

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

DESMOND PROCTOR,	)	
	)	
Plaintiff,	)	CIVIL NO. ST-15-CV-240
	)	
vs.	)	ACTION FOR BREACH OF
	)	CONTRACT; UNJUST
	)	ENRICHMENT
MARY GUMBS,	)	
Defendant.	)	<u>JURY TRIAL DEMANDED</u>
	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Mary Gumbs's Motion for Summary Judgment, filed pursuant to Rule 56 of the Virgin Islands Rules of Civil Procedure.¹ For the reasons set forth herein, Defendant's motion will be denied.²

I. Relevant Background

The allegations of Plaintiff Desmond Proctor are as follows:

Plaintiff Desmond Proctor and Defendant Mary Gumbs were living as a married couple in 1995. Although they were not legally married, Proctor served as a

¹ Although Gumbs cites to Rule 56 Fed. R. Civ. P., the Court notes that since Plaintiff's filing the Supreme Court of the Virgin Islands, on March 31, 2017, adopted the Virgin Islands Rules of Civil Procedure. Pursuant to V.I. R. Civ. P. 1-1(c)(2), the new procedural rules govern "proceedings in any action pending on the effective date of the rules" unless doing so "would be infeasible or would work an injustice." The Court finds that in this instance applying the newly promulgated Virgin Islands Rules of Civil Procedure—specifically V.I. R. Civ. P. 56—would not be infeasible, nor would not work an injustice. Instead, the Court determines that Supreme Court of the Virgin Islands Opinions interpreting Fed. R. Civ. P. 56, which is substantively identical to the V.I. R. Civ. P. 56 counterpart, are persuasive authority.

² Defendant's Motion For Summary Judgment was filed on November 4, 2016. Plaintiff filed an Opposition on December 8, 2016, and Defendant filed a Reply on January 24, 2017.

father figure to Gumbs's children, and oversaw construction of a house on Gumbs's property at No. 7-100 Estate Mariendahl, St. Thomas, Virgin Islands. Proctor was the primary manager, supervisor, and builder of the house and accordingly acquired the building permit, hired the necessary workers, procured the necessary materials, and invested his own funds towards the construction.

Plaintiff states the parties mutually promised to get married when the house was completed, and Proctor's role in the construction of the house was induced by that promise.

In June of 2008, Proctor fell ill, and travelled from St. Thomas to Puerto Rico for surgery. Gumbs initially accompanied Proctor on the trip, but left and returned to St. Thomas before Proctor was discharged. In the same year, when Proctor was finally discharged, Gumbs would not allow Proctor to re-enter the house. At that time, the construction on the house was substantially completed.

On May 27, 2015, Proctor filed the instant two-count Complaint against Gumbs, alleging that (1) Gumbs breached the agreement to marry, and (2) that Gumbs was unjustly enriched by the money and services Proctor expended towards the construction of the house. Gumbs filed the instant motion for summary judgment, arguing that both of Proctor's claims sound in contract, and have therefore expired according to the six-year statute of limitations established in Title 5, Section 31 of the Virgin Islands Code. *See* 5 V.I.C. § 31(3)(a).³

³ Mary Gumbs disputes a number of Proctor's allegations, but her motion for summary judgment is only based on the statute of limitations.

II. Discussion

A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379-80 (V.I. 2014). Because summary judgment is a drastic remedy, a court should only grant summary judgment when the “pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008). Once the moving party has identified the portions of the record that demonstrate no issue of material fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor.” *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Williams*, 50 V.I. at 194. Further, the reviewing court must consider the record evidence in the light most favorable to the non-moving party. *Machado*, 61 V.I. at 379.

III. Analysis

Gumbs argues that both of Proctor’s claims sound in contract and are therefore subject to the six-year statute of limitations established in Title 5, Section 31 of the Virgin Islands Code. Pursuant to 5 V.I.C. § 31(3)(a), an action based on a contract—express or implied—must be commenced within six years. As evidence that Proctor’s

claims has expired according to the statute of limitations, Gumbs identifies a portion of Proctor's Complaint which states "by refusing to allow the Plaintiff to return to the house in which the parties had cohabitated, the Defendant breached the agreement to marry the Plaintiff." Pl.'s Compl., 3 ¶ 22. According to Gumbs, because Proctor filed this complaint in 2015, more than six years after he was refused entry in 2008, "by Plaintiff's own telling...there is no genuine issue of material fact relative to Plaintiff's failure to timely bring this action." Def.'s Motion for Summ. J., 7.

In Proctor's opposition, he claims that despite being prevented from re-entering the home, the couple "resumed their romantic relationship," Pl.'s Opp., 3, and "[Proctor] continued to invest in the house...[and] anticipate marriage into August 2012." Pl.'s Opp., 6. Proctor supports his claim by affidavit. *See* Pl.'s Opp., Ex. A. Proctor also submitted copies of invoices, which he also produced in discovery, that purportedly show purchases of construction materials as late as March 2010.

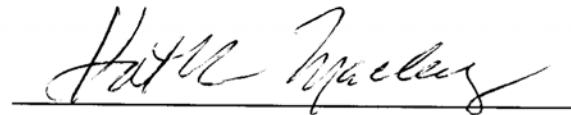
Pursuant to the Virgin Islands Rules of Civil Procedure, a party is allowed to support a factual position in a summary judgment opposition by citing to an affidavit. V.I. R. Civ. P. 56(c)(1)(b)(i). Therefore, Proctor's claim that the breach did not occur until 2012 may be considered by the Court. Accordingly, the issue for the Court to resolve, is the contrariety between the breach date of 2008 and 2012.

It is a well-established rule of summary judgment that, where there are conflicting pieces of evidence in the record, a court cannot independently weigh the evidence to resolve the conflict and must accept as true the evidence that is most favorable to the non-moving party, so long as it is supported by proper proofs.

Rymer v. Kmart Corp., 2018 V.I. Supreme LEXIS 1, *8 (V.I. 2018). The Court—in harmony with the well-established summary judgment rule—accepts as true Proctor's evidence that the breach occurred in 2012. In addition, the claim for unjust enrichment is supported by materials allegedly purchased as late as March 2010. Therefore, Proctor's 2015 Complaint is not barred by the six-year statute of limitations.

Accordingly, Gumbs' motion for summary judgment will be denied. An Order consistent with this Memorandum Opinion will be entered.

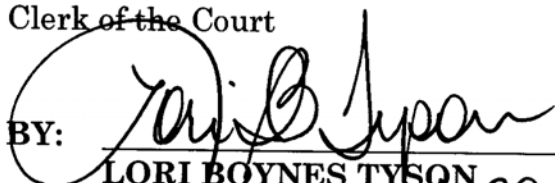
DATED: January 30, 2018



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Chief Deputy Clerk 1/30/18