

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

CARRIE MAE T. JOHNSON,	)	
	)	
Plaintiff/Petitioner	)	
On Review,	)	
	)	
vs.	)	CASE NO. ST-13-CV-431
	)	CASE NO. ST-13-SM-568
ALENDRO CARABALLO,	)	
	)	
Defendant/Respondent	)	
On Review.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Petitioner's petition for review challenging two orders by the Magistrate that dismissed Cases Nos. ST-13-CV-431 and ST-13-SM-568 with prejudice.¹ For the following reasons, the Magistrate's orders will be affirmed.

FACTUAL AND PROCEDURAL HISTORY

On August 26, 2013, Petitioner filed two complaints, one in a forcible entry and detainer ("FED") action (Case No. ST-13-CV-431), and the other in a debt action (Case No. ST-13-SM-568). A hearing was held on October 9, 2013, in Case No. ST-13-SM-568, and the Magistrate entered a default judgment against Respondent. On October 10, 2013, Respondent filed a motion to reopen Case No. ST-13-SM-568 and to consolidate that case

¹ On October 21, 2013, the Magistrate issued an order in Case No. ST-13-CV-431 stating that the Court was "dismiss[ing] this matter based on [Petitioner]'s request." However, in the October 11, 2013, hearing, the Magistrate dismissed Case No. ST-13-SM-568 at Petitioner's request and dismissed Case No. ST-13-CV-431 on the merits. The Magistrate also issued an order on October 21, 2013, dismissing Case No. ST-13-SM-568. For purposes of this appeal, the Court will construe Petitioner's petition as a challenge to both rulings that the Magistrate made on October 21, 2013.

with the FED action. On the outset of the hearing held on October 11, 2013, the Magistrate denied the motion to consolidate based on Superior Court Rule 37 and withheld his judgment on the motion to reopen. Then, the Magistrate conducted a hearing in the FED action and reviewed evidence that the parties executed three leases. The first lease was dated August 1, 2004, and was valid for a five year period beginning on August 1, 2004, and ending on July 31, 2009.² The second lease, dated August 1, 2007, extended the lease from August 1, 2007, to July 31, 2019, and increased the monthly rental rate from \$200 to \$250.³ The third lease, dated April 21, 2010, covered a lease period from July 31, 2019, to August 1, 2029.⁴

Petitioner contested the validity of the first lease, but acknowledged her signature on the second and third leases.⁵ Mr. Theodore Dorsett, a public notary, testified that he had both parties come into his office and that they signed all three leases.⁶ Reviewing Petitioner's signature on the second lease and the signature on the first lease, the Magistrate found that the signatures were "virtually identical."⁷

As a result, the Magistrate found that Respondent was never a month-to-month holdover tenant as Petitioner claimed, but was in lawful possession of Petitioner's premises pursuant to the lease agreements, particularly the second lease.⁸ Accordingly, the Magistrate dismissed the FED action with prejudice. In addition, the Magistrate vacated

² Hearing Transcript, at page 61.

³ *Id.*, at page 62.

⁴ *Id.*, at page 63.

⁵ *Id.*, at page 62.

⁶ *Id.*, at page 62.

⁷ *Id.*, at page 63.

⁸ *Id.*, at page 63.

the default judgment in Case No. ST-13-SM-568 and then dismissed the case with prejudice at Petitioner's request. On October 21, 2013, Petitioner filed a petition for review challenging the Magistrate's rulings.

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 An order or judgment in an FED action is a matter that the Appellate Division may review if appealed.¹⁰ The Superior Court reviews a Magistrate's factual determinations for "clear error" and legal findings are "afforded plenary review."¹¹

ANALYSIS

In support of her petition, Petitioner asserts that the public notary, Theodore Dorsett, violated Title 3 V.I.C. § 775(a), 3 V.I.C. § 802, 3 V.I.C. § 777, 3 V.I.C. § 881, and 3 V.I.C. § 882. However, Petitioner never asserted that Dorsett violated these statutes at the proceeding before the Magistrate, and she waived any arguments pertaining to these statutes on appeal.¹²

Petitioner also contends that the Magistrate violated Superior Court Rule 37 and Superior Court Rule 50. Superior Court Rule 37 provides that:

[s]ummary proceedings between landlord and tenant for the recovery of possession of premises and for forcible entry and detainer which are

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

¹⁰ *Id.*

¹¹ Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black's Law Dictionary, Eighth Edition.

¹² See, e.g., *In re Secivanovic*, 04-2381, 2005 WL 1583357 (3d Cir. July 7, 2005) (precluding party from attempting to raise new arguments on appeal).

brought under the provisions of 28 V.I.C. § 781 *et seq.* shall not be joined with any other cause of action; nor shall a defendant, in any such proceeding, be permitted to file a counterclaim or third-party complaint, although the defendant is permitted to raise any defenses he may have to the plaintiff's cause.

Pursuant to Superior Court Rule 50, a court “may set aside an entry of default, judgment by default, or judgment after trial or hearing” for good cause shown. Rules 59 to 61 of the Federal Rules of Civil Procedure govern the application of Superior Court Rule 50. Under Fed. R. Civ. P. 59, a motion for a new trial “must be filed no later than 28 days after the entry of judgment.” Fed. R. Civ. P. 60(b) provides that a court may grant relief from final judgment, order or proceeding upon a showing of:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

A party has only a year to file after the entry of judgment under Fed. R. Civ. P. 60(b)(1) thru (3) and a reasonable time for subsections (4) thru (6).

On the outset of the hearing, the Magistrate noted that an FED action could not be joined with an action for debt and that the Magistrate did not “have the small claims file in front of [him], so there is no way by which [he could] make a ruling on that.”¹³ In addition, when Respondent provided some testimony describing his reason for his failure to appear

¹³ Hearing Transcript, at page 4.

for an earlier hearing involving the action for debt, the Magistrate interrupted him and reiterated that the two cases could not be consolidated.¹⁴ The Magistrate also stated that he was “withholding judgment as to whether or not to reopen the small claims matter.”¹⁵ After the Magistrate dismissed Case No. ST-13-CV-431 with prejudice based on the content of the second lease, the Magistrate turned to Case No. ST-13-SM-568, and determined that, “based on [Respondent’s] testimony today, [the Magistrate was going to] vacate the entry of default and reschedule this matter for a hearing.”¹⁶

The Magistrate’s October 23, 2013, order states that Cases Nos. ST-13-CV-431 and ST-13-SM-568 were consolidated, which is a clear violation of Superior Court Rule 37. However, the record is at odds with the order because the Magistrate explained during the hearing that the two cases could not be consolidated. In addition, the Magistrate considered the two matters separately and sequentially. As a result, the Court finds that the Magistrate did not commit reversible error in his treatment of Cases Nos. ST-13-CV-431 and ST-13-SM-568.

In addition, while it would have been preferable if the Magistrate had heard from Petitioner before ruling on Respondent’s motion to vacate, nothing in the rules “prohibit[s] the [Magistrate] from ruling without a response or reply when deemed appropriate.”¹⁷ The Magistrate’s decision to rule on the motion based solely on Respondent’s testimony was

¹⁴ Hearing Transcript, at page 5.

¹⁵ *Id.*

¹⁶ Hearing Transcript, at page 66.

¹⁷ Local Rule of Civil Procedure 7.1(e)(3).

appropriate given that Respondent's reason for vacating the default judgment was based on mistake and inadvertence.¹⁸

Petitioner also asserts that her right to due process was violated due to judicial bias. "[A] fair and impartial tribunal is a basic requirement of due process."¹⁹ 4 V.I.C. § 284(4) provides that:

No judge or justice shall sit or act as such in any action or proceeding...
(4) When it is made to appear probable that, by reason of bias or prejudice a fair and impartial trial cannot be had before him.

A movant asserting a 4 V.I.C. § 284 violation "must allege facts reflecting a clear probability that the judge is biased."²⁰

Petitioner asserts that the Magistrate was biased against her because he stated during the hearing that he did "not trust anything [Petitioner] has to say in this courtroom."²¹ Petitioner also directs the Court's attention to the following statement the Magistrate made to her:

I am going to warn [Petitioner] that a lot of her testimony that she gave with this particular matter, I caution her in terms of whether or not she intends to proceed in [Case No. ST-13-SM-568], particularly in light of the findings that this Court has made today, because if this Court finds that you are submitting perjured testimony, this matter will be referred to the Office of the Attorney General's Office for prosecution.²²

¹⁸ Petitioner has made no argument nor provided any evidence rebutting Respondent's testimony that he was mistaken as to the date of the hearing in Case No. ST-13-SM-568.

¹⁹ *Martinez v. Stridiron*, CIV. 2005-0052, 2011 WL 2670475 (D.V.I. July 7, 2011) aff'd, 538 F. App'x 184 (3d Cir. 2013). See also *In re Murchison*, 349 U.S. 133 (1955).

²⁰ *Prior v. Innovative Communs. Corp.*, 2000 U.S. Dist. LEXIS 12584, 2000 WL 1670915 (D.V.I.2000); *De Olivera v. Armstrong*, Civ. No.1977-111, slip. op. (D.V.I.1977).

²¹ Hearing Transcript, at pages 63-64.

²² *Id.*

The Magistrate then inquired if Petitioner wished to proceed, and when Petitioner stated she did not wish to proceed, the Magistrate dismissed Case No. ST-13-SM-568 with prejudice.²³

“[A]dverse rulings alone [do] not constitute grounds for claiming bias or prejudice.”²⁴ Similarly, the imposition, or the threat of the imposition, of sanctions does not alone create an appearance of bias.²⁵

Petitioner has failed to demonstrate clear evidence of judicial bias. She has failed to indicate how the Magistrate’s ruling against her and his warning of possible sanctions resulted in an unfair and partial tribunal.

As a result, the Magistrate’s rulings dismissing Cases Nos. ST-13-CV-431 and ST-13-SM-568 will be affirmed.

An Order consistent with this Opinion shall follow.

Dated: September 7, 2016

ATTEST: Estrella George
Acting Clerk of Court

Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor

Renee Gumbs Cartty
HON. RENEE GUMBS CARTY
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

²³ *Id.*, at page 67.

²⁴ *In re Marriage of Johnson*, 40 Colo. App. 250, 576 P.2d 188 (1977). See also *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) (recusal not warranted where judge’s adverse attitude toward defendant was based on study of facts, depositions, and briefs).

²⁵ See, e.g., *Honneus v. United States*, 425 F.Supp. 164, 166 (D.Mass.1977) (referral of attorney to disciplinary committee does not create appearance of bias); see also *In re Recusal Motion*, 118 F. Supp. 2d 622, 637-38 (D.V.I. 2000) (sanctions appropriate for the misconduct do not evince personal prejudice or bias against the offending party).