modernize the law governing **commercial transactions**,” and “(2) to permit the continued expansion of **commercial practices** through custom, usage, and agreement of the parties.”¹⁷ Conspicuously absent from the UCC is any language which makes it applicable to criminal prosecutions, or which provides that it supersedes Virgin Islands criminal laws and procedures. By its plain terms the UCC cannot be applied in criminal proceedings, and its provisions do not warrant the dismissal of these criminal cases.

c. Defendants Clayton and Hendrickson were properly held in Direct Summary Contempt of Court.

As Virgin Islands courts have previously noted, there are different varieties of contempt of court.¹⁸ In this instance, the Court applied the summary, or direct, contempt procedure. Summary contempt of court applies when a person, in the presence of the court, conducts himself in a manner which interferes with the court’s ability to conduct its proceedings in an orderly and efficient manner.¹⁹ In the Superior Court, summary contempt is governed by Rule 138, which provides,

A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court, or in all instances of failure to obey a summons or subpoena of the court if properly served. The order of a contempt shall recite the facts and shall be signed by the judge and entered of record after the defendant is given an opportunity to be heard.²⁰

Because “...the trial judge is the judge, jury and executioner with regard to direct, summary contempt findings[,]” this practice is not viewed favorably, and Rule 138 is construed narrowly.²¹

¹⁵ In the Affidavits of Truth, at pp. 3 to 6, Defendants Clayton and Hendrickson distance themselves from their prior use of their birth certificates, national currency, bank accounts, driver’s licenses, license plates, passports, tax returns, voting enrollment and rights, citizenship, and “semantics.” They also disavow the Constitution and “revoke” all of their birth certificates, tax identification numbers, licenses, and other government-issued and quasi-government-issued instruments.

¹⁶ *E.g., Lopez v. People*, 60 V.I. 534, 537 (V.I. 2014) (“When construing a statute, we first examine the plain language of the statute under the assumption that the legislature’s intent is manifest through the ordinary meaning of the words chosen.”) (citations and quotation marks omitted); *Shoy v. People*, 55 V.I. 919, 926 (V.I. 2011) (“In interpreting a statute, we commence with the plain language of the statute. If the language is clear and unambiguous, there is no need to resort to any other rule or statutory construction.”).

¹⁷ 11A V.I.C. §§ 1-103(a)(1), (2) (emphasis added).

¹⁸ *E.g., In re Rogers*, 56 V.I. 325, 334-36 (V.I. 2012).

¹⁹ *Marsh-Monsanto v. St. Thomas-St. John Bd. of Elections*, 60 V.I. 41, 50-51 (V.I. Super. Ct. 2014).

²⁰ SUPER. CT. R. 138.

²¹ *In re M.R.*, S. Ct. Civil No. 2015-0048, 2016 V.I. Supreme LEXIS 3 at * 25-27 (V.I. Feb. 1, 2016) (quoting *In re Shafer*, 455 S.E.2d 421, 423 (Ga. Ct. App. 1995)).

Nevertheless, where a party snubs court directives in open court, or shouts and otherwise is disrespectful to the point of being disruptive, courts will summarily find the offender in contempt of court.²²

In this instance, as noted above, Defendants Clayton and Hendrickson displayed a large flag in the courtroom, refused to comply with a court directive to come forward so that the discovery conference could proceed, and repeatedly spoke very loudly and over the judge, even when told to be quiet. In addition, both Defendants, on multiple occasions, referred to the undersigned as your dishonor,²³ demanded that the prosecutor identify and produce in court the “holders of their accounts,”²⁴ and continued to shout as they were being removed from the courtroom. Their conduct caused the discovery conference for their cases, which were only two of fourteen cases on the calendar, to come to a complete standstill, and delayed the remaining cases. In light of Defendants repeated speaking out of turn, I also was forced to repeat the circumstances which unfolded in Court, the decision to hold Defendants in contempt, and the reasons therefor, so that the court stenographer could accurately create a record. Plainly, direct summary contempt proceedings and punishments against Defendants Clayton and Hendrickson were warranted to restore order to the court proceedings.²⁵

²² See *United States v. Wilson*, 421 U.S. 309, 315-16 (1975); *In re Ellis*, 264 A.2d 300 (D.C. Ct. App. 1970) (affirming a summary contempt judgment where the defendant raised his voice to the trial judge, banged his fist on the table, and refused to comply with the judge’s directives).

²³ The Supreme Court of the Virgin Islands recently noted that where the putative contemnor has indicated that the trial judge is biased or prejudiced against him or her, even if use of the summary contempt procedure may be appropriate, recusal of the judge may be required under Title 4, Section 284, Virgin Islands Code. *In re M.R.*, 2016 V.I. Supreme LEXIS 3 at * 27-31. However, in this case there is no basis for a claim of bias or prejudice of the undersigned. The February 18, 2016, hearing was only the second hearing in which Defendant Clayton appeared before the undersigned, and the third hearing for Defendant Hendrickson. While Defendant Clayton refused to come forward into the well of the courtroom at the January 8, 2016, discovery conference, and then left before the case could be recalled, rather than hold her in summary contempt, an order to show cause was issued. This judge is more than willing to provide both Defendants an opportunity to be heard on an issue before taking any action, provided that proper decorum is observed. Moreover, I do not know either of the Defendants or the victim in this case, and am unaware of any other cases in which of these persons have appeared before me. Under these circumstances, following the summary procedure of Rule 138 was apt, and recusal was unnecessary, to preserve the dignity of this tribunal. See *Ocean-Oil Expert Witness, Inc. v. O’Dwyer*, 451 F. Appx. 324, 331 (5th Cir. 2011) (“Requiring a judge to hand off contempt proceedings any time a party chose to insult him would give litigants an incentive to insult any judges who threatened contempt in hopes of getting one more favorable. Allowing parties to force a change of judge where summary contempt must be used to restore order and dignity to the court would result in additional delays when time is of the essence, greatly hampering the effectiveness of that power.”). See also *Hargrove v. Superior Court of the Judicial Dist. of Tolland*, 959 A.2d 626, 631 (Conn. Ct. App. 2008) (“The use of [the summary contempt] power cannot be constrained by the [plaintiff] simply through the expediency of directing personal insults at the judge: the judge may exercise the contempt power regardless of whether he or she is the subject of attack [absent evidence of personal embroilment by the judge]....”) (insertions in original) (citations and quotation marks omitted).

²⁴ The basis for this demand is apparently the same legal theory on which these Defendants erroneously believe that this Court lacks jurisdiction over them and this action. This topic is discussed in Section II.b. of this opinion.

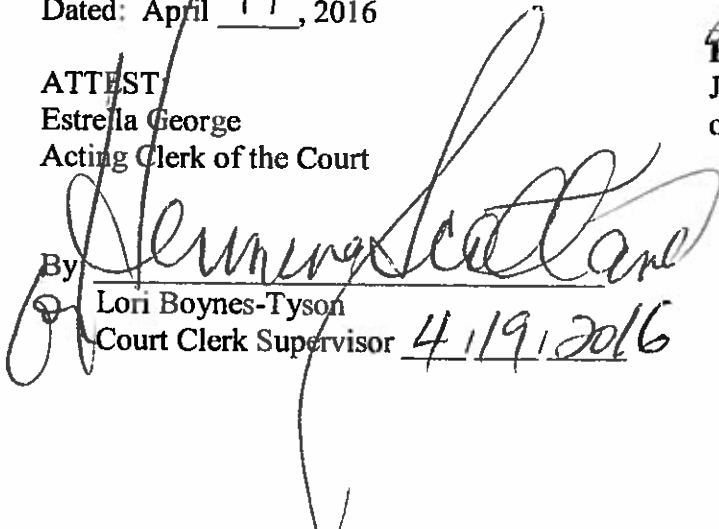
²⁵ See, e.g., *Clark v. Mortenson*, 93 F. Appx. 643, 651 (5th Cir. 2004) (“Direct contempt is the ‘intentional obstruction of court proceedings that literally disrupts the progress of the trial and hence the orderly administration of justice.’”) (quoting *United States v. Wilson*, 421 U.S. 309, 315-16 (1975)); *Johnson v. El Paso Cnty. Dist. Ct.*, 939 P.2d 479, 481 (Colo. Ct. App. 1997) (“Summary punishment for direct contempt is necessitated by a court’s need to suppress immediate disturbances in the courtroom so that justice may be properly administered.”) (citation omitted); *Purpura v. Purpura*, 847 P.2d 314, 316 (N.M. Ct. App. 1993) (“Contumacious words or acts expressed in the presence of the court constitute direct criminal contempt.”).

III. CONCLUSION.

Contrary to their arguments, this Court has jurisdiction over Defendants Clayton and Hendrickson and their criminal cases. Further, the Uniform Commercial Code does not apply to criminal cases in the Virgin Islands. Finally, the Court properly held Defendants Clayton and Hendrickson in direct summary contempt of court on February 18, 2016. An appropriate order to this effect will be issued separately.

Dated: April 19, 2016

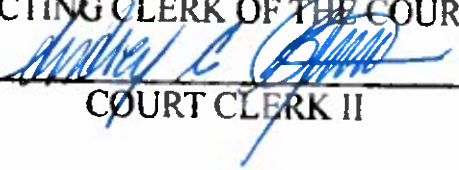
ATTEST
Estrella George
Acting Clerk of the Court

By 
Lori Boynes-Tyson
Court Clerk Supervisor 4/19/2016


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

A CERTIFIED TRUE COPY

DATE 4/19/16
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT

BY 
COURT CLERK II