IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

GIL RON JEWELRY, Plaintiff, vs. DIAMOND WORLD and VALENZA JEWELERS, Defendants.	)	ST-11-SM-380 Action for Debt
INDIA GEMS, Plaintiff, vs. DIAMOND WORLD and AMALFI and SALEM ZUHDI, Defendants.	)	ST-11-SM-381 Action for Debt
MIGUEL LAUFER, Plaintiff, vs. VALENZA and DIAMOND WORLD, Defendants.	)	ST-11-SM-385 Action for Debt
A.G.M., Plaintiff, vs. DIAMOND WORLD, Defendant.	)	ST-11-SM-391 Action for Debt

SMITH, ALAN D., Magistrate

MEMORANDUM OPINION

Summary

Arthur Newman filed these four small claims actions on behalf of several plaintiffs. When the matters came on for trial, Newman attempted to appear before the Court as the "personal representative" of each plaintiff. Newman has only a temporary relationship to each plaintiff, limited to the collection of the debt in each matter. Virgin Islands law, however, prevents Newman from appearing on behalf of any of these plaintiffs. The one plaintiff who is a natural person must personally appear in order to litigate the matter. The plaintiffs who are corporations or other types of business entities must appear through a "personal representative", who has a regular and on-going relationship with the entity, in order to litigate the matter.

Facts

On or about June 29, 2011, Arthur Newman filed four small claims complaints and then amended them on or about August 3, 2011. Neither the complaints nor the amended complaints indicate whether the businesses named as the plaintiffs are simply trade names for individuals or partnerships or whether they denote separate legal entities such as corporations or limited liability companies. All four matters came on for trial on Wednesday, October 19, 2011, at which time Newman attempted to appear on behalf of all the plaintiffs. Newman has a history of attempting to represent parties in matters before the Small Claims Division. In these matters, Newman maintains no permanent business relationship with any of the plaintiffs, and he is not an officer for or an employee of any of them. He is, by his own admission, simply an independent contractor attempting to recover alleged debt owed to each plaintiff. He is not an attorney licensed to practice law in the Virgin Islands. Newman stated to the Court that he has received authorization from each plaintiff to act as a "personal representative".

Discussion

The Court is faced with the question of whether Newman may prosecute these small claims actions on behalf of the plaintiffs. The relevant Virgin Islands statute, specifically applicable to small claims matters, provides that "[n]either party may be represented by counsel and parties shall in all cases appear in person except for corporate parties, associations and partnerships which may appear by a *personal representative*."[1] Newman argues that this statute, along with authorization from each plaintiff, permits him to represent the plaintiffs in the Small Claims Division. In determining whether Newman may represent these plaintiffs, the Court will differentiate between those plaintiffs who are natural persons/sole proprietors and all others, including artificial legal entities.

Natural Persons / Sole Proprietorships

The Court will first consider ST-11-SM-385. In that matter, unlike the other three, the named plaintiff, "Miguel Laufer", is clearly a natural person. Accordingly, 4 V.I.C. § 112(d) requires that he "appear in person".[2] This is consistent with the holding of the Virgin Islands Supreme Court in which that court found section 112(d) to provide a "clear statutory prohibition against surrogate representation of individuals" in small claims actions.[3] Therefore, since "personal representatives" may only appear on behalf of "corporate parties, associations and partnerships",[4] Newman may not represent Laufer in ST-11-SM-385. Virgin Islands law only allows Laufer to represent himself.

As noted above, Newman has not provided the Court with sufficient information for it to determine whether the other three plaintiff-businesses are sole proprietorships, partnerships, corporations, limited liability companies, etc. Therefore, if any of the other named plaintiffs are sole proprietorships, which have "no legal existence apart from [their] owner[s]"[5], Newman may not represent them for the reasons stated in the immediately preceding paragraph.

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[1] VI CODE ANN. tit. 4 § 112(d) (1997) (emphasis added).
[2] *Id.*
[3] *Gore v. Tilden*, 50 V.I. 233, 239 (Sup. Ct. 2008).
[4] VI CODE ANN. tit. 4 § 112(d).
[5] *Santillan v. Sharmouj*, 2006 U.S. Dist LEXIS 96428 (D.V.I. Apr. 3, 2006) (*quoting In re Grand Jury Empaneled Feb. 14, 1989*, 597 F.2d 851, 859 (3d Cir. 1979)).

Other Artificial Legal Entities

In the event that the plaintiffs in ST-11-SM-380, ST-11-SM-381, and ST-11-SM-391 are corporations, limited liability companies, or other types of business entities, they must appear in small claims matters through "personal representatives". Therefore, the narrow issue before the Court is whether Newman fits within the definition of "personal representative".

There is no applicable definition for the term "personal representative" in the Virgin Islands Code. When used, the term is usually limited to the context of decedents' estates.[6] In the context of small claims matters, however, [t]he District Court of the Virgin Islands has shed some light on the meaning of this term:

> We do not interpret section 112 to mean that corporate parties may be represented by counsel in the Small Claims Division. However, the usual rule that a corporation may not appear pro se may be relaxed . . . to allow a corporation to be represented in the Small Claims Division by *an officer or shareholder*, even if that officer or shareholder is an attorney.[7]

This definition suggests that a "personal representative" should be someone with more than temporary or contractual ties to the entity. This definition, however, does not sufficiently address the issue before the Court. The Black's Law Dictionary definition, "[a] person who manages the legal affairs of another because of incapacity or death, such as the executor of an estate",[8] is not helpful because there is no death or incapacity in these cases. In the absence of a workable definition, the Court must approach the issue in light of public policy goals.

There are two competing policies that the Court will consider and balance: (1) the policy against the unauthorized practice of law and (2) the policy to allow parties to have access to the small claims court in a simple and inexpensive manner.

The first policy against the unauthorized practice of law is set forth in 4 V.I.C. § 443:

> Except as otherwise provided by law or rule of court . . . the unauthorized practice of law shall be deemed to mean the doing of any act by a person who is not a member in good standing of the Virgin Islands Bar Association for another person usually done by attorneys-at-law in the course of their profession, and shall include but not be limited to . . . the appearance, acting as the attorney-at-law, or representative of another person, firm or corporation, before any court, board, judicial person or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation and/or filing of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the same.[9]

Similarly, as further evidence of a policy against the unauthorized practice of law, "the [Virgin Islands] Supreme Court has exclusive jurisdiction to regulate the admission of

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[6] *See e.g.* VI CODE ANN. tit. 5 § 76(d) (1997 & Supp. 2010).
[7] *Ryans Restaurant, Inc. v. Lewis*, 35 V.I. 187, 190 n.4 (D.V.I. 1996) (emphasis added).
[8] BLACK'S LAW DICTIONARY 1416-17 (9th ed. 2009).
[9] VI CODE ANN. tit. 4 § 443(a).

persons to the practice of law and the discipline of persons admitted to the practice of law"[10] and has promulgated a comprehensive set of rules governing admission, practice, and discipline of attorneys.[11] The only exception to the statute and rules prohibiting the unauthorized practice of law is found in section 112, which allows a "personal representative" to appear on behalf of certain legal entities in small claims actions. In other words, while representing legal entities before the Small Claims Division constitutes the practice of law under section 443, section 112(d) specifically authorizes a non-attorney "personal representative" to do so. In all other civil actions, such entities must be represented in court by a licensed attorney at law.[12]

The second policy the Court will consider is "[t]he purpose behind the enactment of the Small Claims Statute" which is "to permit individuals with small claims access to the courts in a simple inexpensive manner and without the need to retain counsel."[13] Barring counsel is one way in which this policy is enforced since allowing attorneys would "thwart" the purpose for the creation of the Small Claims Division.[14] Consistent with this policy, procedural formalities that non-lawyers may not be familiar with are relaxed in all small claims matters.[15]

The definition of "personal representative" in small claims matters must be consistent with both competing public policies. Newman contends that he should be recognized as the "personal representative" merely by virtue of his authorization from the entities to appear for them. If the Court accepts this argument, then any individual who is not an attorney licensed to practice law, regardless of how little on-going and regular affiliation he or she has with the entities, could effectively practice law in the Small Claims Division. Since section 112(d) prevents attorneys from appearing in small claims matters, Newman's position would permit anyone other than licensed attorneys to practice law in small claims matters. This would constitute a blatant violation of section 443(a) and result in an absurd and irrational interpretation of the exception to section 443(a) that is carved out in section 112(d). To avoid this absurd and irrational result, those eligible to be a "personal representative" must necessarily be restricted to a more limited class of persons.

Artificial legal entities naturally have agents with authority to bind them. For example, officers[16] of a corporation, especially the president,[17] often have authority to bind the corporation. On the other hand, shareholders[18] and individual directors[19] do not have this authority. For solely-held[20] and closely-held[21] corporations, however, the restrictions may be relaxed at times. Similarly, for limited liability companies, natural agents also exist.[22] Each member in a member-managed limited liability company is an agent and generally can bind the company when carrying on ordinary business.[23] With manager-managed companies,

[10] § 32(e) (1997 & Supp. 2010).
[11] *E.g.* SUP. CT. R. 204.
[12] *Lettsome v. VI Sea Trans*, 52 V.I. 109 (Super. Ct. 2009).
[13] *Thomas v. St. Croix Marine*, 41 V.I. 3, 5 (Terr. Ct. 1995).
[14] *Id.*
[15] *See* SUPER. CT. R. 64.
[16] *See* 18A AM. JUR. 2D CORPORATIONS § 1316.
[17] *See* §§ 1328, 1329.
[18] §§ 612, 626.
[19] § 1289. Directors may only act as a whole. *Id.*
[20] *See* § 627.
[21] *See* § 628.
[22] *See* VI CODE ANN. tit. 13 § 1301 (2006).
[23] § 1301(a)(1).

however, a member is not normally an agent that can bind the company;[24] rather, a sufficiently authorized manager holds the power to bind the company in ordinary business.[25] Therefore, the Court recognizes that individuals such as these may act as "personal representative" in small claims matters.

The Court is also mindful that many businesses, including corporations and limited liability companies, doing business in the Virgin Islands may not have officers, members, managers, etc. here. Consequently, if the Court limited "personal representatives" only to the small group discussed above, the second policy of allowing easy and inexpensive access to the Small Claims Division would be undercut. Therefore, in addition to agents that naturally can bind the entities they represent, the Court finds it reasonable and necessary to include individuals with regular and on-going relationships to a business entity or other association, usually full-time employees, within the definition of "personal representative". The Court, however, will require written authorization from the entity that the individual may prosecute or defend the action before the Small Claims Division. Depending on the structure of the entity as well as its internal policies and bylaws, this may require authorization from the board of directors, an officer, one or more members or managers of a limited liability company, etc.

Conclusion

Any natural person must personally appear in small claims matters and is not entitled to a "personal representative" under Virgin Islands law. Regarding artificial legal entities and other associations, who are entitled to appear through "personal representatives", the Court must define that term in light of the policy against the unauthorized practice of law as well as the policy for simple and inexpensive access to the Small Claims Division. The Court holds that such eligible candidates are limited to those with a regular and on-going relationship to the entity, including those normally authorized to bind the entity as well as those granted specific authorization to represent the entity in the small claims matter. Here, Newman merely has contracted to temporarily represent the plaintiffs solely for collection of debt and does not maintain any ties with them that are more permanent. Accordingly, Newman is ineligible to act as a "personal representative" in any of these matters.

DATED: November 8, 2011

ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: ____________________
HYACINTH M. LOCKHART
Senior Deputy Clerk 11/8/2011

[24] § 1301(b)(1)
[25] *Id.*