IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL

ANTONIO MESSER d/b/a TONY'S LAUNDRIES AND DRY CLEANERS, Plaintiff,	CIVIL NO. 344/1994
vs.	ACTION FOR DEBT
GOVERNMENT OF THE VIRGIN ISLANDS, Defendant.	<u>NOT FOR PUBLICATION</u>

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For Defendant Government of the Virgin Islands

CABRET, Judge

MEMORANDUM OPINION
(Filed: October 29, 1996)

THIS MATTER is before the Court on the Defendant's motion for summary judgment. Plaintiff responded by filing a motion in opposition as well as a cross motion for summary judgment. Plaintiff alleges that the defendant owes him $12,994.63 for past interest due on services rendered, plus interest from April 1, 1993 to date of judgment. In response, the Government alleges that it never contracted with the Plaintiff for the payment of interest pursuant to Virgin Islands statutes and that the Virgin Islands Legislature never appropriated funds for the payment of interest.

STATEMENT OF FACTS

During the period of August 1, 1992 through April 1993, an emergency situation prompted the St. Croix Hospital to hire a private launderer to wash its linens. Plaintiff performed such laundry services for the St. Croix Hospital and regularly billed the St. Croix Hospital for his principal balances, plus interest. The Government, through the Department of Property and Procurement, paid its debt which included the principal balances and some interest. Plaintiff, however, alleges that the Government has not paid interest in the amount of $12,994.63, which allegedly has been outstanding since April 1, 1993. Plaintiff seeks judgment in the amount of $12,994.63 for the interest past due, plus interest from April 1, 1993 to date of judgment, along with costs and attorney's fees.

DISCUSSION

I. Summary Judgment Standard

A party against whom a claim, counterclaim or cross-claim is asserted...may at anytime, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof. Fed. R. Civ. P. 56(b). Where the record reveals no genuine issue of material fact and the evidence entitles the movant to judgment as a matter of law, the court shall enter summary judgment. Fed. R. Civ. P. 56(c).

The principal purpose of a motion for summary judgment is to isolate and dispose of factually unsupported claims. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A summary judgment must be granted if pleadings, depositions, answers to interrogatories and admissions on file, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Lempert v. Singer, 766 F.Supp. 1356, 1360 (D.V.I. 1991); Green v. Hess Oil Virgin Islands Corp., 29 V.I. 27,30 (Terr. Ct. 1994). A fact is material if it might affect the outcome of the suit, while a dispute is genuine if the evidence is such that a jury could return a verdict for the nonmoving party. Ferris v. V.I. Industrial Gases, Inc., 23 V.I. 183,188 (D.V.I. 1987).

The moving party bears the initial burden of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. Celotex Corp., 477 U.S. at 322-23. Once this showing has been made, the burden shifts to the nonmoving party to present affirmative evidence from which a jury might reasonably return a verdict in his or her favor. Id. The nonmoving party may not rest upon the mere allegations or denials of his pleading, but must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 547,586 (1986). Finally, in its review of a motion for summary judgment, a court must view the facts in a light most favorable to the party opposing the motion. Anderson v. Liberty Lobby, Inc. 477 U.S. 242 (1986); Reed, Wible and Brown v. Mahogany Run Development, 19 V.I. 561 (D.V.I. 1983).

II. There are No Genuine Issues of Material Fact

In its motion for summary judgment, the Government contends that 1) no contract ever existed for interest payments and 2)the V.I. Legislature did not appropriate funds pursuant to statute for interest payments. Hence, the Government claims Plaintiff is owed nothing.

A. The validity of Virgin Islands Government contracts

Where any contract entered into by the Government fails to comply with the statutory scheme of Title 31 V.I.C., Chapter 23 (Procurement and Sale), which governs how government contracts are enforced in the Virgin Islands, such contract is void. Sargeant v. Government, 10 V.I. 245 (1973). Additionally, Title 31 V.I.C. §§ 248 and 249 provide that no contract "on behalf of the Government shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment," and further that any purported contract in violation of the chapter "shall be null and ineffective." Finally, Title 33 V.I.C. §3101 states

> No officer or employee of the Virgin Islands shall make or authorize an expenditure from, or create or authorize an obligation under, any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the government in any contract or obligation for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law.

The law requires an express agreement by the Government or its executive officer or a legislative mandate that the Government pay for its indebtedness, otherwise, the Government is not liable for the same. U.S. v. North Carolina, 136 U.S. 211 (1890); Antilles Industries v. Government, 11 V.I. 604 (1975). Similarly, where matters of safeguarding the public treasury are at issue, courts have routinely held no basis for quantum meruit recovery or collateral estoppel, on principles of equity. See Sargeant, 10 V.I. at 253.

B. No contract was formed pursuant to Title 31 V.I.C., Chapter 23.

In support of its summary judgment motion, the Government first alleges that it never contracted with Messer for the payment of interest on outstanding principal balances. The Government points to the affidavits of Luz Nash, Comptroller for the St. Croix Hospital, and George H. McCoy, Chief Executive Officer for the St. Croix Hospital, who swear that neither ever made nor entered into a contract or agreement with the Plaintiff for the payment of interest. They claim that the agreement was for laundry services to be provided at a charge of 90 cents per pound. In addition, the Government alleges that the Department of Property and Procurement never contracted with the plaintiff for payment of interest on services rendered pursuant to 31 V.I.C. §237 and that no agreement existed which included the terms "for payment within thirty days or 1.5% interest would be charged." The Department of Property and Procurement simply paid the balance on each invoice from an emergency fund, pursuant to Title 31 V.I.C. §239(a)(8).[1]

The Plaintiff, in support of his cross motion for summary judgment and opposition to defendant's summary judgment motion, submitted to the court one of the alleged contracts processed by the Government as well as a copy of an invoice. Both documents

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[1] Title 239(a)(8) states

> (a) Supplies, material and equipment may be purchased and contractual services negotiated for, in the open market without observing the provisions of §236 of this title provided-
>
> (8) the purchase or contract is for property or services for which it is impracticable to obtain competition.

contain the terms "thirty (30) days net. 1.5%/MO. Interest UNPAID Balance."[2] He further argues that the Government incorporated these terms in each contract and that it understood that it had to pay interest on delinquent balances because it paid the Plaintiff $4,413.81 as interest on August 24, 1992 for services rendered in 1991, and January, February, and March of 1992.[3] Finally, Plaintiff notes that the Government's "method of purchase" was pursuant to 31 V.I.C. §239(a)(8).[4]

A review of the evidence presented shows that an emergency situation prompted the St. Croix Hospital to hire a private launderer to wash its linens. The Government used Plaintiff's services on an "as need" basis.[5] The Department of Property and Procurement, when presented with several invoices from the Plaintiff, paid off the principal balances pursuant to §239(a)(8) as well as a payment for interest on services rendered for the year 1991 and early 1992. These payments are evidenced by forms

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[2] See Plaintiff's Cross-Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment, Exhibits "A" and "B".

[3] See Plaintiff's Cross Motion for Summary Judgment and Memorandum in Opposition..., Exhibit "C".

[4] See Plaintiff's Cross-Motion and Memorandum in Opposition..., Exhibit "D".

[5] See Government's memorandum in Support of Motion for Summary Judgment, Affidavit of Luz Nash.

captioned "Requisition - Order - Invoice - Voucher." It is these forms that Plaintiff alleges were processed as contracts each time he submitted a bill. Although the voucher submitted by Plaintiff as Exhibit "A" contains the disputed interest terms, the Government has submitted eight such vouchers to this court of which only two contain the interest terms. Plaintiff's Exhibit "A" simply shows an account balance brought forward which was approved and paid as indicated on the voucher. The Plaintiff fails to show how this voucher, in light of the others submitted by the Government, created a duty on the Government to make future interest payments. In addition, the mere fact that the Government made interest payments in the past is irrelevant to this action since as the Government points out, such payments were for services rendered in 1991, and January, February, and March of 1992. Such evidence of past interest payments cannot sufficiently prove to this Court that the Plaintiff validly entered into a contract in compliance with Title 31 V.I.C. §237 for the payment of interest on services rendered from August 1,1992 through April 1993.[6]

In addition, the Government, in its summary judgment motion, provides numerous exhibits and supporting affidavits of two of St. Croix Hospital's top officers who swear that no contract for the

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[6] See Plaintiff's Complaint, Paragraph 2.

payment of interest was validly entered into with plaintiff. Plaintiff, to the contrary, has failed to provide in his opposition and cross-motion for summary judgment any supporting affidavits or affirmative evidence showing that the Government validly entered into a binding contract with him for the payment of interest in compliance with the statutory scheme spelled out in Title 31. See Fed. R. Civ. P. 56. Thus, Plaintiff has not met his burden under Fed.R.Civ.P.56 by failing to show any genuine issues of material fact with respect to the alleged existence of a contract between the Plaintiff and the Government for interest payments. See Lempert, 766 F.Supp. at 1360; and Green, 29 V.I. at 30.

C. No Funds were appropriated by the Legislature to pay off interest

The Government next alleges in support of its summary judgment motion that the Legislature never appropriated any funds, pursuant to statute, for interest payments. The only money the Government alleges that the Legislature appropriated came out of a general emergency fund to pay the principal balances incurred as a result of the emergency circumstances facing the St. Croix Hospital at that time. The Government cites Sargeant v. Government to support its contention that where the legislature approved but did not appropriate any money for a contract, the Plaintiff must be barred from recovery for breach of contract pursuant to Title 31 V.I.C.

§249 and 33 V.I.C. §3101. Plaintiff alleges that a contract exists for the payment of interest by the fact that the Government made prior interest payments along with payment of the principal balances pursuant to 31 V.I.C. §239(a)(8). The Plaintiff also cites 11 V.I.C. §951(a) as supporting its contention that the defendant did not exempt itself from its payment of interest on "all monies which have become due" and payable to its creditors.

In Sargeant v. Government, the Plaintiffs sought additional sums owed them by the Government pursuant to an escalator clause in the contract. Despite the fact that the contract was negotiated by Department Commissioners, was approved by the Governor, and the Legislature passed three resolutions in connection with the project, the court held that no formal appropriation was ever passed by the Legislature in compliance with the Revised Organic Act, Title 31 V.I.C. §249, and Title 33 V.I.C. §3101. Sargeant, 10 V.I. at 249. Accordingly, the contract was void since payment out of the V.I. Treasury is forbidden except pursuant to an Act of Congress or a "money bill" of the local legislature and Title 31 V.I.C. §§248-249. Id.

Similarly, in F.D. Rich Housing of V.I., Inc. v. Government, 17 V.I. 410 (D.V.I. 1980), plaintiff filed a third party action against the Government for indemnification for any liability that it may have had to a general contractor that it had hired to construct a housing development for the Government. The Government argued that "even if some legislative appropriations were made for the construction of the housing development, they were insufficient to meet, in full, the cost of the site work which the Government was obligated to perform under the Agreement." F.D. Rich, 17 V.I. at 422. The court agreed, holding that

> the issue was not whether the Government had sufficient funds in its entire budget to support the contract, but rather whether or not adequate funds were "appropriated" to enable the Government to fulfill its site improvement obligation under the Agreement. In this regard, the law is clear that general appropriations of the type relied upon by Rich cannot supply the shortfall left from inadequate specific appropriations. Id. at 423.

Thus, there existed no appropriations as such to furnish the final $150,000 of the Government's site work obligation and the Agreement was invalid under 33 V.I.C. §3101 because it attempted to commit government funds in excess of any prior appropriation. Id. at 425.

In the matter sub judice, the Plaintiff has not provided any evidence that addresses the Government's claim that the Legislature of the Virgin Islands has never appropriated any funds for the specific purpose of paying off any interest that accrued on balances for laundry services rendered, or in the event such appropriation was made, that the appropriation was sufficient to pay off the interest. For that matter, the Plaintiff, once again, has not provided any affidavits or affirmative evidence pursuant to

Fed. R. Civ. P. 56 in support of his cross-motion for summary judgment and in opposition to the Government's summary judgment motion. In accordance with Sargeant and F.D. Rich Housing of V.I., Inc., as well as the applicable statutory law, if no formal appropriation of money had been made, any contract executed that is in non-compliance with such laws is void. Accordingly, in the event that Plaintiff had a contract with the Government or was promised by a Government officer for the payment of interest, such contract or agreement is void and cannot bind the public treasury for any payment since no evidence is presented that the Legislature had appropriated any money for interest payments. In addition, Plaintiff's reliance on 11 V.I.C. §951(a) is unfounded since, as the Government correctly points out, this statute applies to interest due on breached contracts, as a form of money damages. F.D. Rich Housing of the Virgin Islands, 17 V.I. at 38. Since any contract would be deemed void, the statute is inapplicable.

CONCLUSION

The Government has met its burden as required under Fed. R. Civ. P. 56 by showing the nonexistence of any genuine issues of fact. Specifically, Plaintiff's cross-motion for summary judgment and opposition to the Government's motion for summary judgment, without any affidavits, depositions, answers to interrogatories, or admissions to support his allegation that he had a contract for the payment of interest with the Government of the Virgin Islands, are insufficient to show the existence of any genuine issues of fact. The evidence presented to this Court supports the Government's contention that no contract for interest payments ever existed pursuant to Title 31 V.I.C. §237. In addition, any such contract would have been void since the statutory law found in Titles 31 and 33, the Revised Organic Act, and Virgin Islands case law provides that no contract will be executed where no formal appropriation of funds has been made by the Legislature for the satisfaction of such contract. Accordingly, the Government's motion for Summary Judgment is GRANTED and the Plaintiff's cross motion for Summary Judgment is DENIED.

ENTER:

MARIA M. CABRET
Territorial Court Judge