

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

**THE MORAVIAN CHURCH, VIRGIN
ISLANDS CONFERENCE,**

Plaintiff,

vs.

DAVID HOGAN,

Defendant.

CIVIL NO. 264/1998

**ACTION FOR BREACH OF
CONTRACT, DAMAGES**

NOT FOR PUBLICATION

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(Defendant, pro se)

CABRET, J.

MEMORANDUM OPINION

(July 23, 1999)

THIS MATTER is before the Court on a Motion for Summary Judgment filed by The Moravian Church, Virgin Islands Conference (the "Church"). For reasons which follow, the motion will be granted.

I. SUMMARY JUDGMENT STANDARD

To prevail on its Motion for Summary Judgment, the Church must show that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [it is] entitled to a judgment as

a matter of law." Fed. R. Civ. P. 56(c). Under this standard, the Church "bears the initial burden of showing that no genuine issue of material fact exists. But once [the Church] properly supports a motion for summary judgment, [the defendant, David Hogan] 'may not rest upon the mere allegations or denial of [his] pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial.' Any doubts are resolved in favor of [Hogan] whose allegations are taken to be true." Mingolla v. Minnesota Mining and Mfg. Co., 893 F. Supp. 499, 503 (D.V.I. 1995) (citations omitted). In determining whether the Church has met its initial burden, the Court must view the evidence in a light most favorable to Hogan as the party opposing the motion. See Fleming v. Frett, 33 V.I. 58, 60 (Terr. Ct. 1995).

II. FACTS

Viewed in this light, the evidence shows that on June 15, 1981, the Church leased commercial real property to David Hogan for a period ten years. On June 14, 1991, the parties renewed the lease for another ten year period. The original lease terms, which applied to the renewal, required Hogan to "obtain and keep in effect insurance covering fire, windstorm, earthquake and other extended coverage in the amount of One Hundred Fifty Thousand Dollars."¹ The lease further provided that "[a]ll improvements made by [Hogan] to the leased premises which are so attached to the premises that they cannot be removed without material injury to the premises shall become the property of [the Church] upon installation."² Finally, the renewal provided in pertinent part for monthly rental payments of \$2,350.00 with adjustments based on the cost of living index.

¹ Pl's Motion for Summary Judgment, Ex. A Lease Agreement at paragraph 6.

² Id. at paragraph 10.

Although Hogan paid rent due for the first five years of the lease renewal, during the latter part of 1995 he experienced financial trouble and failed to make payments. Hogan ultimately vacated the premises, but still owes the Church \$20,200.00 in unpaid rent. Hogan admitted this liability in his answer and did not dispute the fact in his opposition to the Church's motion. In addition, in support of its motion, the Church produced uncontested evidence establishing that it has incurred \$1,859.15 in costs and attorneys fees in prosecuting this action and anticipates incurring another \$345.75.

III. DISCUSSION

The undisputed facts presented above establish that under the lease agreement, Hogan is indebted to the Church in the principal amount of \$20,200.00. Hogan, appearing pro se, argues in response to the Church's motion that due to unforeseen circumstances, including hurricanes, the escalating costs of insurance, and St. Croix's failing economy, he was unable to perform his obligations under the lease. Hogan further contends that the Church has been unjustly enriched by improvements he made to the property.

Notwithstanding these adversities, the undisputed evidence shows that Hogan agreed to maintain insurance and that the Church would own all improvements to the property. Hogan has cited no authority establishing that these provisions are invalid or that the adverse circumstances discharged his duty to perform. *See generally, Restatement (Second) of Property*, §5.6, cmt. e (1977) (unconscionable agreements concerning condition of property); § 12.2 (5), cmts. r, s (duty of tenant not to remove annexations). Accordingly, the Court concludes that there is no genuine issue as to any material fact concerning Hogan's liability for unpaid rent and the Church is therefore entitled to a judgment as a matter of law. *See Fed. R. Civ. P. 56(c).*

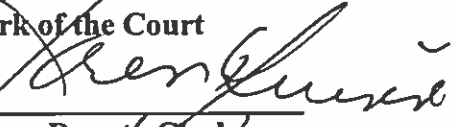
A prevailing party in a civil action may be awarded certain costs incurred in prosecuting or defending the case. *See* V.I. Code Ann. tit. 5, § 541 (a) (1997). The evidence of costs presented by the Church shows that in addition to attorney's fees and costs actually incurred, it is seeking a total of \$345.75 in "costs to be incurred" and "estimates" of anticipated future attorney's fees.³ Such anticipated future costs are not addressed under section 541, the Church has not cited any authority establishing that they are recoverable and the Court will not assess them against Hogan. In addition, the Church is requesting \$36.65 for its costs for copy and facsimile charges. "These charges will be disallowed as normal office overhead." Wenner v. Government of the Virgin Islands, 29 V.I. 158, 163 (D.V.I. 1993).

IV. CONCLUSION

For the reasons stated above, the Court concludes that the Church is entitled to summary judgment against Hogan for unpaid rents. It is undisputed that Hogan is liable for the unpaid rent and he has presented no cognizable affirmative defenses to the Church's claims. Accordingly summary judgment will be granted to the Church and as the prevailing party it will be awarded those costs incurred which are authorized under Virgin Islands law.


MARIA M. CABRET
Territorial Court Judge

ATTEST:
YVONNE V. WESSELHOFT
Clerk of the Court

By: 

Deputy Clerk

Dated: 4/21/99

³ See Affirmation of Costs attached to the Church's Motion for Summary Judgment.