

DIVISION OF ST. THOMAS AND ST. JOHN

CALVIN GUMBS, II,

**Plaintiff/Petitioner,
On Review**

VS.

CASE NO. ST-15-SM-522

**TINA M. KOOPMANS, KELLY HARRIGAN, and
UNIVERSITY OF THE VIRGIN ISLANDS,**

Defendants/Respondents On Review.

CALVIN GUMBS, II,

Plaintiff,

VS.

CASE NO. ST-16-CV-233

**TINA M. KOOPMANS, KELLY HARRIGAN, and
UNIVERSITY OF THE VIRGIN ISLANDS,**

Defendants.

MEMORANDUM OPINION

Pending before the Court is Plaintiff Calvin Gumbs' Complaint filed in Case No. ST-16-CV-233. For the following reasons, Plaintiff's claims will be dismissed with prejudice.

FACTUAL AND PROCEDURAL HISTORY

In 2008, Plaintiff paid \$50.00 for a lifetime community borrower's membership at the University of the Virgin Islands.¹

On June 4, 2014, Plaintiff was approached by Defendant Kelly Harrigan, a UVI employee, at the UVI computer lab regarding his use of the computer lab printers. The parties began to argue, and Harrigan called campus security. Campus security escorted Plaintiff from the UVI premises and informed Plaintiff that he was banned from the property.

On May 6, 2015, Plaintiff filed a small claims complaint in Case No. ST-15-SM-202 against Defendants University of the Virgin Islands and Kelly Harrigan. Plaintiff sought \$263.70 in general damages for the funds that remained on his printer account, and \$9,731.30 in punitive damages. On August 19, 2015, the parties participated in mediation and settled the matter, and the Magistrate dismissed the case with prejudice.

Under the terms of the settlement agreement, UVI would provide Plaintiff with \$50.00 and a written apology before August 31, 2015.² In a letter dated August 31, 2015, Defendant UVI's vice president, Tina Koopmans, sent Plaintiff a letter indicating that he was "sorry [Plaintiff] was placed in a situation where [he] felt accused and disrespected" and provided Plaintiff with a full refund of his \$50.00 membership.

On October 3, 2015, Plaintiff filed a small claims complaint in Case No. ST-15-SM-522 against Defendants University of the Virgin Islands, Kelly Harrigan, and Tina Koopmans. In his complaint, Plaintiff sought \$263.70 in general damages, \$9,721.30 in

¹ Adult residents of the Virgin Islands who are not enrolled at the University of the Virgin Islands (UVI) can purchase a membership and use the library and borrow materials according to the certain guidelines. See <http://www.uvi.edu/academics/libraries/stcroix-info.aspx>.

² November 9, 2015, Order, at page 2.

punitive damages, and \$15.00 for a membership fee. In the supplementary material attached to the complaint, Plaintiff asserted that UVI's apology letter was untimely because it was postmarked on September 1, 2015, when it should have been received before August 31, 2015. Plaintiff also acknowledged that the letter was "very well-written" and that "the first paragraph constitutes what is defined as apologetic." However, Plaintiff objected to the remaining paragraphs of the letter because he "did not ask for any of those statements to be placed" in the letter.³ Plaintiff also asserted claims of false accusation, abuse of power/authority, targeting, bullying, character defamation, and theft.

On November 9, 2015, the Magistrate dismissed Plaintiff's complaint with prejudice on the grounds that Plaintiff's claim for \$263.70 in general damages was an issue that was raised and resolved through the settlement agreement in Case No. ST-15-SM-202. In addition, the Magistrate found that Plaintiff had failed to allege any acts by Defendants that were intentional, spiteful, willful, wanton, or reckless and that would support a claim for punitive damages.

Then, on May 4, 2016, Plaintiff filed a civil Complaint with the Superior Court in Case No. ST-16-CV-233, seeking \$30,000,263.70 in damages.

STANDARD

The Appellate Division of the Superior Court "has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrate exercising their original

³ In the remaining paragraphs of the letter, Koopmans expressed "regret" that UVI "did not do a better job of making [Plaintiff] feel [that he was] being treated fairly." Koopmans also indicated that UVI was refunding Plaintiff his \$50.00 membership fee and that UVI would "take what [it] learned from this experience and apply it to improve [UVI's] services and [its] relationship with patrons." In addition, UVI was "no longer pursuing the investigation into account discrepancies" and "consider[ed] this matter closed."

jurisdiction as provided for at 4 V.I.C. § 123.”⁴ The Superior Court reviews a Magistrate’s factual determinations for “clear error” and legal findings are “afforded plenary review.”⁵

ANALYSIS

In his Complaint in Case No. ST-16-CV-233, Plaintiff seeks damages based on seven grounds: false accusation, abuse of power/authority, targeting, bullying, character defamation, theft, and coercion. In addition, Plaintiff makes the following averments:

- 1) ... the University of the Virgin Islands and its two (2) aforementioned employees has demonstrated, by the particular individual and/or the sum of its parts, a lack of respect as it concerns a moral, legal, and criminal matter that I, the Plaintiff, have attempted to resolve numerous times.
- 2) Be it known that when I made various failed attempts to converse with the Defendant concerning the matter at hand, my primary request was for an apology in a just as public manner as the accusations(s) that was/were falsely brought forth against me along with my forced removal from the premises. Any monetary damages were essentially insignificant or meaningless. Due to the blatant disrespect that the Defendant has as it concerns me, along with the Defendant choosing to ignore my claims but do not seem to ignore moving forward with other issues, among them being their attempts to secure a thirty-million dollar ... figure for their proposed medical school on either campus, I have now amended my damage claim from just a simple apology to a total damage amount of \$30,0000,263.70 for their part in hindering and potentially costing a moving forward of projects proposed by myself and a number of business associates.

The factual basis for Plaintiff’s Complaint in Case No. ST-16-CV-233 is rooted in a controversy that was settled in Case No. ST-15-SM-202 and dismissed in Case No. ST-15-SM-522. As a result, Plaintiff’s Complaint is subject to dismissal on res judicata grounds.

⁴ *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

⁵ Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black’s Law Dictionary, Eighth Edition.

“The term *res judicata* ...‘comprise[s] two doctrines concerning the preclusive effect of a prior adjudication.’”⁶ “The first doctrine, ‘claim preclusion,’ ... refers to a judgment’s effect in foreclosing litigation of matters that were not litigated in the prior suit, but should have been.”⁷ “The second doctrine is ‘issue preclusion,’ also known as ‘collateral estoppel.’”⁸ Collateral estoppel “means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.”⁹

Plaintiff’s claims of false accusation, abuse of power/authority, targeting, bullying, character defamation, and theft were claims raised in ST-15-SM-522 and dismissed by the Magistrate. As a result, Plaintiff is precluded from relitigating these claims in ST-16-CV-233. Similarly, Plaintiff’s coercion claim is foreclosed because this claim should have been litigated in either of the two small claims cases he filed.

In addition, even if the Court were to construe Plaintiff’s Complaint in Case No. ST-16-CV-233 as a notice of appeal of the Magistrate’s Order in Case No. ST-15-SM-522, Plaintiff’s notice would be untimely. Superior Court Rule 322(b)(2)(A) establishes that “[p]etitions for review under this section must be filed with the Clerk of Court within ten (10) days after entry of the order sought to be reviewed.” Here, Plaintiff filed his Complaint in Case No. ST-16-CV-233 on May 4, 2016, more than ten days from the date of the

⁶ *Chabuz v. Putnam Lumber & Exp. Co.*, 2016 V.I. LEXIS 33, *3-4 (V.I. Super. Ct. Apr. 12, 2016) (quoting 18 Charles Alan Wright et al., *Federal Practice and Procedure* § 4402 (2d ed. West 2014)).

⁷ *Chabuz*, 2016 V.I. LEXIS 33, *3-4 (citing *Hodge v. McGowan*, 29 V.I. 142, 147 (D.V.I. App. Div. Dec. 23, 1993)).

⁸ *Chabuz*, 2016 V.I. LEXIS 33, *3-4 (citing *Federal Practice and Procedure* § 4402).

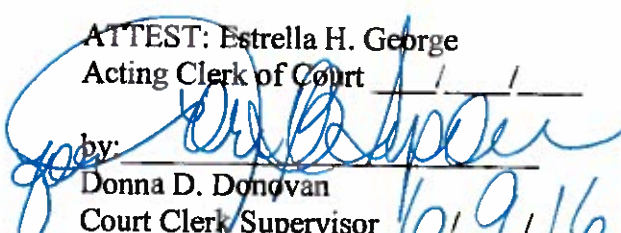
⁹ *Gilbert v. People of the Virgin Islands*, 52 V.I. 350, 364 (V.I. 2009) (quoting *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S. Ct. 1189, 25 L. Ed. 2d 469 (1970)); *McGowan*, 29 V.I. at 147 (“[i]ssue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided”).

Magistrate's Order on November 9, 2015. As a result, Plaintiff has no basis for relief and his claims will be dismissed with prejudice.

An Order consistent with this Opinion shall follow.

Dated: June 9, 2016

ATTEST: Estrella H. George
Acting Clerk of Court

by: 

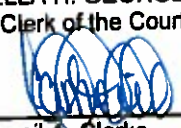
Donna D. Donovan
Court Clerk Supervisor 6/9/16


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

CERTIFIED A TRUE COPY

DATE: 6-13-16

ESTRELLA H. GEORGE
Acting Clerk of the Court

By: 

Cameil A. Clarke
Court Clerk II