

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

THERON BROWNE,	)	
	)	
	)	CASE NO.: ST-12-SM-288
Plaintiff/ Respondent,	)	
vs.	)	ACTION FOR DEBT
	)	
ERICKSON REVAN,	)	
	)	
Defendant /Petitioner.	)	
	)	

MEMORANDUM OPINION

I. INTRODUCTION

Before the Court is the appeal filed on July 2, 2012¹ of the Judgment of the Magistrate dated June 29, 2012 which ruled in favor of the Plaintiff Theron Browne and against Defendant Erickson Revan.² Upon consideration of the record, the parties' pleadings, and the applicable law, the Court concludes that the Magistrate's Judgment should be affirmed.

II. BACKGROUND

On or about November 2011, Ericson Revan, the owner of Labour Construction, hired Theron Browne to work on a construction project at the East End Medical Center.³ Based on the parties' agreement, Browne would work on the project during the weekdays for eight hours a day and receive an hourly wage of \$22.00.⁴ From February 6 to April 5, 2012, Browne worked on the project as agreed with the exception of April 3, 2012, on which Browne worked only 6 hours. On March 9, Browne received a check from Revan in the amount of \$1,400.00 for the work period of February 6 to February 15.⁵ No other payments were given to Browne from Revan for hours worked during February 15 to April 5, 2012.⁶ After several demands for payment, Browne filed the Complaint on June 6, 2012.

On June 26, 2012, this matter came on for trial. After hearing the sworn testimony and reviewing admitted evidence, the Magistrate found Revan was liable for breach of contract and

¹ In accordance with Superior Court Rule 322.1(b), Petitioner's notice of appeal is considered a petition for review in this matter.

² On June 26, 2012 the Magistrate issued an oral ruling against Erickson, which was later memorialized on June 29, 2012.

³ Small Claims Hr'g. Tr. 3, 4 (June 26, 2012)

⁴ Id. at 5

⁵ Id. at 18

⁶ Id.

Browne was entitled to a payment from Revan of wages owed for the period of February 15 to April 5, 2012.⁷ The Magistrate found that the parties had an agreement under which Browne would work on the East End Medical Center construction project and Revan would pay Browne an hourly wage of \$22.00 for time worked.⁸ The Magistrate found that Browne worked 34 days and 6 hours on the East End Medical project during the period of February 15 to April 5, 2012 and had not receive compensation from Revan.⁹ The Magistrate also found that Revan's timesheet records lack sufficient information regarding Browne's work dates and hours during the time at issue.¹⁰ The Magistrate finally found that Revan's testimony that Browne normally worked 6 hours a week instead of 8 hours was not creditable given that Revan's timesheets showed that Browne worked 8 hours a day with the exception of two days.¹¹ Given these facts, the Magistrate concluded that Revan failed to compensate Browne for 34 days and 6 hours, for which Browne should have received \$22.00 per hour or a total of \$6,116.00.¹² The Magistrate awarded Browne a judgment of \$6,116.00 and memorialized her decision on June 29, 2012. Revan filed a petition for review on July 2, 2012.

III. DISCUSSION

A. The Magistrate's determination that Browne was entitled to damages for unpaid compensation was proper.

At trial, Revan admitted that Browne was an employee of Labour Construction for the East End Medical Clinic project and money was owed to Revan for work performed.¹³ Since Revan admitted to liability, the only remaining issue for determination by the Magistrate was the calculation of damages.

When a plaintiff files suit against an employer for unpaid wages, the Court is required to review the employment practices and records of the employer. Pursuant to Section 14 of the Virgin Islands Fair Labor Standards Act, all employment records must be maintained by employers and they must include "the rate of pay and the amount paid each pay period to each such employee, the hours worked each day, and each week by such employee."¹⁴

In this matter, the Magistrate conducted a review of Labour Construction's employee payroll records for the East End Medical Clinic project after Revan admitted the records into evidence. The records showed the names, occupation of each employee, the number of hours worked each day, total hours worked, and the amount paid to each employee. Specific dates and

⁷ Small Claims Hr'g. Tr. 75 (June 26, 2012)

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Small Claims Hr'g. Tr. 75 (June 26, 2012)

¹³ *Id.* at 5

¹⁴ V.I. CODE ANN. tit. 24, § 14 (1987).

times worked by each employee were missing from the records.¹⁵ When asked about the missing information, Revan failed to produce any evidence of specific dates or work weeks that correspond with payroll numbers listed on the payroll record.¹⁶

Revan also provided no clear explanation of the work times of each employee, or what information was used to deduct hours or calculate the total hours worked by employees. Revan testified that he would monitor employees' attendance by observing them on the worksite during the day.¹⁷ However, evidence at trial showed that Revan was not always present on the worksite during working hours, nor were there any formal procedures established for recording an employee's daily attendance.¹⁸ In fact, Revan admitted that since he had other construction jobs at the same time he would leave the East End Clinic worksite and for the rest of the day employees worked on the project unsupervised.¹⁹ Based on these facts it appears that Revan used an estimation to calculate the number of hours Browne worked.²⁰ An employer's estimation of hours worked by an employee is a violation of Section 14 of the Virgin Islands Fair Labor Standards Act, which requires employers to maintain accurate attendance records.²¹ Therefore, Revan has failed to meet the reporting requirements of the Fair Labor Standards Act.

When an employer fails to keep employment records, an employee may introduce evidence to support a reasonable inference of hours worked.²² "Once an employee establishes that the employer's records are inadequate, the employee need only introduce enough evidence to support a reasonable inference of hours worked. The burden then shifts to the employer to come forward with evidence to negate 'the inference to be drawn from the employee's evidence'."²³

In this case, Browne testified and produced a record of the number of hours he worked on East End Clinic project, which totaled 34 days and 6 hours. Browne's witness further collaborates his claim that he in fact worked on the project during that time.²⁴ This evidence supports a reasonable inference of hours worked and shifts the burden on Revan to negate the inference.

In review of the record, Revan has failed to provide sufficient evidence to nullify the inference of hours worked by Browne. Accordingly, the Court finds that the Magistrate's decision that Revan must pay Browne for time he worked February 6 to April 5, 2012, is proper

¹⁵ Small Claims Hr'g. Tr. 55 (June 26, 2012)

¹⁶ *Id.* at 52, 71.

¹⁷ *Id.* at 45.

¹⁸ *Id.* at 25, 31.

¹⁹ *Id.* at 45 - 47.

²⁰ Small Claims Hr'g. Tr. 52 (June 26, 2012)

²¹ V.I. CODE ANN. tit. 24, § 14 (1987).

²² *Williams v. Tre-County Growers, Inc.*, 747 F.2d 121, 128 (1984).

²³ *Id.* (quoting *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946)).

²⁴ Small Claims Hr'g. Tr. 34 (June 26, 2012)

and that the Magistrate's conclusions of law based on the Virgin Islands Fair Labor Act were not erroneous.

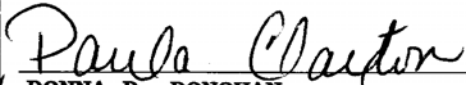
IV. CONCLUSION

The Magistrate's ruling is affirmed since (1) there is sufficient evidence that Browne was an employee for Labour Construction; (2) there is sufficient evidence that Browne is owed compensation for work performed on the East End Medical Clinic construction project (3) the Virgin Islands Fair Labor Act is the applicable law governing this matter; (4) Revan has failed to present sufficient evidence of Browne's hours worked from February 6 to April 5, 2012, and (4) Revan failed to present sufficient evidence of wages being paid to Browne for the period. Given these factors, the Magistrate award of damages to Browne in the amount of \$6,116.00 and \$100.00 in court costs is proper and is affirmed.²⁵

Dated: March 22, 2013


Hon. Michael C. Dunston
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT


DONNA D. DONOVAN
Court Clerk Supervisor 3/26/2013

²⁵ Brownie is entitled to post-judgment interest at the rate of 4% per annum on the entire judgment until the date that it is satisfied. See V.I. CODE ANN. tit. 5, §426 (1997).