

This matter was heard before the Magistrate on June 13, 2010. Parties appeared personally and were ready to proceed. At the hearing, a representative for the Petitioner testified

that the Respondent's trailer was not damaged when the Petitioner took possession in West Palm Beach, Florida. As further proof, the Respondent produced photos of the trailer during transport in the Petitioner's Florida facility. The photo illustrated that at the time the trailer was in the Petitioner's possession there was no visible damage. The Respondent then entered into evidence photos taken upon delivery of the trailer, which illustrated noticeable damage to the trailer. At the hearing, the Petitioner testified that although the trailer was not damaged when Tropical took possession any damage sustained was the responsibility of the Respondent because the trailer was not properly packed for ocean transport. The Court then inquired, "[d]id he sign something saying if it's damaged during transport and if it is later determined that it was too heavy, that he is liable?" To which the Petitioner responded "No. No, he did not. I don't think he did." The Court then inquired, "did he sign anything saying that while it's in your possession, he's liable?" To which the Petitioner replied "no".

At the conclusion of the hearing, the Magistrate entered judgment in favor of Respondent and against Petitioner awarding a judgment for \$2,355.00. The Petitioner filed a timely request for review on July 20, 2010. The Respondent did not file a reply.

DISCUSSION

In its brief, the Petitioner argues that the Court erred in awarding judgment without considering the Bill of Lading and the terms included on the back of the document. Specifically, the Bill of Lading required the application of the Carriage of Goods by Sea Act, which limited the Plaintiffs award of Damages to \$500.00.

Under Rule 322.3(b) of the Virgin Islands Superior Court Rules, "Factual determination is to be reviewed for clear error." Further, under Rule 322.3(a) if the Virgin Islands Superior Court Rules "the trial judge shall review the record as developed before the magistrate, which

shall include: the exhibits and other evidence admitted before the magistrate, the transcript of proceedings . . .” Clear error is a very deferential standard; an appellate court should only reverse a factual determination as being clearly erroneous if it is “ ‘completely devoid of minimum evidentiary support or ... bears no rational relationship to the supportive evidentiary data.’ ” *Matter of Estate of Small*, 2012 WL 4077375 *7 (V.I., 2012) (quoting *Rainey v. Herman*, 55 V.I. 875, 880 (V.I. 2011)).

The Petitioner’s argument is based on the applicability of the Bill of Lading to the Respondent. However, no evidence was presented at the hearing binding the Respondent to the Bill of Lading. The Bill of Lading present to the Magistrate bore no signature from either party. Although the document does limit liability and damages there is no evidence that the Respondent or the Petitioner agreed to the terms of the document. In order to clarify this issue, the Magistrate specifically inquired as to whether the Respondent signed any document limiting the liability of the Petitioner while the trailer was in their possession. The Petitioner responded “no” to both inquiries.

A review of the matter for “clear error” requires this Court to determine if the evidence presented to the finder of fact supports the final decision rendered. After a review of the record, this Court finds that the evidence supports the Magistrates decision. Although the Petitioner would like to apply the terms of the Bill of Lading, the record and evidence presented does not show that the Respondent agreed to the limited liability included on the Bill of Lading. Further, the Petitioner agreed that he did not sign any document agreeing to any limitation of the liability of the Petitioner. The representative of the Petitioner also admitted under oath that the trailer was damaged while in Tropical’s possession.

The award for damages to the Respondent trailer revolved around factual findings that rest with the Magistrate who is in the best position to make such determination in so much as the evidence and facts are presented before her court. Accordingly, this Court will not disturb such determinations of facts unless the record evidences clear error pursuant to Rule 322.3(b)(1) of the Rules of the Superior Court of the Virgin Islands. Nothing in the record rises to the level of clear error.

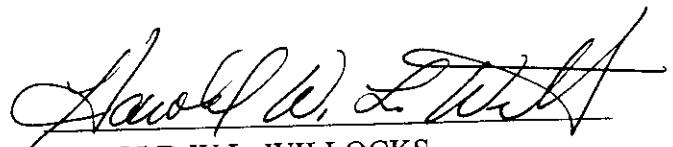
CONCLUSION

Upon review of the record, this Court finds that, pursuant to Rule 322.3(b) of the Rules of the Superior Court of the Virgin Islands, the factual determinations of the Magistrate are not clearly erroneous. The Court finds no error in the Magistrate's finding that Respondent was entitled to payment of \$2,355.00. Therefore, the Court will affirm the judgment of the Magistrate Division.

ORDERED that the Magistrate's Order is AFFIRMED. It is further

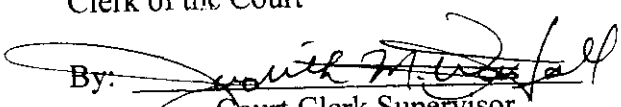
ORDERED that a copy of the Order shall be served on the parties.

DONE SO AND ORDERED this 20th day of May 2013.


HAROLD W.L. WILLOCKS
Judge of the Superior Court

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: 
Court Clerk Supervisor

Date: 5/20/13