

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

CHARLOTTE BROWN RAMOS,	)	
	)	ST-11-SM-147
Plaintiff,	)	
	)	ACTION FOR DEBT
vs.	)	
	)	
GARY FOMBRUN,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM

The Defendant, Gary Fombrun, failed to appear for trial in this small claims matter, which resulted in a default judgment being entered against him. Nearly one month later, Fombrun filed a letter that the Court will, pursuant to Super Ct. R. 62(c), interpret as a motion for a new trial and a motion to vacate the writ of execution. The motion for a new trial is untimely and will be denied. The motion to vacate the writ of execution will be denied because the writ was issued in compliance with Virgin Islands law.

Facts

The Plaintiff, Charlotte Brown Ramos, appeared ready for trial on Thursday, April 14, 2011. Fombrun was properly served but failed to appear. The Court found Fombrun in default and then allowed Ramos to offer sworn testimony and evidence. Based on the evidence, the Court entered default judgment against Fombrun in the amount of \$10,000.00 plus \$40.00 in court costs. The default judgment was reduced to writing and entered by the Clerk on April 15, 2011. Ramos filed a praecipe on May 4, 2011 and the Clerk of the Court issued a writ of execution on May 9, 2011. In a letter received by the Court on May 11, 2011, Fombrun stated that he did not appear for trial because he had to work, attempted to call the Court on April 14, 2011 and that his vehicle was seized by a deputy marshal on May 10, 2011. Based on these facts, Fombrun asked the Court to order the release of his vehicle and grant him "another hearing date".

Motion for New Trial

In the Small Claims Division the applicable rule provides: "Within five (5) days after entry of judgment, the judge may, upon a showing that a substantial question of law and/or fact is involved, grant a party leave to file a motion for a new trial. The motion shall be submitted no later than ten (10) days after leave is granted."¹ Fombrun filed his motion for a new trial on May 11, 2011, nearly one month after the entry of judgment on April 15, 2011. The Court never

¹ Super. Ct. R. 65; *See Deliver It, Inc. v. Mitchell*, 28 V.I. 28, 27 (Terr. Ct. 1992).

granted, nor did the Defendant ever request, leave to file such a motion. Even if the May 11, 2011 letter is treated as such a request, it was not filed within five days from the entry of judgment. Therefore, the motion for a new trial is denied.

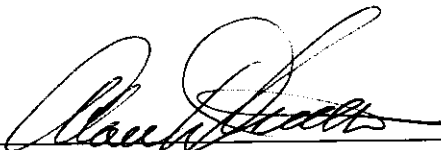
Motion to Vacate Writ of Execution

Virgin Islands law permits the Clerk of the Court to issue a writ of execution to enforce a judgment requiring the payment of money.² The April 15, 2011 judgment is valid in that the Court had subject-matter jurisdiction, personal jurisdiction, and Fombrun had proper notice to appear.³ Furthermore, since the writ issued more than fourteen days after entry of judgment, the automatic stay for enforcement was not violated.⁴ Having been properly found in default, there also was no requirement that Fombrun be served with a copy of the Judgment.⁵ Therefore, this motion is denied.

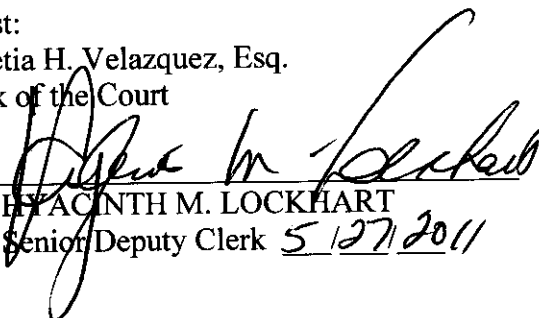
Conclusion

In matters before the Small Claims Division, Virgin Islands law provides a narrow time frame after entry of judgment in which a new trial can be granted. The Defendant's motion for a new trial was filed after this time had expired. Therefore, the motion is denied. Virgin Islands law also provides a procedure for enforcing a money judgment through the issuance of a writ of execution. The Plaintiff was entitled to a writ of execution against the Defendant, and the writ was issued in compliance with the law. Therefore the motion to vacate the writ is denied.

DATED: May 27, 2011


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 5/27/2011

² VI CODE ANN. tit 5 § 471 *et seq.* (1997).

³ Restatement (Second) Judgments § 1.

⁴ Fed. R. Civ. P. 62(a).

⁵ Fed. R. Civ. P. 77(d)(1).