FOR PUBLICATION

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

ANITA DAVID, Plaintiff,	)	CASE NO. SX-13-CV-036
vs.	)	ACTION FOR EVICTION AND RESTITUTION OF PREMISES
BERT SCOTLAND, Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff's Motion for Summary Judgment, filed August 22, 2013, and Plaintiff's Motion to Deem Conceded Plaintiff's Motion for Summary Judgment, filed September 9, 2013. Neither motion is opposed by Defendant. Plaintiff's Motion for Summary Judgment was not accompanied by a "separate statement of the material facts about which the movant contends there is no genuine issue" as required by LRCi 56.1(a)(1). Nonetheless, the motion itself sets forth material facts sufficient to grant the relief sought, which facts have not been contested by Defendant.[1]

The background and procedural history of this case were outlined in detail in the Court's June 17, 2013 Order granting Plaintiff's Motion to Enforce the Settlement Agreement. As such, no further description will be presented here.

DISCUSSION

A moving party will prevail on a motion for summary judgment where the record shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The reviewing

[1] In addition, the Court is also in receipt of a letter from Plaintiff Anita David dated December 11, 2013, received December 12, 2013, which confirms her counsel's filing in alleging that "Mr. Scotland has never paid one cent to me in rent in all these years." Plaintiff's letter is not considered as part of the proofs before the Court as a litigant represented by counsel lacks the right to submit *pro se* filings with the Court. *See Simmonds v. People,* Crim. No. 12-074, 2013 WL 4404592, at *12 (V.I. August 13, 2013).

court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no genuine issue of material fact in dispute. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248.

The record shows that there are no genuine issues of material fact in dispute. Defendant has not contested Plaintiff's recitation of facts and has offered no alternative version of the factual record. Finding no issues of material fact in dispute, the Court will determine whether Plaintiff is entitled to judgment as a matter of law.

Breach of Settlement Agreement.

To prevail on a breach of contract claim, a plaintiff is required to "prove that there was 1) an agreement, 2) a duty created by that agreement, 3) a breach of that duty, and 4) damages." *Davis v. Ragster,* 49 V.I. 932, 941 (D.V.I. 2008) (*citing Stallworth Timber Co. v. Triad Bldg. Supply,* 968 F. Supp. 279, 282 (D.V.I. App. Div. 1997)).

This Court is to consider three factors when deciding whether to apply a provision of the verified proof establishes that Defendant has violated the terms of the Lease by failing to pay rent since April 2001 and by recording an altered version of the Lease against the subject property.

The Lease states in Section XIX that the Tenant shall be in default when "the rent… is not paid when due and such breach is not cured within thirty (30) days after the effective date of written notice from Landlord to Tennant." Lease, at 8. Through counsel, Plaintiff provided written notice of default to Defendant by letter of January 8, 2013. Verified Complaint, Exhibit 2. After thirty (30) days, Defendant had neither vacated the premises nor cured the defaults. As such, Plaintiff filed her action for eviction and restitution of premises by her Verified Complaint, seeking remedies available under the Lease in the event of Defendant's default, including to "[t]erminate this Lease, in which event Tenant shall immediately surrender the premises to Landlord." Verified Complaint, at 2; Lease, at 9.

Plaintiff and Defendant entered into the February 21, 2001 Lease by which Defendant, as Tenant, was required to, among other things, pay rent to Plaintiff in the amount of $300 per month. Defendant has breached the Lease with Plaintiff by failing to pay rent, and Plaintiff is entitled to entry of judgment as a matter of law awarding restitution of the premises pursuant to the terms of the Lease. An Order will enter contemporaneously herewith consistent with the terms of this Memorandum Opinion.

February 3, 2014

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: ______
Court Clerk Supervisor
2/4/14

By its June 17, 2013 Order, the Court determined that the March 5, 2013 Settlement Agreement between Plaintiff and Defendant ("Agreement") is a legally binding contract.[2] Without contradiction, Plaintiff has stated that Defendant has refused to abide by the terms of the Agreement and to execute necessary documents pursuant to the Agreement. The Court takes judicial notice that the February 21, 2001 Lease, recorded by Defendant on June 19, 2008 (P.C. 1148, page 300, document no. 2008003070), remains of record confirming that Defendant has failed to release any liens or encumbrances from Plaintiff's property as required by the terms of the Agreement. In light of Defendant's failure to perform under the Agreement, Defendant has breached the Agreement entitling Plaintiff to available remedies.

"The plaintiff entitled to a remedy for material breach or repudiation potentially chooses between damages, specific performance, and rescission, electing the remedy that promises the most favorable recovery at the lowest cost." RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT §37 (2011), Comment a.[3]

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[2] "The agreement achieved by the parties was memorialized by a handwritten Settlement Agreement ("Agreement") signed by both parties. The terms of the Agreement are summarized as follows: Plaintiff will sell to Defendant one-half (1/2) acre of land for the sum of $65,000, to be subdivided from Remainder Plot 4L Estate Sion Farm, St. Croix, beginning from a point at the northeastern boundary of Plot 4LA Sion Farm and extending to Plot 4L1 Sion Farm. Defendant will pay costs necessary to subdivide the property, using his best efforts to accomplish the subdivision within forty-five (45) days from the date of the Agreement. Further, by the terms of the Agreement Defendant agreed to surrender the February 1, 2001[sic] Lease, to execute a Release of Interest in Lease and to release any other liens or encumbrances from Plot 4LA and/or Remainder Plot 4L Estate Sion Farm by March 12, 2013.The purchase and sale transaction was to close within sixty (60) days after the date of the Agreement, with an extension if needed for Defendant to complete the subdivision of the property. Plaintiff was to bear the costs of preparing the deed, obtaining the tax clearance letter, paying the surveyor attest fees and stamp taxes. Plaintiff agreed to waive all past due rents on the Lease dated February 21, 2001. The parties agreed to file a stipulation to dismiss the forcible entry and detainer action by March 12, 2013, and to execute an agreement relative to the sale and purchase of the one-half (1/2) acre by the same date. Each party would bear her/his own costs and attorney's fees." Order, SX-13-CV-036, June 17, 2013.

[3] The Restatements of the Law as promulgated by the American Law Institute no longer constitute binding authority, notwithstanding the provisions of 1 V.I.C. §4, which was implicitly repealed by the Legislature's adoption of 4 V.I.C. §21, establishing the Supreme Court of the Virgin Islands as the repository of "the supreme judicial power of the Territory." *See Banks v. Int'l Rental & Leasing Corp.,* 55 V.I. 967, 978-80 (V.I. 2011); *Simon v. Joseph,* 2013 WL 4854776, at *6 (V.I. September 11, 2013).

This Court is to consider three factors when deciding whether to apply a provision of the Restatement as the applicable standard for an issue in dispute: "(1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the

Normally, "damages for breach of contract have been limited to the non-breaching parties' expectation interest." *Mendez v. Coastal Systems Development, Inc.*, 2008 WL 2149373*14 n. 15 (D.V.I. May 20, 2008). The purpose of an award of damages in the amount of the plaintiff's expectation interest, also known as expectation damages, is "to place the non-breaching party in as satisfactory a position as she would have occupied had the other party performed as promised." RESTATEMENT (SECOND) OF CONTRACTS § 344(a) (1981).

In this case, however, Plaintiff does not seek to recover damages, nor does she seek a judgment requiring Defendant to specifically perform the Agreement.[4] Rather, she seeks restitution of her property, claiming that she "is entitled to her property free of liens of encumbrances and defendant evicted from the premises." Motion for Summary Judgment, at 5.

Except in cases where a defendant's obligation is exclusively to pay money, a plaintiff may recover for the defendant's material breach by a judgment of rescission instead of damages or specific performance. RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT §37(1).[5] Defendant's breach in this case extends beyond an exclusive obligation to pay money, in that he failed to release the liens he placed on Plaintiff's property, refused to sign a document relinquishing

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position taken by a majority of courts from other jurisdictions; and (3) most importantly, which approach represents the soundest rule for the Virgin Islands." *Id., at *7, citing Matthew v. Herman,* 56 V.I. 674, 680-81 (V.I. 2012).

[4] Specific performance is available as a remedy for a breach of contract only if: (1) the terms of the contract are sufficiently certain; (2) no adequate remedy at law exists for the breach; (3) the party seeking relief has materially performed his obligations under the contract; and (4) the grant of such relief is not unfair, against public policy, or otherwise inequitable. See RESTATEMENT (SECOND) OF CONTRACTS §§ 357, 359, 362, 364, 369.

[5] In analyzing the *Banks* factors in this case: (1) several Virgin Islands courts, including the Virgin Islands Supreme Court, have relied on or adopted the RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT. *See Walters v. Parott*, 58 V.I. 391 (V.I. 2013); *Hall v. Hall*, 2013 WL 4128465, at *6 (D.V.I. August 9, 2013); (2) this Restatement, while relatively new, is widely cited throughout United States jurisprudence. *See In re Processed Egg Products Antitrust Litigation,* 815 F. Supp. 2d 867, 932 n. 64 (E.D.Pa. 2012); *Uzyel v. Kadisha*, 188 Cal. App. 4th 866, 892 (2DCA 2010); and (3) the RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT represents the soundest rule for the Virgin Islands as this work updates the previous RESTATEMENT OF RESTITUTION, published in 1937, carrying forward well-developed common law principles of equity in cases in which the essence of a plaintiff's right and remedy is the reversal of a transfer, and thus a literal restitution. *See* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT, §1, Comment a. Nothing in Virgin Islands law contradicts the principles in this Restatement.

his interest in the 2001 Lease, and failed to coordinate the subdivision of the property for the agreed purchase and sale of a subdivided parcel of the property.

"Rescission is appropriate when the interests of justice are served by allowing the claimant to reverse the challenged transaction instead of enforcing it." RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT §54(4). In the facts of this case, the interests of justice are served by placing the parties back into their respective positions prior to the Settlement Agreement forged outside Magistrate Gallivan's courtroom on May 5, 2013. To the extent that Defendant has incurred expenses or given consideration by partially performing the Agreement, facts that are not now before the Court, rescission is nonetheless appropriate. Restatement §54(3) limits rescission to cases which restore the defendant as well as the plaintiff to the *status quo ante,* unless "the fault of the defendant… in the underlining transaction makes it equitable that defendant bear any uncompensated costs." *Id.,* at §54(3)(b). Because the failure of the Agreement was caused by the nonperformance of Defendant, rescission is proper.

The interests of justice further mitigate in favor of granting rescission of the Agreement as the parties themselves did not define in the Agreement their respective rights and obligations in the event of default. Without a contractual default provision, it is impossible to ascertain the parties' intentions in the event of the failure of performance of the Agreement by one of the parties. Justice is best served by restoring the parties to their respective positions prior to the Agreement. As such, the Agreement shall be rescinded and avoided, placing the parties in the *status quo ante*, that is as Landlord and Tenant under the 2001 Lease.

Breach of February 21, 2001 Lease.

As noted above, Defendant has not contested any of the factual assertions of Plaintiff. Specifically, as is noted in more detail in the Court's Order entered June 17, 2013, Plaintiff's verified proof establishes that Defendant has violated the terms of the Lease by failing to pay rent since April 2001 and by recording an altered version of the Lease against the subject property.

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