

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

ALBERT H. GEORGE and DENISE	)	
GEORGE-COUNTS,	)	SMALL CLAIMS NO. ST-13-SM-5
	)	
Plaintiffs,	)	
	)	ACTION FOR DEBT
vs.	)	
	)	
ABK II, INC. d/b/a SUBWAY,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for trial on Tuesday, January 29, 2013 before the Honorable Alan D. Smith, Magistrate of the Superior Court of the Virgin Islands. The Plaintiffs (collectively “George”) appeared *pro se* and the Defendant appeared through its President, Allie Petrus.

George claims that the ABK II owes three month’s rent on a five-year commercial lease. The Lease, unless renewed, is scheduled to terminate on April 1, 2015. George is attempting to collect additional rent from the Defendant for the months of September, October, and November 2012¹, even though ABK II has vacated the premises and rent is due for the months of December 2012 and January 2013. Section 13(2) of the Lease gives George the right to terminate the Lease and reenter and repossess the premises for failure to pay rent as it becomes due. George has not exercised its right to terminate the lease. George also contends that the ABK II damaged or destroyed parts of the premises and that they intend to bring an action against ABK II for rent and damages.

¹ The rent for these months totals nine thousand three hundred dollars (\$9,300.00), just under this Court’s ten thousand dollar (\$10,000.00) jurisdictional limit.

A lease for a term of one year or more that provides for the payment of rent in installments is a single contract.² “[A] party to a [lease] contract cannot recover damages for loss that he could have avoided by reasonable efforts.”³ George has not attempted to relet the premises or to otherwise mitigate damages. Although section 13(2) of the Lease states that the landlord has the option to repossess the premises, Virgin Islands’ case law mandates that landlords reasonably attempt to avoid loss and mitigate damages when one party breaches a contract.⁴ After the ABK II breached the Lease, George had the right to terminate the lease, evict the Defendant, and relet the premises. Instead, George sat on that right and allowed ABK II to remain in possession of the property for months and accumulate thousands of dollars in unpaid rent. Because George failed to reasonably attempt to mitigate their damages, they cannot recover against ABK II.

Additionally, George previously sued ABK II in this Small Claims Court on November 14, 2012 for rent under the same Lease.⁵ In that matter, the Court awarded George \$6,400.00. Without first terminating the Lease, George, for the sole purpose of meeting the \$10,000.00 jurisdictional limit of the Small Claims Court, “split” a single claim for rent by bringing this action for three monthly rent installments under a contract that expressly states the annual rent shall be \$36,000.00. While no Court in the Virgin Islands has specifically held that parties may not split their claims in order to meet the jurisdictional limit of small claims court, several other jurisdictions enforce such a rule.⁶ Courts in those jurisdictions have held that “claim-splitting”

² See *Kmart Corp. v. Sunshine Shopping Center, Inc.*, 2009 WL 2170074 (D.C.V.I. 2009) (stating the well-established principle that a lease contract for years is to be interpreted by contract principles as applied to a single contract).

³ See *H.E. Lockhart Mgmt., Inc. v. Hughes*, 1999 WL 159843 (Terr. Ct. V.I. 1999).

⁴ *Id.*

⁵ Case number ST-12-SM-485.

⁶ See *Kessler v. Old Guard Mut. Ins. Co.*, 570 A.2d 569, 573 (1990) (stating that Pennsylvania law prohibits splitting single claims into multiple legal actions); *Balin v. Amerimar Realty Co.*, CIV. A. 12896, 1995 WL 170421 (Del. Ch.

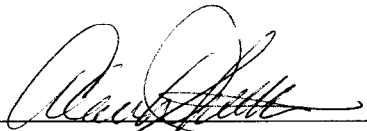
violates the doctrine of *res judicata* by mandating that the Defendant defend against a Plaintiff's single claim multiple times.⁷ This Court adopts the position of these jurisdictions. George may not split claims pertaining to the single leasehold contract in this case in order to circumvent the Small Claims Court jurisdiction's monetary limit. George may not pursue their claim for unpaid rent in the Small Claims Division of this Court. Therefore, this matter will be dismissed.

Accordingly, it is hereby

ORDERED that the above-captioned matter is **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that copies of this Order shall be directed to the parties.

DATED: February 8, 2013

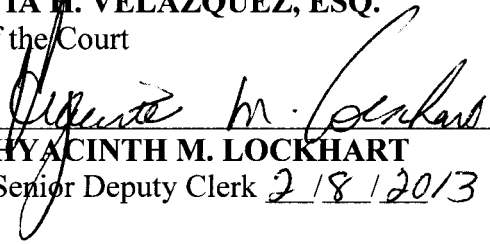


ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:



HYACINTH M. LOCKHART

Senior Deputy Clerk 2/8/2013

Apr. 10, 1995) (stating that Plaintiffs should present all claims in one action); *A & J Enter. Solutions, Inc. v. Bus. Applications Outsourcing Technologies, Inc.*, 11 Misc. 3d 173, 174, 812 .Y.S.2d 226, 227 (Dist. Ct. 2005) ("claim-splitting doctrine requires plaintiff to join all installments due under a single contract at the time suit is commenced).
⁷ *Kessler*, 570 A.2d at 183.