

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

DAXIMUS ENTERPRISES, LLC,

Plaintiff,

v.

VERONICA ROLLINS,

Defendant.

SX-08-CV-352

ACTION FOR DEBT

VERONICA ROLLINS,

Third Party Plaintiff,

v.

**FREDERICK ROLLINS, AND ANYONE
CLAIMING AN INTEREST IN 231 ESTATE
ENFIELD GREEN, ST. CROIX,**

Third Party Defendants.

Appearances:

H. A. CURT OTTO, ESQ.

H. A. Curt Otto, P.C.

1138 King Street

St. Croix, USVI 00820

For Plaintiff and Third Party Defendant

VERONICA ROLLINS

116 Queen Cross St.

Frederiksted, USVI 00840

Pro se Defendant and Third Party Plaintiff

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff Daximus Enterprises, LLC's
(hereinafter "Plaintiff" or "Daximus") Motion for Summary Judgment (hereinafter "Motion")

against *Pro se* Defendant Veronica J. Rollins (hereinafter “Rollins”) filed on February 16, 2012.¹

Rollins did not file a response. For the reasons stated below, Daximus’ Motion will be granted and the court shall reserve entering a judgment until additional documents are submitted.

BACKGROUND

On or about September 6, 2004, Daximus and Rollins allegedly executed a Promissory Note (hereinafter “Note”) in which Daximus agreed to loan Rollins \$25,000 at the rate of 12.5% per year. Compl ¶4. Under the terms of the Note, payments were to be remitted in quarterly installments beginning October 1, 2005 with the total sum due on October 1, 2006. Compl ¶6. Rollins allegedly paid about \$400 but failed to pay the remainder due on the Note. Compl ¶¶7-9.

On July 2, 2008, Daximus filed the instant action for debt against Rollins. Rollins’ counsel entered an appearance on August 5, 2008. About a week later, on August 13, 2008, Daximus moved for an entry of default against Rollins. On August 18, 2008, Rollins filed an opposition to the motion for entry of default and moved to file an answer out of time. The Court denied Daximus’ request for entry of default without prejudice and granted Rollins leave to file an answer out of time. *See* Order entered September 11, 2008.

On September 19, 2008, Rollins filed an Answer. Five days later, the Court granted Rollins’ leave to file a third-party complaint. (*See* Order entered September 24, 2008.) On October 17, 2008, Rollins impleaded her estranged husband Frederick Rollins and anyone

¹ The Court notes that Daximus did not include a separate statement of undisputed material facts as required under Virgin Islands Rule of Civil Procedure 56(c). *See* V.I. R. Civ. P. 56(c)(1)(A) & (B). Although Federal Rule of Civil Procedure 56 governed summary judgment motions at the time Daximus’ Motion was filed, Fed. R. Civ. P. 56(c) also prescribed that a statement of undisputed material facts must be filed. *See* Fed. R. Civ. P. 56(c)(1)(A) & (B). However, if a party fails to submit a separate statement of undisputed material facts as required in V. I. R. Civ. P. 56(c), V. I. R. Civ. P. 56(e)(3) gives the court discretion to “grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it.” *See* V. I. R. Civ. P. 56(e)(3).

claiming an interest in 231 Estate Enfield Green and filed a *lis pendens* against the marital homestead, Plot No. 231 Estate Enfield Green, St. Croix (hereinafter “Property”). Rollins alleged that Frederick Rollins is equally liable for repayment of the Note because the proceeds were used to make alterations to the Property which they were jointly responsible for. Third-Party Compl. ¶¶ 4, 8, 11-20. On September 16, 2011, the Court granted Lydia Logie Moolenaar, Esq. leave to withdraw as counsel for Rollins and granted Rollins 45 days to name counsel or appear *pro se*. To date, no new counsel has entered an appearance on the record for Rollins. Daximus filed the instant motion for summary judgment on February 16, 2012.²

STANDARD OF REVIEW

Motion for Summary Judgment

Motions for summary judgment are governed by Virgin Islands Rule of Civil Procedure 56. V.I.R. Civ. P. 56. A motion for summary judgment shall be granted, “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. Civ. P. 56(a). *See also Rymer v. Kmart Corp.*, No. 2017-0010, 2018 V.I. Supreme LEXIS 1, at *5 (Jan. 18, 2018) (A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.). *See also Walters v. Walters*, 60 V.I. 768, 794 (VI. 2014) (citations omitted). “A dispute is genuine if, based on the evidence in the summary judgment record, a reasonable jury could find in favor of the non-moving party.” *See Martin v. Martin*, 54 V.I. 379, 387 (2010)

² The Certificate of Service indicates that the Motion was served via U.S. Mail on Rollins at 7433 Estate St. Peter, St. Thomas, VI 00802 and served by facsimile at (340)774-5299 and U.S. Mail on Francis E. Jackson, Esq. at The Law Center, 1212 Bjerre Gade, P.O. Box 6591, St. Thomas, V.I. *See Mot.*, Certificate of Service. The Court notes that Francis E. Jackson, Esq. has never entered an appearance on the record.

(citations omitted). “As to materiality, only those facts that ‘might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.’” *See id.*

“The moving party bears the initial burden of pointing out to the court that there is no genuine issue of material fact”—or in other words, “an absence of evidence to support the nonmoving party’s case.” *See id.* at 386-87. *See also Williams v. United Corp.*, 50 V.I. 191, 194 (VI. 2008) (citations omitted). The non-moving party, then has the burden of setting out specific facts showing a genuine issue for trial. *See Rymer*, No. 2017-0010, 2018 V.I. Supreme LEXIS 1, at *5-6 (Once the moving party has identified the portions of the record that demonstrate no issue of material fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor.”). The court may consider the cited materials and other materials in the record. *See V.I. R. Civ. P 56(c)(3)*. But “the court may not weigh the evidence or determine the credibility of witnesses.” *See Williams*, 50 V.I. at 194-95. The Court “must consider the record evidence in the light most favorable to the non-moving party.” *See Rymer*, No. 2017-0010, 2018 V.I. Supreme LEXIS 1, at *6 (citations omitted).

Daximus’ Motion is uncontested because Rollins did not file a response. Nevertheless, Daximus’ burden, as the summary judgment movant, is not relieved by the fact that the Motion was unopposed. *See Walters*, 60 V.I. at 795 (citations omitted). In such a situation, “the trial court may not accept as true the moving party’s itemization of undisputed facts; instead, the court must satisfy itself that the evidence in the summary judgment record supports this relief.” *See Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563, 583 (2015). “A drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *See Rymer*, No.

2017-0010, 2018 V.I. Supreme LEXIS 1, at *5 (citations omitted). *See also Martin*, 54 V.I. at 386.

DISCUSSION

Daximus asserts that the Court should enter judgment as a matter of law for the full amount due under the Note including interest. Mot. at 3. Daximus also moves for attorney's fees. *Id.* As previously mentioned, Rollins did not oppose the motion to summary judgment.

Upon careful review of the record, the evidence reflects that Daximus has met its burden of showing that there is no genuine issue as to any material fact concerning its debt claim against Rollins. Daximus submitted a copy of the Note signed by Rollins and executed on September 4, 2006. Mot., Ex. 1, Note dated September 6, 2004. The Note states, in pertinent part, that

“(the Undersigned”) promis[ed] to pay to the order of Daximus Enterprises, LLC the principal sum of \$25,000, with interest at the rate of 12.5% per year from the date of this note payable quarterly commencing October 1, 2005, with the principal sum and all accrued interest due and payable in full on October 1, 2006.

According to an affidavit submitted by Frank Chukes (hereinafter “Chukes”), President of Daximus Enterprises, LLC, he “made a loan to Veronica Rollins of \$25,000 on September 6, 2004”; and “[i]n exchange, she provided me with a Promissory Note.” Mot., Ex. 2, Aff. of Frank Chukes at 2.” “No payments of principal or interest have ever been made by Veronica Rollins” and “the principal balance of \$25,000 is wholly unpaid.” Mot., Ex. 2, Aff. of Frank Chukes at 3-4.

However, despite Chukes' averments in his affidavit that the \$25,000 balance remains wholly unpaid, Daximus alleged in its Complaint that Rollins may have made a payment of “\$400, more or less.” Compl. ¶7. “Viewing the inferences to be drawn from the underlying facts in the light most favorable to” Rollins, this allegation indicates that Rollins may have made some

payments towards the principal on the Note. *See Anthony v. FirstBank V.I.*, 58 V.I. 224, 234 (2013). Ultimately, this fact is immaterial to the determination of whether to grant summary judgment because a single *de minimis* payment has no bearing on whether Rollins defaulted on the Note.

The record and the facts indicate that Rollins has not satisfied her obligations under the Note. Besides the single allegation that Rollins made a \$400 payment, there is no record that she satisfied her obligations under the Note. Under the terms of the Note, Daximus has the right to demand payment of “the unpaid principal and late charges, all costs and expenses of such action [for the enforcement of collection of the monies due on the Note], and attorney’s fees.” Mot., Ex. 1, Note dated September 6, 2004. Based on the pleadings, facts, affidavits, and materials in the record, there is no genuine issue as to any material fact regarding Daximus’ debt claim against Rollins. Ergo, judgment as a matter of law shall be entered in favor of Daximus.

Although Daximus has provided the necessary evidence to establish that Rollins defaulted on the Note, the amount Rollins owes is uncertain. As mentioned above, Daximus indicated that Rollins made a payment of “\$400, more or less” towards the Note. Compl. ¶7. But there is no evidence or supporting documentation memorializing that the \$400 payment was deducted from the remaining balance on the Note. Although the claim is for a sum certain, for the court to enter a judgment, Daximus must submit the most recent documentation verifying the current amounts owed, reduced by any payments, and a detailed tabulation of attorney’s fees and costs. *See V.I. R. Civ. P. 55(b)(1). See also 5 V.I.C. §541.*

CONCLUSION

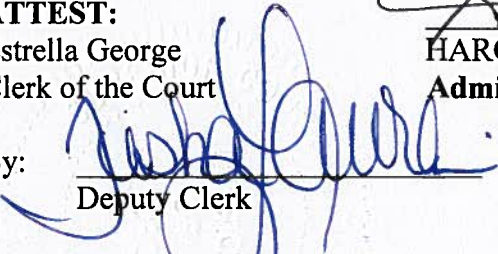
Based on the foregoing analysis, summary judgment shall be granted. Daximus is entitled to judgment as a matter of law against Rollins. Rollins is liable to Daximus for the remaining

balance due on the Note. A judgment by default will be entered after Daximus submits documentation verifying the current amount owed, reduced by remitted payments, and a detailed tabulation of attorney's fees and costs. An Order consistent with this Memorandum Opinion follows.

DATED this 2nd day of May, 2018.

ATTEST:
Estrella George
Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Deputy Clerk

Dated: 5.4.18