

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

DAVID HEIDMANN,

Plaintiff/Petitioner,

v.

BRENDA ROBERTS HEIDMANN,

Defendant/Respondent.

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CASE NO. SX-12-SM-556

ACTION FOR DEBT

**ORDER**

**THIS MATTER** is before the Court on Petitioner's April 3, 2013 Petition for Review of Magistrate Jessica Gallivan's Order of Dismissal entered April 2, 2013. Petitioner's \$50.00 filing fee was received and entered on the docket on April 3, 2013, as required by Super. Ct. R. 332.1(b)(4). This Review may proceed without the need for a transcript of the proceedings below, pursuant to Petitioner's request, consistent with Rule 332.1(h)(2)(C).

On his Petition for Review form, Petitioner checked the line adjacent to language indicating that he requested that the Court permit time for the parties to submit briefs explaining the issues to assist the Court in determining the issues and reviewing the case. By letter dated April 9, 2013, the Clerk of the Court advised Petitioner that he "is required to file a brief outlining the issues and the arguments to be reviewed, no later than fourteen (14) days after the transcript is filed with the Court... Briefs must be filed, unless waiver of that requirement is obtained."

In this case, Petitioner sought a waiver of the requirement that a transcript be obtained, but has not submitted a brief to the Court during the several months that have passed since the Petition for Review was filed. The Court finds that the issue presented for review is an issue of law which has previously been determined by controlling law and for which there is no

reasonable dispute. As such, the issues may be determined based upon the case record and the need for briefs is hereby WAIVED. See Super. Ct. R. 322.1(i)(B).

For the reasons that follow, Petitioner's Petition for Review will be denied and the Magistrate's Order of Dismissal will be affirmed.

### **STANDARD OF REVIEW**

Pursuant to Super. Ct. R. 322.3(b), factual determinations of the Magistrate are to be reviewed for clear error, while legal findings, statements of law and the application thereof are to be afforded plenary review.

### **FACTUAL AND PROCEDURAL BACKGROUND**

This review arises from an action for debt initiated by Complaint filed November 30, 2012 in the Small Claims Division of this Court. The matter came on for hearing before the Magistrate on April 2, 2013. Plaintiff/Petitioner and Defendant/Respondent both appeared personally and presented testimony under oath. Petitioner's proof included evidence that he loaned Respondent the sum of \$3,500.00 on March 15, 2006, and that the loan was to be repaid in full not later than August 15, 2006. Petitioner's Complaint was filed on November 30, 2012, more than six years after the date the loan was to have been repaid.

Magistrate Gallivan determined that Petitioner's action was time barred pursuant to the applicable statute of limitations and dismissed Petitioner's Complaint by Order of Dismissal entered April 2, 2013.

### **DISCUSSION**

The Court has reviewed the record developed before the Magistrate, including exhibits admitted, and finds no clear error in the Magistrate's factual determinations.

Pursuant to V.I.CODE ANN. tit. 5, § 31(3)(A), an action upon an express contract not under seal is subject to a six-year statute of limitations. *Birnbaum v. Zenda*, 15 V.I. 329 (VI Ter. Ct. 1978); *Burton v. First Bank of Puerto Rico and Chase Manhattan Bank*, 49 V.I. 16 (VI Super. Ct. 2007). In this matter, the evidence established that the loan repayment was due not later than August 15, 2006. The cause of action arose no later than that date upon Respondent's default in repayment. The Complaint in this matter was filed November 30, 2012, outside the applicable limitations period for an action sounding in contract.

As such, this Court finds that the Magistrate's legal findings, statements of law, and applications thereof are consistent with law, and the Court accepts the findings, and the decision of the Magistrate. On the basis of the foregoing, it is hereby

**ORDERED** that Petitioner's Petition for Review is hereby **DENIED**. It is further

**ORDERED** that the Magistrate's April 2, 2013 Order of Dismissal is **AFFIRMED**.

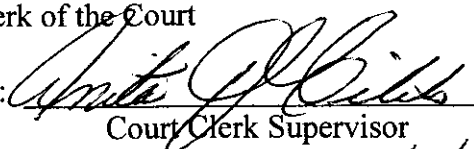
**ORDERED** that a copy of the Order be served on the parties **FORTHWITH**.

Dated: Oct.  
~~September~~ 1 2013

  
DOUGLAS A. BRADY  
JUDGE OF THE SUPERIOR COURT

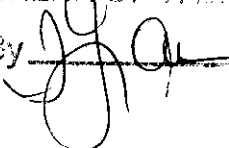
ATTEST:

VENETIA H. VELÁZQUEZ, ESQ.  
Clerk of the Court

By:   
Court Clerk Supervisor

10/2/2013

OFFICED TO BE A TRUE COPY  
THE 1 Oct 2013  
VENETIA H. VELÁZQUEZ, ESQ.  
CLERK OF THE COURT

By:   
Court Clerk