

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

CYNTHIA STALKER,	)	
Plaintiff/Respondent	)	
On Review,	)	
	)	
vs.	)	CASE NO. ST-12-SM-404
	)	
SBP ST. THOMAS, LLC d/b/a ROYAL DANE MALL,	)	
	)	
Defendant/Petitioner	)	
On Review.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is a petition for review filed by SBP St. Thomas, LLC that challenges a judgment issued by the Magistrate. For the following reasons, the Magistrate's judgment will be reversed in part and the matter will be remanded for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL HISTORY

Petitioner SBP St. Thomas, LLC owns a shopping mall on St. Thomas commonly known as the Royal Dane Mall. On or about December 1, 2008, Petitioner entered into a lease agreement with Cynthia Portrait Art, Inc. ("CPA, Inc.") for rental space in the Royal Dane Mall.¹ CPA, Inc. began falling behind in its rental payments in 2012,² and on August 18, 2012, Petitioner placed a lock on the door of CPA, Inc.'s rental unit.

Respondent Cynthia Stalker, CPA, Inc.'s principal, filed a complaint with the Magistrate Division on August 21, 2012, alleging unlawful eviction and damages associated with being unable to access her place of business. Respondent served the

¹ See Exhibit C to Petitioner's counterclaim, at page 1.

² See Petitioner's "2012 Statement" attached to its counterclaim.

complaint on Petitioner on August 30, 2012, and the Magistrate held a hearing on September 4, 2012. During the hearing, Petitioner's representative indicated that CPA, Inc. owed Petitioner for unpaid rent, and Petitioner filed a counterclaim for \$9,070.00 in unpaid rent on September 7, 2012. However, in the second hearing held on September 12, 2012, the Magistrate indicated that Petitioner's counterclaim was untimely and that the purpose of the second hearing was only to determine the extent of Respondent's damages. Following the second hearing, the Magistrate entered a judgment in favor of Respondent on September 19, 2012. Petitioner timely filed its appeal on September 28, 2012.³

STANDARD

"Final orders or judgments of magistrates resolving completely the merits of cases ... are immediately reviewable by the judges of the Superior Court."⁴ The Appellate Division of the Superior Court reviews a Magistrate's factual determinations for "clear error" and legal findings are "afforded plenary review."⁵

ANALYSIS

In its appellate brief, Petitioner asserts that the Magistrate erred in finding that Petitioner's counterclaim was untimely.

Super. Ct. R. 32 provides that a party may file an answer within 20 days after service of the summons and complaint. In addition, "all claims in the nature of recoupment,

³ Pursuant to Superior Court Rule 322.1(b)(2)(A), a petition for review of a Magistrate's final order or judgment "must be filed with the Clerk of Court [of the Superior Court of the Virgin Islands] within ten (10) days after entry of the order sought to be reviewed."

⁴ Super. Ct. R. 322.3(a).

⁵ Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black's Law Dictionary, Eighth Edition.

set off, cross-action, or any other claim for relief ... shall be asserted in an answer as a counterclaim, and not otherwise, and shall be served and filed within the time limited for answering.”⁶ Moreover, civil procedure rules have liberal amendment standards. For instance, Super. Ct. R. 8 provides that a court can “amend any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at trial.”⁷ Fed. R. Civ. P. 15 also establishes that:

When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move--at any time, even after judgment--to amend the pleadings to conform them to the evidence and to raise an unpleaded issue.

Furthermore, “pleadings of a pro se party are to be construed more liberally than pleadings filed by attorneys.”⁸

Although Petitioner had not filed its counterclaim previous to the first hearing before the Magistrate, the first hearing was held only five days after Petitioner was served with the complaint. In addition, Petitioner was a pro se party and filed its counterclaim within twenty days of being served with the complaint. Presented with these facts, the Magistrate should have determined either that (1) Petitioner properly raised a counterclaim through its representative’s oral testimony during the first hearing, (2) Petitioner’s counterclaim was properly filed in accordance with Super. Ct. R. 32, or (3) the counterclaim was an amendment to the oral pleadings and was properly filed in accordance

⁶ Super. Ct. R. 34.

⁷ See also *Brooks v. Government Department of Education*, 2013 WL 1832837, at *5 (V.I. 2013).

⁸ *Int'l Islamic Cmty. of Masjid Baytulkhaliq, Inc. v. United States*, 981 F. Supp. 352, 361 (D.V.I. 1997) (citing *Boag v. MacDougall*, 454 U.S. 364, (1982)).

with Fed. R. Civ. P. 15. As a result, the Magistrate improperly dismissed Petitioner's counterclaim, and this matter will be reversed and remanded to the Magistrate to determine the merits of the counterclaim.⁹

In addition, Petitioner asserts that the judgment was incorrectly issued in favor of Cynthia Stalker and against SBP St. Thomas, LLC because the subject of the dispute was a lease agreement between CPA, Inc., as tenant, and SBP St. Thomas, LLC, as landlord. Given that this action is concerned with damages to a tenant's business due to a landlord's violation of a lease agreement, the Magistrate shall amend the judgment to reflect the proper parties to the action on remand.¹⁰

Petitioner also contends that the Magistrate erred by finding that a provision in the lease¹¹ allowing the landlord to secure the premises was void on public policy grounds. The Magistrate found that Petitioner placed a lock on the door of CPA, Inc.'s rental unit and that the door also had three of CPA, Inc.'s locks on it.¹² As a result, Petitioner did not present sufficient evidence establishing that the premises were unsecured. In addition, "under the Virgin Islands law, the use of self-help by a landlord to evict a tenant is prohibited, and any lease provision to the contrary is void as against public policy."¹³ As a

⁹ The Magistrate made a finding that Respondent's rent was in arrears, but did not make a determination concerning the amount of unpaid rent. See September 4, 2012, hearing transcript, at page 74.

¹⁰ The Magistrate had stated the caption should be amended in the September 12, 2012, hearing, but the judgment did not reflect this change. See September 12, 2012, hearing transcript, at page 68.

¹¹ See provision 22 to the lease agreement in Petitioner's trial Exhibit # 1.

¹² See September 4, 2012, hearing transcript, at page 73.

¹³ *Floyd v. Hoheb*, CIV. 824/1997, 1997 WL 815373 (Terr. V.I. Nov. 26, 1997) (citing *St. Thomas House, Inc., v. Barrows*, 15 V.I. 435 (T.C.1979)).

result, Petitioner has failed to demonstrate that the Magistrate erred by finding that the lease provision to secure the premises was void for public policy reasons.

Petitioner also asserts that the Magistrate erred by failing to consider that Respondent had not mitigated her damages. Failure to mitigate is a defense to a claim for damages,¹⁴ and Petitioner carried the burden of proof for this defense at trial.

The Magistrate found that Respondent and her company “were blocked and prohibited access to [the] art or portrait studio for a period of three weeks.”¹⁵ In contrast, Petitioner relies on evidence introduced at trial that Petitioner’s lock was removed from CPA, Inc.’s door every day between 9:00 a.m. and 5:00 p.m., that a portion of Respondent’s business activities were conducted outside her studio,¹⁶ and that Respondent never contacted Petitioner to remove Petitioner’s lock on the door of her studio.¹⁷

Petitioner has failed to show that the Magistrate committed clear error by finding that Petitioner’s lock on the studio door prohibited Respondent from conducting her business for a period of four weeks. The Magistrate heard testimony from Respondent that she wanted to remove the lock, but she received legal advice from several attorneys that she should handle the matter through the court system.¹⁸ Respondent expressed to the Magistrate that none of the attorneys she consulted told her to contact Petitioner,¹⁹ and that she was intimidated by Petitioner, asserting that the owners of Petitioner were

¹⁴ See, e.g., *Scott v. United Corp.*, DC CIVAPP 2005/195, 2006 WL 1679388, at *1 (D.V.I. June 1, 2006).

¹⁵ See September 12, 2012, hearing transcript, at page 68.

¹⁶ See September 12, 2012, hearing transcript, at page 54. Respondent stated that “most of [her photo] shoots on island are on location on the beach.”

¹⁷ September 4, 2012, hearing transcript, at page 32.

¹⁸ September 4, 2012, hearing transcript, at pages 18, 31, 33.

¹⁹ September 4, 2012, hearing transcript, at page 33.

“dangerous.”²⁰ In addition, although Petitioner asserted that the lock on the rental unit door was removed every day between 9:00 a.m. and 5:00 p.m., there was no evidence before the Magistrate indicating that Respondent was aware she had access to the studio during that time period. Rather, Respondent testified that she discovered the lock on the studio door on August 17, 2012,²¹ and that she generally works in her studio at night²² when Petitioner’s lock would have been placed on the studio door. Accordingly, the Court finds that Petitioner has not met its burden of proof showing that the Magistrate committed clear error in rejecting Petitioner’s failure to mitigate defense.

Finally, Petitioner asserts that the Magistrate erred by finding that Respondent had incurred damages based on documents that had no independent support. The Magistrate determined the extent of Respondent’s damages based on several documents of past earnings produced by Respondent at trial. Petitioner produced no case law establishing that the Magistrate should have required Respondent to substantiate these documents through independent sources. In addition, the weight that the Magistrate attributed to Respondent’s documents is reviewable under the clear error standard. In the absence of contradictory evidence produced by Petitioner, the Court cannot find that the Magistrate committed clear error by relying on Respondent’s documents to determine to the extent of CPA Inc.’s damages.

Accordingly, this case will be remanded for further proceedings consistent with this opinion. An order consistent with this opinion shall follow.

²⁰ September 4, 2012, hearing transcript, at page 19.

²¹ September 4, 2012, hearing transcript, at page 15.

²² September 4, 2012, hearing transcript, at page 34.

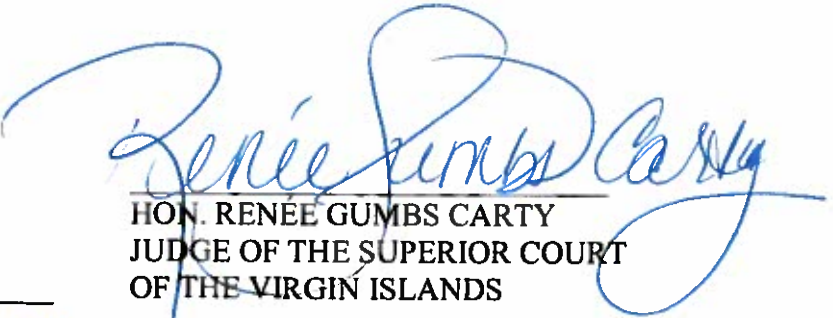
Dated: August 24, 2016

ATTEST: Estrella George
Acting Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


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

8/24/2016