

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

JOHN GIMENEZ,	)	
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	)	CASE NO. ST-15-RV-4
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IRMA DE LEON,	)	
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MEMORANDUM OPINION

Pending before the Court is Petitioner John Gimenez's appeal of a Judgment issued by the Magistrate on May 18, 2015. For the following reasons, the Magistrate's Judgment will be reversed and the matter remanded to the Magistrate Division.

FACTUAL AND PROCEDURAL HISTORY

On November 19, 2014, Respondent Irma De Leon became a guest at Petitioner John Gimenez's Guesthouse by agreeing to pay \$140.00 per week for a room. Respondent De Leon continued to reside at the Guesthouse until February 9, 2015, when Gimenez changed the locks on the room because De Leon had an outstanding debt. Soon after, De Leon returned with the police, and was permitted to enter the room only to gather some, but not all, of her property.¹ Gimenez claimed that as a hotelkeeper, he had a lien on De Leon's remaining property pursuant to 27 V.I.C. § 405, and would only return the remaining property to her when she paid her outstanding debt.

¹ Gimenez retained several of De Leon's items, including her bed, stove, refrigerator, clothes, dishes, and medication. See *De Leon v. Gimenez*, Case No. ST-15-SM-6 (May 13, 2015), Hearing Transcript, at page 7.

On March 20, 2015, De Leon filed a complaint with the Magistrate Division of the Superior Court to recover her belongings.² Gimenez filed a counterclaim for \$300.00 in unpaid rent and \$1,260.00 for the storage fees for keeping De Leon's property secure in the room.³

On May 13, 2015, the Magistrate Judge interpreted 27 V.I.C. § 405 to mean "the lien attaches or can only be exercised on property that has not been claimed."⁴ The Magistrate Judge also found that De Leon's "attempts to retrieve her personal belongings from [Gimenez's] guesthouse were sufficient to make a claim for her personal property."⁵

Based both on the Magistrate Judge's interpretation of the statute—and his finding that De Leon claimed her belongings by returning to the room—the Magistrate Judge found that Gimenez "had no right to exercise a property lien on [De Leon's] property inside the hotel room."⁶ Therefore, "once [De Leon] laid claim to the personal possession inside the property, [Gimenez] was under a legal and statutory obligation to allow her to re-enter to regain possession of those items..."⁷ Gimenez was granted a judgment in the amount of \$340.00⁸, but his counterclaim for storage charges were denied. In addition, the court granted De Leon immediate access to retrieve her property, with the option to pursue a claim for damages if Gimenez failed to comply.

Gimenez timely filed an appeal with the Appellate Division of the Superior Court on May 26, 2015. He argues that the Magistrate Judge committed error by denying him storage charges, granting De Leon immediate access to the room to gain possession of her property, and by advising De Leon she could maintain an action for damages. All three of Gimenez's contentions are based

² See Case No. ST-15-SM-135.

³ Gimenez asserts that De Leon owes him nine weeks of storage fees priced at \$140.00 per week.

⁴ *De Leon v. Gimenez*, Case No. ST-15-SM-6 (May 13, 2015), Hearing Transcript, at page 68.

⁵ *De Leon v. Gimenez*, Case No. ST-15-SM-6 (May 13, 2015), Judgment, at page 3.

⁶ Hearing Transcript, at 73.

⁷ *Id.*

⁸ \$240 back rent, plus \$100 of the security deposit to clean the room.

on the Magistrate Judge interpreting 27 V.I.C. § 405 to allow a hotelkeeper to only establish a lien over property which is unclaimed.

STANDARD

The Appellate Division of the Superior Court “has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrates' exercising their original jurisdiction as provided for at 4 V.I.C. 123(a).”⁹ The Appellate Division reviews the Magistrate’s factual determinations for “clear error,” while legal issues are afforded “plenary review.”¹⁰ Thus, questions of statutory interpretation present legal questions that are subject to plenary review.¹¹

It is a well-established axiom of statutory interpretation that “[w]hen interpreting the meaning of a statute, we first look to its plain text.”¹² “If the plain language is unambiguous, the inquiry into its meaning comes to an end.”¹³ In expounding a statute, the Court “must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”¹⁴

ANALYSIS

The origin of the “innkeeper’s lien” can be traced back to the year 1465¹⁵, and is defined as the “lien of the proprietor of an inn or hotel upon the effects of a guest in the inn or hotel for the

⁹ *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

¹⁰ Super. Ct. R. 322.3(b)(1)-(2).

¹¹ “Plenary review means applying the same legal standard as the trial court to the same record.” *Henry v. Dennery*, 55 V.I. 986, 991 (V.I. 2011).

¹² *Haynes v. Ottley*, 61 V.I. 547, 561 (VI. 2014)

¹³ *Davis v. Am. Youth Soccer Org.*, Case No. ST-09-CV-70, 2016 V.I. Lexis 54, at *13 (VI. Sup.Ct. 2016)

¹⁴ *Paek v. AG of the U.S.*, 793 F.3d 330, 335 (3d Cir. 2015)

¹⁵ John C. Hogan, *The Innkeeper’s Lien at Common Law*, 8 Hastings L.J. 33, (1956)

amount of unpaid reasonable charges...”¹⁶ Innkeepers, have a general duty to accept guests and keep their property safe. In return they are invested with a lien upon the property of those guests.¹⁷

Historically, an innkeeper’s lien ends when the innkeeper voluntarily delivers the property to the guest, or when the lien is destroyed by payment of the debt.¹⁸ “Under the early American common law, the innkeeper could not dispose of property claimed under the lien, and his only recourse was in the courts of equity. But under modern practice, he may convert the security by sale as prescribed by law.”¹⁹

The Virgin Islands have codified the innkeeper’s lien in 27 V.I.C. § 405 (using the terms innkeeper and hotelkeeper interchangeably)²⁰, and the passages relevant to this matter read:

Hotelkeepers shall have a lien upon the baggage and other valuables of their guests brought into such hotel by such guests or tenants or under their control.

Every hotelkeeper who has a lien on property, consistent with the provisions of this section and every hotelkeeper who has in his custody any baggage, personal effects, or any other mobile property unclaimed, can, after six months from the date on which said property was occupied in accordance with the provisions of this paragraph or had been placed in his custody, according to the circumstances, sell the goods at public auction...

¹⁶ BALLENTINE’S LAW DICTIONARY (2010) “innkeeper’s lien”; see also *Gray v. Moorhead*, No. 224-1964, 1964 V.I. Lexis 1, at *3 (VI. Municipal Court) (“if the plaintiffs were guests or lodgers, as defined by statute, defendant would have had the right to assert a lien upon the property of plaintiffs for damage to her property...”)

¹⁷ Leonard A. Jones and Edward White, *A Treatise on the Law of Liens: Common Law, Statutory, Equitable and Maritime*, § 498 (1914). See also, 27 V.I.C. § 405 (“Hotelkeepers shall have a lien upon the baggage and other valuables of their guests brought into such hotel...”)

¹⁸ Joseph Henry Beale, JR., *The Law of Innkeepers and Hotels: Including Other Public Houses, Theatres, Sleeping Cars*, §273 (1906).

¹⁹ Alvin D. Tredo, *The Innkeeper’s Lien in the Twentieth Century*, 13 Wm. & Mary L. Rev. 175, 180 (1971); see also, 27 V.I.C. §405 (“[A]fter six months...according to the circumstances, sell the goods at public auction).

²⁰ 27 V.I.C. § 401(2) “Hotelkeeper” or “Innkeeper” shall mean any person, firm, corporation or enterprise devoted to profit in the administration of a hotel, and, in accordance with the use of the term in this chapter, shall include officials, agents and employees of such person, firm, corporation or enterprise unless otherwise interpreted herein.

27 V.I.C. § 405.

The Magistrate Judge interpreted 27 V.I.C. § 405 as only applying an innkeeper's lien upon "unclaimed" property. However that interpretation is in conflict with the object, policy, and historical operation of an innkeeper's lien. The centuries old purpose of the innkeeper's lien is to assure payment in exchange for an innkeeper's broad duty to accept guests.²¹ Therefore it is logical that the innkeeper's lien, which is created once the guest's property comes *infra hospitium*²², does not dissipate just because the guest "claims" the property.

Interpreting 27 V.I.C. § 405 to mean the innkeeper's lien is extinguished when the debtor guest claims his property, instead of paying the debt, would effectively extinguish the statute itself. This Court finds the proper interpretation of the statute shows the word "unclaimed" is part of a sentence with two independent clauses. Thus, 27 V.I.C. § 405 provides two circumstances in which a hotelkeeper can exercise control over, and even sell a guest's property.²³ The first circumstance is through the hotelkeeper's lien "upon the baggage and other valuables of their guests brought into such hotel..." The second circumstance is when baggage, personal effects, or any other mobile property is left behind unclaimed for at least six months.

Gimenez is exercising control over De Leon's property in accordance with the first circumstance. Consistent with the provisions of 27 V.I.C. § 405, Gimenez had an innkeeper's lien upon De Leon's property because she was a guest who brought the property into his hotel.

²¹ Tredo, *supra* note 18, at 175-176. ("the 'innkeeper's lien,' a device designed to afford a host a means of protection from his guest's non-payment of the bill....it is apparent that the innkeeper's duty is quite broad as to whom he must admit.")

²² *Infra hospitium* is Latin for "within the inn" and is defined as the doctrine that an innkeeper is liable for goods deposited by the guest. BLACK'S LAW DICTIONARY (Ninth Edition).

²³ Pursuant to 27 V.I.C. § 405, once a hotelkeeper has either a lien over the property, or has unclaimed baggage, personal effects, or other mobile property, the hotelkeeper must then comply with the rest of the statute to effect a legal sale of the property.

Gimenez's lien would have been extinguished upon De Leon paying her debt, but not by De Leon returning with the police and "claiming" the property.

Thus, the finding of the Magistrate Judge will be reversed based on the erroneous interpretation of 27 V.I.C. § 405. If De Leon still has an outstanding debt, then Gimenez still has a valid lien on her property and De Leon may neither regain her property, nor maintain an action for damages.

This finding does not, however, fully resolve the status of the case if De Leon still has an outstanding debt. Gimenez's claim for storage fees may be part of that outstanding debt and may have increased while this matter was pending. But there is a factual question as to whether Gimenez mitigated his damages. In the Virgin Islands, "the policy of the courts ... is to promote the mitigation of damages."²⁴ A party "to a contract cannot recover damages for loss that he could have avoided by reasonable efforts," and he is "expected to take such affirmative steps as are appropriate in the circumstances to avoid loss by making substitute arrangements ..."²⁵

Here, Gimenez asserted that De Leon's property at the Guesthouse prevented him from renting De Leon's former room to another guest. As a result, Gimenez calculated his storage fees as if De Leon was still occupying the room. However, there is a factual question as to whether Gimenez could have moved De Leon's items to storage (and stored them at a lower cost or no cost at all) and rented the room to another visitor, thereby mitigating his damages. As a result, the Court will remand this case to the Magistrate to determine this factual issue.

²⁴ *Raimer v. Stout*, 1978 V.I. LEXIS 21, *38, 14 V.I. 568, 591, 1978 WL 444370 (V.I. Terr. Ct. 1978) (citing *Geddes & Smith, Inc. v. Saint Paul Mercury Indemnity Co.*, 63 Cal. 2d 602, 47 Cal. Rptr. 564, 407 P.2d 868, 870 (1965); *Germain v. Crown*, 9 V.I. 501, 506 (D.V.I. 1973)).

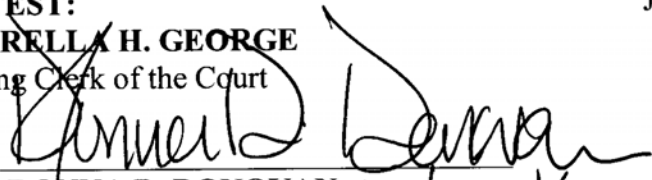
²⁵ *H. E. Lockhart Mgmt. v. Hughes*, 1999 V.I. LEXIS 6, *11-15, 40 V.I. 123, 129-131, 1999 WL 159843 (V.I. Terr. Ct. 1999).

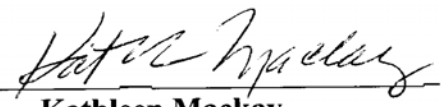
An Order consistent with this Opinion shall follow.

DATED: November 4, 2016

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

By:


DONNA D. DONOVAN
Court Clerk Supervisor


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

11 / 4 / 2016