

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

WEST INDIES TRANSPORT COMPANY,	)	
As Agent for WITSERVICE, LTD.,	)	
	)	
Plaintiff/Petitioner,	)	
On Review	)	
	)	
vs.	)	CASE NO. ST-14-SM-226
	)	
MARK SCOTT,	)	
	)	
Defendant/Respondent	)	
On Review.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Petitioner West Indies Transport Company's appeal of an Amended Judgment issued by the Magistrate. For the following reasons, the Magistrate's Amended Judgment will be reversed and remanded for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

On or about March 29, 2014, Petitioner's agent Jim Oelsner and Respondent Mark Scott entered into an oral agreement in which the parties agreed to exchange goods and services. Petitioner agreed to buy a 2006 Yamaha 90 horsepower boat motor in exchange for a 2014 Yamaha 30 horsepower boat motor and \$2,000.00 cash.¹ In addition, Petitioner agreed to pay Respondent \$25.00 an hour to install the 90 horsepower motor onto Petitioner's 17 foot Boston Whaler boat. On or about April 7, 2014, Oelsner delivered a letter to Respondent requesting a reevaluation of the number of hours Respondent was

¹ Hearing Transcript, at page 132.

planning to charge Petitioner for installing the 90 horsepower motor. Due in part to the contents of the letter, the parties came to a disagreement.² As a consequence, Respondent removed the 90 horsepower motor from Petitioner's Boston Whaler and placed the motor on one of his own boats. Respondent also installed the 30 horsepower engine onto the Boston Whaler and informed Oelsner to retrieve the boat.

On April 25, 2014, Petitioner filed a breach of contract claim in the Magistrate's Division of the Superior Court. Respondent filed a counterclaim on May 12, 2014. A hearing was held on the matter on June 24, 2014, and the Magistrate found in favor of Petitioner on its breach of contract claim and in favor of Respondent on his counterclaim. The Magistrate awarded Petitioner \$2,300.00, which consisted of the \$2,000.00 cash amount that was part of the parties' agreement, \$100.00 to cover the cost to install a different 90 horsepower motor on the Boston Whaler, \$100.00 to cover the cost to transport the boat from Hull Bay to Krum Bay, and \$100.00 in court costs.³ The Magistrate also awarded Respondent \$825.00 for the work he performed on the Boston Whaler, \$100.00 in transportation costs, and \$50.00 in court costs.⁴ A written Judgment of the decision was issued on July 9, 2014.

² The parties attempted to resolve their differences through correspondence but could not come to a resolution. In an April 8, 2014, letter to Scott, Oelsner stated that the April 7 letter was not intended for Scott to break the agreement and indicated an intention to "salvage" the agreement. (Plaintiff's SOF, at page 6). Scott emailed Oelsner the same day giving Oelsner three options. (Plaintiff's SOF, at page 7). Scott indicated that he would return the boat to Krum Bay if Oelsner paid him \$900.00 for his work done to the boat, or Oelsner could buy the 90 horsepower motor for \$5,000.00, or Oelsner could store the boat at Scott's facility for \$10.00 a day until Oelsner removed the boat from the property at his own expense. (*Id.*) In subsequent correspondence, Plaintiff indicated that it would not accept Scott's new proposals. (Plaintiff's SOF, at page 12).

³ Hearing Transcript, at pages 138 and 139. The Magistrate also awarded Petitioner four percent post judgment interest.

⁴ Hearing Transcript, at page 139. The Magistrate also awarded Respondent four percent post judgment interest.

On July 10, 2014, the Magistrate issued an Amended Judgment, which vacated the July 9, 2014, Judgment, dismissed with prejudice Petitioner's claim, and entered judgment in favor of Respondent in accordance with the original Judgment. The Magistrate determined that because Petitioner never paid Respondent \$2,000.00 as the parties had agreed, and because Petitioner did not pay Respondent \$100.00 to transport the boat, and because Respondent reduced his verbal bill by four hours or by \$100.00, Petitioner was not entitled to its award of \$2,200.00 against Respondent.⁵ Petitioner filed an appeal on July 17, 2014.⁶

STANDARD

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."⁷ The Superior Court reviews a Magistrate's factual determinations for "clear error" and legal findings are "afforded plenary review."⁸

ANALYSIS

During the hearing, the Magistrate heard two versions of the terms of the oral contract. According to Oelsner, Scott was to transport the Boston Whaler from Water Island to Scott's facility in Hull Bay on St. Thomas, install the 90 horsepower motor with

⁵ The \$2,200.00 figure does not include the \$100.00 court costs that the Magistrate also awarded Petitioner.

⁶ Petitioner had requested an appeal in the event that the Magistrate denied its motion to vacate the Amended Judgment filed on July 17, 2014. Following the Magistrate's denial of the motion to vacate on August 13, 2014, Petitioner filed a second notice of appeal on September 3, 2014.

⁷ *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

⁸ Super. Ct. R. 322.3(b). "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).

its associated equipment,⁹ modify the boat's compartments, install a ladder, clean and paint the boat, and transport the boat back to Krum Bay on St. Thomas. According to Scott, he was tasked to install the 90 horsepower motor with its associated equipment and perform a test run on the boat near his facility in Hull Bay, whereupon Scott would turn the boat over to Oelsner.

The Magistrate made specific findings of fact that the parties had agreed to exchange a 90 horsepower motor, valued at \$5,000.00, for a 30 horsepower motor, valued at \$3,000.00 plus \$2,000.00 cash. The Magistrate also made specific findings on damages, awarding Plaintiff "the value of the engine bargain," which consisted of "\$5,000.00 minus \$3,000.00 for the 30 horsepower engine which has been placed back on Plaintiff's boat."¹⁰ However, no findings of fact were made on the issue of breach. Considering that Plaintiff was awarded the value of the engine bargain, the Court deduces that Defendant breached the agreement, but it is unclear as to how or when the agreement was breached.

In addition, when the Magistrate issued the Amended Judgment, new findings of fact were made indicating that Plaintiff was not entitled to the award of damages because it failed to pay Defendant \$2,000.00, consisting of the difference in value between the 90 horsepower engine and the 30 horsepower engine, and failed to pay Defendant \$100.00 to transport the boat, and because Defendant reduced his verbal bill by four working hours.

⁹ Installing the motor included connecting the motor to the steering wheel, engine controls and battery with steering, throttle, shifting, and battery cables. See Plaintiff's SOF, at page 2. Plaintiff asserts that it spent over \$2,000.00 on the equipment and materials necessary to install the 90 horsepower engine. See Plaintiff's SOF, at page 4.

¹⁰ Hearing Transcript, at page 138.

Superior Court Rule 65 states that “[j]udgment shall be entered at the time of entry of findings by the judge unless stayed.” The Supreme Court of the Virgin Islands has stated that Rule 65 “[c]learly ... contemplates an entry of findings of facts upon entry of a judgment in small claims matters.”¹¹ In addition, Rule 52(a) of the Federal Rules of Civil Procedure establishes that “[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon.” Notwithstanding, appellate courts “will determine the appeal without further elaboration by the trial judge if the record sufficiently informs it of the basis of the [trial] court's decision of the material issues in the case”¹²

Without knowing the Magistrate's original basis for finding Defendant in breach of the agreement, it is unclear whether Plaintiff's failure to pay Defendant \$2,100.00 caused the agreement to be breached or whether Plaintiff's failure to pay was excusable given Defendant's prior nonperformance under the contract.¹³ In addition, it is unclear how Defendant's reduction of his original bill by four working hours prevented Plaintiff from recovering on its breach of contract claims. Considering that the record does not sufficiently inform the Court of the basis for the Magistrate's decision,¹⁴ the matter will be remanded for the Magistrate to enter findings of fact consistent with this Opinion.

¹¹ *Spencer v. Navarro*, No. 2007-69, 2008 WL 6054262, at *2-3 (V.I. June 27, 2008).

¹² 9C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2577 (1998); see also *Hooper's Estate v. Government of Virgin Islands*, 427 F.2d 45, 48 (3d Cir.1970).

¹³ See, e.g., *Stallworth Timber Co. v. Triad Bldg. Supply*, 968 F. Supp. 279, 282 (D.V.I. 1997).

¹⁴ *Id.*

An Order consistent with this Opinion shall follow.

Dated: August 24, 2016

ATTEST: Estrella George
Acting Clerk of Court

by:

Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor

8/25/2016

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HON. RENÉE GUMBS CARTY
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS