

DIVISION OF ST. THOMAS AND ST. JOHN

Defendants.

CASE NO. ST-12-CV-470

5 V.I.C. § 541 provides:

- (a) Costs which may be allowed in a civil action include:
 - (1) Fees of officers, witnesses, and jurors;
 - (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
 - (3) Expenses of publication for the summons or notices, and the postage when they are served by mail; \
 - (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
 - (5) Necessary expense of copying any public record, book, or document used as evidence in the trial; and
 - (6) Attorney's fees as provided in subsection (b) of this section.
- (b) The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto, provided, however, the award of attorney's fees in personal injury cases is prohibited unless the court finds that the complaint filed ... is frivolous.¹

Under 5 V.I.C. § 541(b), a “prevailing party is considered to be the one in whose favor a decision or verdict is rendered and a judgment is rendered.”² Under 5 V.I.C. § 541(c), a frivolous claim is defined as one that lacks legal or factual merit or was raised to cause unnecessary delay or to harass.

A judgment or judicial decision has not been rendered in Central Air's favor, and “as a general rule, a defendant may not recover fees when a plaintiff dismisses an action with prejudice absent exceptional circumstances.”³ Central Air's proof that the claims against it were frivolous consists of allegations from counsel that Central Air “should never have been named as a party to this litigation” and that it “had no dealings with any

¹ V.I. Code Ann. tit. 5 §541 (1997).

² *Melendez v. Rivera*, 24 V.I. 63, 65 (Terr. Ct. 1988) (noting that the definition of prevailing party can be construed more broadly in some cases where “a party has achieved at least some of the benefits which were sought in the litigation, if a judgment is not finally obtained”).

³ *Grand Union Supermarkets v. H.E. Lockhart Management, Inc.*, 2013 WL 163830, at *3 (D.V.I. 2013).

of the parties hereto.”⁴ Central Air’s motion will be denied for failure to provide sufficient evidence to sustain a finding that Plaintiff’s claims were frivolous.

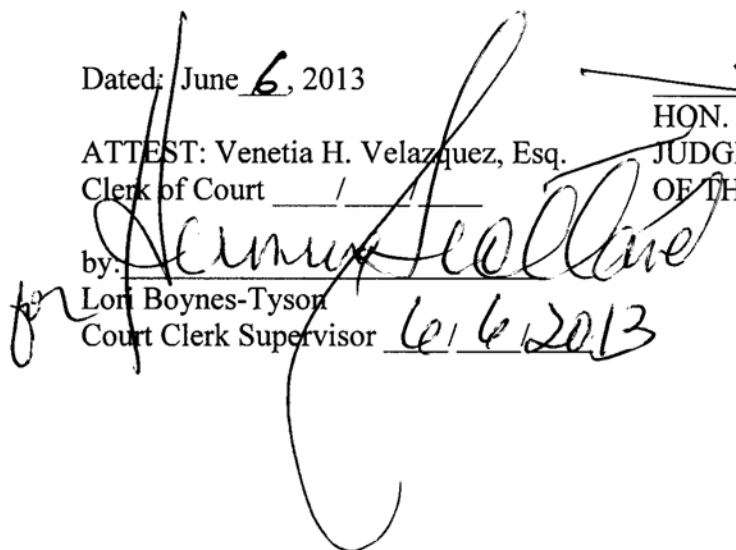
An Order consistent with this Opinion shall follow.

Dated: June 6, 2013

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

by:


Lori Boynes-Tyson
Court Clerk Supervisor

6/6/2013

⁴ Central Air’s motion, at page 2.