

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: AT CHRISTIANSTED

ARTURO R. WATLINGTON,

Plaintiff,

vs

GILMORE THOMPSON,

Defendant.

CIVIL NO. 715/1982

ACTION FOR DEBT

ARTURO R. WATLINGTON
5D Palme Strade
P. O. Box 261
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00801
(Plaintiff Pro-Se)

MICHAEL STEWART McLaurin, ESQUIRE
46 King Street
P. O. Box 3801
Christinsted, St. Croix
U.S. Virgin Islands 00820
(809) 773-5010
(Attorney for Defendant)

PETERSEN, Judge

MEMORANDUM OPINION
January 24, 1983

INTRODUCTION

This case was originally filed in the Small Claims Division of this Court on May 6, 1982. By Motion to Transfer made by the Defendant on August 16, 1982, and granted by this Court on August 19, 1982, this case was transferred to the Civil Division. Thereafter, on November 12, 1982, Defendant moved to dismiss the action for failure to prosecute. The Plaintiff responded to this on December 9, 1982 requesting

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that it be denied and that default be entered against the defendant for failure to file a timely answer.

For the following reasons, Defendant's Motion to Dismiss for failure to prosecute will be denied, Plaintiff's request for entry of default will be denied, and the Defendant will be given ten (10) days within which he is to file an answer to the complaint.

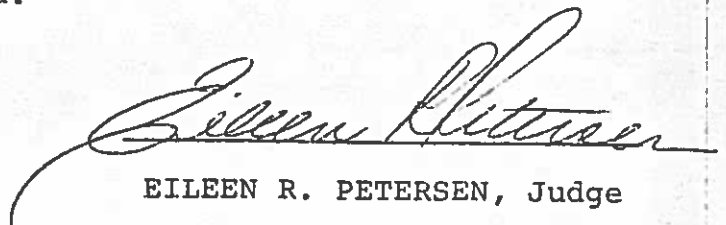
DISCUSSION

The basis for the Defendant's Motion to Dismiss for lack of prosecution is that the Plaintiff "has not filed an amended complaint to comply with the applicable rule of Civil Procedure". As the Defendant has not specified which rule of procedure it is relying on, this Court is uncertain as to what rule the Defendant has made reference. Nowhere in the Federal Rules of Civil Procedure, nor in the Rules of the District Court or Territorial Court of the Virgin Islands is there a provision requiring the complaining party to somehow amend its complaint when a case is transferred from the Small Claims Division to the Civil Division. If the Defendant's Motion is to be construed as a Rule 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted, it is still without merit. Rule 8 of the Federal Rules of Civil Procedure sets forth the requirements of a complaint. It is, by now, axiomatic that pleadings are to be liberally construed

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as long as there is a concise statement showing an entitlement to relief accompanied by a demand for certain relief, and should be accepted as a valid complaint as long as the court has jurisdiction. Since it was the Defendant who requested that this case be transferred to the Civil Division of this Court, there is no issue as to whether or not the Plaintiff's Complaint has established this Court's jurisdiction. And since the complaint in this action certainly meets the liberal pleading requirements of Rule 8, F.R.C.P., the Defendant's Motion is considered to be without merit.

The Plaintiff, in addition to responding to the Defendant's Motion to Dismiss, has applied to this Court for an entry of default against the Defendant for failure to answer the complaint or otherwise defend itself. This must be denied and, pursuant to Rule 12(a), F.R.C.P., the Defendant is hereby given ten (10) days after notice of this decision to answer the complaint. If an answer is not filed in ten (10) days, default will be entered.



EILEEN R. PETERSEN, Judge