

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

STEVEN HUTCHINS,	)	
	)	CIVIL NO. 78/1990
Plaintiff,	)	
	)	ACTION FOR DEBT
v.	)	
	)	
BARBARA DOREY and PAUL DOREY,	)	
	)	
Defendants.	)	

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FINCH, JUDGE

MEMORANDUM OPINION AND ORDER
(Filed September 16, 1992)

INTRODUCTION

This matter is before the Court on defendants' motion to dismiss and motion to strike affidavit. The defendants seek to have the lawsuit dismissed on the grounds that the Court lacks personal jurisdiction. Defendants argue that personal jurisdiction does not exist because the plaintiff did not effect proper service of process, the defendants do not have the necessary contacts required under Virgin Islands long arm

statutes, and St. Croix is an inconvenient forum for this civil lawsuit. Plaintiff opposes both motions. For the reason herein stated, defendants' motion to dismiss and motion to strike affidavit are hereby GRANTED.

FACTS

The sequence of facts begins August, 1986 when defendant Barbara Dorey flew on vacation from Maine to the Virgin Islands. While on vacation defendant investigated potential real estate investment opportunities on St. Thomas. Defendant took an interest in a property referred to in the record as Scott Beach. According to defendant Barbara Dorey, she made two more trips over a five month period in 1986 to St. Thomas. It was during one of these trips that Barbara Dorey placed a security deposit on the Scott Beach property. However, the sale of the land was not completed and defendant's security deposit was returned. According to plaintiff, defendants received architectural plans for a resort complex to be constructed on the Scott Beach property for a contract price of \$40,000.00. Discussions between the parties regarding plans for the resort complex first took place in November, 1986 in Massachusetts. On December 8, 1986, a second meeting between the parties took place aboard a cruise ship docked for one day in St. Thomas. Defendant Paul Dorey met only once with plaintiff aboard the cruise ship. It was during the course of

the St. Thomas cruise ship meeting that defendant Barbara Dorey wrote plaintiff a check for \$40,000.00. Defendants contend the check was only for show by the plaintiff to prospective investors. Plaintiff insists the check was for payment of services rendered. The plaintiff asserts in the complaint the defendants breached a contract entered into December 8, 1986. On February 5, 1990 plaintiff filed an action for debt. Plaintiff alleges that defendants owe him \$40,000.00 in payment for completed architectural plans. The complaint and summons were mailed by certified mail to the defendants at a Maine post office box address. Both return receipts were signed by defendant Paul Dorey.

DISCUSSION

Virgin Islands courts may assert personal jurisdiction over a nonresident defendant when their actions fall under the Virgin Islands long arm statute. 5 V.I.C. §4903. Long arm statutes must meet the constitutional requirements that a nonresident defendant receive adequate notice of the lawsuit and be subject to the jurisdiction of the forum court. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 294, 564, 100 S.Ct. 559, 564 (1980). Therefore, the forum court must conduct a two-prong examination of the issue of whether personal jurisdiction exists over a nonresident defendant. Id. The nonresident defendant's conduct must satisfy the requirements

of the forum court's long arm statute and extending personal jurisdiction by the forum court must not offend the principles of the Due Process Clause. Godfrey v. International Moving Consultants, Inc., 18 V.I. 60, 66 (D.C.V.I. 1980). Jurisdiction under the long arm statute will be addressed first.

The Virgin Islands long arm statute¹ sets forth several criteria upon which a court may exercise personal jurisdiction over an individual who is beyond the boundaries of the territory. Section 4903(a)(1) allows a court to invoke personal jurisdiction where the nonresident party, "transacts any business" within the Virgin Islands. 5 V.I.C. §4903(a)(1). The term "transact any business" means conduct that equates to "less than doing business but more than performing some inconsequential act within a jurisdiction." Hendrickson v. Reg O. Company, 17 V.I. 457, 461 (D.C.V.I. 1980). Before the Court may exercise personal jurisdiction outside the territory, the nonresident party must engage in some purposeful activity within the Virgin Islands. Buccaneer Hotel Corp. v. Reliance Internat'l, 17 V.I. 249, 257 (Terr.Ct. St.X 1981)(citing Hendrickson, supra, at 6).

The defendants transacted no business within the

¹ 5 V.I.C. § 4901 et seq.

jurisdiction. Their only contact with the territory extends no further than an interest in purchasing real estate here. The one meeting with the plaintiff aboard a ship in St. Thomas falls short of purposeful activity sufficient to warrant hauling the defendants into Virgin Islands courts. Even under the rationale of the more recent Godfrey decision which established that a single act was sufficient to amount to the transaction of business within the territory, this single meeting between the present parties fails to constitute transacting business under subsection (a)(1). In Godfrey, an action for damages arising from destruction by fire of plaintiffs' goods which a nonresident corporation had contracted to move from the Virgin Islands to Africa, the Court held the St. Thomas contractor hired to pick up the plaintiffs' goods to be an agent of the nonresident corporation. Clearly, it is the quality of that single contact not its mere occurrence that is of importance. Thus, personal jurisdiction has not been established under subsection (a)(1).

5 V.I.C. §4903(a)(2) allows the Court to exercise personal jurisdiction over an individual that contracts to supply services or items in the territory. It is settled that the court may take a liberal construction of subsection (a)(2) requirements. Buccaneer at 253-254. Thus, all that is required is that the contract be performed in the Virgin

Islands and that the cause of action arise from the contract. Godfrey, 18 V.I. at 68. In the case at bar, it is at issue whether a contract was even created between the parties. However, assuming, arguendo, that a contract for architectural plans exists, and given that the plaintiff's cause of action arises from defendant's alleged breach of that contract, there is still no evidence indicating that the contract was to be performed in the Virgin Islands. Indeed, according to defendant Barbara Dorey's affidavit, the plaintiff represented that the drawings would be completed in Texas. The mere fact that the plans were for a potential project to be constructed in the Virgin Islands is of no significance, as the plaintiff would have this Court believe. Rather, it is the place where performance is contemplated that the statute requires us to consider. Hence, defendants' conduct does not constitute supplying services or items to the Virgin Islands pursuant to 5 V.I.C. §4903(a)(2).

5 V.I.C. §4903(a)(5) allows the Court to invoke personal jurisdiction when a nonresident defendant has possession or an interest in real property located in the Virgin Islands. The act of placing a deposit on real estate, according to plaintiff, suggests defendants made use of the land, and thus created sufficient contacts with the Virgin Islands for purposes of establishing personal jurisdiction. The record

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indicates the defendants did not purchase the Scott Beach property. The Court may only construe the clear statutory language to mean a party must have a legal right, title or claim in real property located in the Virgin Islands. The facts in this case lack such a showing. The rationale that a court may invoke personal jurisdiction over a nonresident party who intends to use property where a legal right or interest in the property does not exist is without merit. Therefore, jurisdiction under subsection (a)(3) does not exist and, thus, jurisdiction under the long arm statute has not been established.

Because we lack in personam jurisdiction under the local long arm statute, constitutional analysis need not be considered. Accordingly, plaintiff's motion to dismiss will be granted.

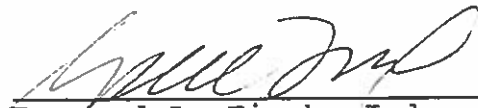
Defendants assert proper service was not perfected by plaintiff on the grounds that defendant Paul Dorey's signature appears on both return receipts. Service on a nonresident defendant must accord with both territorial and federal laws. Extraterritorial service must be made pursuant to the forum court's state mailing procedures. Fed.R.Civ.P. 4(e), and Wright & Miller, Federal Practice and Procedure: Civil 2d §1115. Therefore, compliance with Fed.R.Civ.P. 4(c)(2)(C)(ii), (d)(1), or (d)(3) is not required. See, William B. May Co. v.

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Hyatt, 98 F.R.D. 569, 570 (1983). The statutory language of 5 V.I.C. §4911 is not ambiguous. Proof of extraterritorial service shall include a receipt signed by the addressee. 5 V.I.C. §4911(b). Plaintiff's failure to obtain a return receipt with the signature of defendant Barbara Dorey violates section 4911(b) of the Virgin Islands Code. Therefore, Barbara Dorey has not been properly served.

With respect to the Motion to Strike Affidavit, plaintiff admits having failed to serve defendants with his opposition to Defendant's Motion to Dismiss and the accompanying affidavit, as required by statute. Plaintiff also failed to move for an enlargement of time. Because plaintiff's conduct was in direct contravention of procedure, defendant's Motion to Strike is granted.

9/16/92


Raymond L. Finch, Judge

ATTEST:
VIOLA E. SMITH
Clerk, Territorial Court

By: _____
Deputy Clerk