

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

**DEAN SANDERSON, DIANNE
SANDERSON AND JULIUS
SANDERSON**

Plaintiff,

v.

LEONA RICHARDSON,

Defendant.

) **CASE NO. SX-11-CV-111**

) **ACTION FOR FORCIBLE ENTRY AND
DETAINER**

ORDER

THIS MATTER is before the Court on Defendant's Petition for Writ of Review of Magistrate's May 17, 2011 decision and Defendant's motions for; 1) Temporary Restraining Order and Preliminary Injunction (filed Sept. 19, 2011); 2) Expedited Motion to Stay Magistrate's Amended Order of Restitution Pending Appeal (filed Sept. 12, 2011); and 3) Motion to Transfer File Out of Magistrate Division.

Plaintiffs commenced this action for forcible entry and detainer (FED) on March 7, 2011. Plaintiffs are the owners of Plot 243 Estate Enfield Green located in Frederiksted, St. Croix Virgin Islands. (Pl.'s Compl. ¶ 1). They claim that Defendant wrongfully occupies the subject property. *Id.* at 4. Plaintiffs asked the Court for a judgment against the Defendant for restitution of the subject property. *Id.* at ¶ 9.

A hearing before a Magistrate of this Court was held in this matter on April 14, 2011. During the hearing, Defendant asserted that the Magistrate did not have jurisdiction over this matter. (Mag., R. Proceedings, held April 14, 2011.) Defendant then made an oral motion that the case be dismissed and transferred to this Court's civil division. *Id.* Following the hearing, the Magistrate ordered Parties to file briefs regarding the Court's jurisdiction in this matter. (Mag. Order, entered April 18, 2011.) Both Parties filed briefs. After review, the Magistrate issued an order denying Defendant's Motion to Dismiss for lack of Jurisdiction and granting Plaintiff's request for a Writ of Restitution (Writ)¹. (Mag. Order, entered May 10, 2011.) (Mag. Amend. Order, entered May 17, 2011.) The Court also determined that Defendant should be given a reasonable

¹ The Magistrate's original order granting the Writ of Restitution incorrectly identified the subject property. (Order entered May 10, 2011.) Pursuant to this, an order was entered by the Magistrate on May 17, 2011 amending the mistake. (Order entered May 17, 2011.)

period of time to vacate the property. *Id.* Pursuant to this determination, the order stayed the writ for a period of ninety days. *Id.*

Defendant promptly filed a Petition for Writ of Review of the Magistrate's May 17, 2011 decision. (Def.'s Pet. Review, entered May 23, 2011.) Accordingly, the Clerk of Court issued letters to all Parties, explaining associated court fees, transcript request procedures and providing a briefing schedule to Parties. Defendant then filed a Motion to Stay Order of Restitution Pending Appeal of the Magistrate's May 17, 2011 Order. (Def.'s Mot. Stay., filed July 15, 2011.) Plaintiffs asked the Court for more time to respond to Defendant's motion to stay. (Pl.'s Mot. Ext., filed July 28, 2011.) On August 3, 2011, Plaintiffs filed their Opposition to Defendant's Motion to Stay. (Pl.'s Opp. to Def.'s Mot. to Stay.) Defendant filed a Reply on August 15, 2011. (Def.'s Reply to Pl.'s Opp. Stay.) On September 2, 2011 the Magistrate issued an order denying Defendant's Motion for Stay Pending Appeal. (Mag. Order). Once again Defendant appealed. This time appealing the Magistrate's order denying her Motion to Stay Order of Restitution Pending Appeal of the Magistrate's May 17, 2011 Order. (Def.'s Exp. Mot. to Stay Mag. Amend. Order of Restitution Appeal, filed Sept. 12, 2011.) On September 19, 2011 Defendant filed a Motion for Temporary Restraining Order and Preliminary Injunction to prevent the issuance of a Writ of Restitution.

STANDARD OF REVIEW

Pursuant to Section 123(a)(6) of Title 4 of the Virgin Islands Code, Magistrates of this Court may hear forcible entry and detainer actions. 4 V.I.C. § 123(a)(6)(Supp. 2011)). If the magistrate issues a judgment or order in a FED action, a party to that action may file a petition to review the decision. (*In Re: Order Amending the Rules Governing Review of Magistrate's Decisions*, SX-10-MC-30, entered Nov. 23, 2010.) *See also* Super. Ct. R. 322.1. Judgments and orders of the magistrate in an FED action are reviewable by judges of this Court. *Id.* Magistrate decisions are reviewed under two standards. *Id.* at Super. Ct. R. 322.3(b). A magistrate's finding of facts are to be reviewed for clear error. *Id.* Legal findings, statements of law and the application thereof, are given plenary review. *Id.*

DEFENDANT'S PETITION FOR REVIEW

On appeal, the issue before the Court for resolution is whether the Magistrate erred by issuing a writ in this matter. In a FED action, "when forcible entry is made upon any premises, or when an entry is made by peaceable manner and the possession is held by force, the person entitled to the premises may maintain an action to recover the possession thereof." Section 782 of Title 28

of the Virgin Islands Code. Since FED is a summary action, upon a determination that the landlord is entitled to possession, the only remedy is the issuance of a writ of restitution to the rightful possessor. See *Four Winds Plaza Corp. v. Celestino White*, D.C. Civil App. No. 2005-203, 2008 U.S. Dist. LEXIS 61484 * 4, 50 V.I. 520 (D.V.I. Aug. 5, 2008). See also Section 787 of Title 28 of the Virgin Islands Code. In exchange for revoking the right to repossession by force, the forcible entry and detainer statute provides a simple summary proceeding, thus the issues which may be determined in an FED action are very narrow. *Four Winds Plaza Corp., v. Celestino White*, 2008 U.S. Dist. LEXIS 61485 at * 4. FED actions are confined to issues of peaceable possession. *Inter Car Corp., v. Discount Car Rental*, Civ. No. 191-1984, 22 V.I. 157, 159 (Terr. Ct. 1984). A court may not reach issues dealing with the adjudication of title or the right of possession or the right of possession based on an equitable interest in the property. *Inter Car Corp. v. Discount Car Rental*, 22 VI at 158. Once a determination is made that that title or lease is in a question, a court must dismiss the FED proceeding. *Id.*

Jerome Sanderson, now deceased, is the original owner of the property at issue in this matter. Defendant and Sanderson had an intimate relationship for thirteen years, until his death in November 2010. Defendant claims that in or about 1997, she and Sanderson agreed to construct a residence on the subject property; and that they agreed to share the expenses related to constructing the home. Over the past thirteen years, Defendant claims she made significant financial contributions to both the construction and upkeep of the property. Defendant argues that this entitles her to an equitable interest in the property at issue in this matter. Finally, Defendant asserts that the Magistrate disregarded the existence of a colorable claim of title raised by her and that under the law, this matter should have been dismissed. Plaintiffs contend that even if Defendant has an equitable interest in the property this does not give rise to title in this matter or throw title into question.².

In *Inter Car Corp., v. Discount Car Rental*, this Court found that in FED summary proceedings, when a tenant holds possession by force, relief is available only if “is an undisputed oral or written lease agreement, and rent is due and owing thereon; or [t]here is an undisputed oral or written lease which has expired.” 22 V.I. at 159. See also *C.M.L. Inc., v. Dunagan*, Civ. No. 89-3831, 904 F. 2d

² On September 30, 1999 in a Deed of Gift, Jerome Sanderson deeded the property to Plaintiffs². He retained only a life interest. During the hearing held on April 14, 2011, Ms. Althea Pedro, a representative of the Office of Recorder of Deeds testified that Plaintiffs were the record title owners of the subject property.

189, 191 (3d Cir. 1990). Defendant argues that under *Inter Car Corp.*, because she never entered an oral or written lease with Sanderson or Plaintiffs and never paid rent on the property, Plaintiffs are not entitled to relief in this matter. (Def.'s Pet. ¶ 7.) But this argument is disingenuous. *Inter Car Corp.*, also establishes that a person is considered to be holding by force "... when after notice to quit as provided in this Chapter [Section 789 of Title 20 of the Virgin Islands Code], any person continues in possession of any premises at the expiration of the lease or agreement under which he holds ... " 21 V.I. at 159. Defendant concedes that she received the Notice to Quit from Plaintiffs, the owners of the subject property. The Notice to Quit informed Defendant that she was considered a tenant by sufferance and that the applicable rent on the property was \$2,000.00 a month. Defendant admits she had paid no rent to Plaintiffs. (Def.'s Opp. Pl.'s Memo. Jur. Sup. Ct., filed May 10, 2011.)

Defendant's second argument holds more weight. She asserts that a FED action must fail where title to the premises is in question or where it is proved to the Court that there exist a bona fide question of the existence of a lease at law or in equity. (*emphasis added*) *Intercar Corp., v. Discount Car Rental*, 22 VI at 159. Defendant argues that the Magistrate failed to consider evidence proving that she had a colorable claim of title to the property at issue. Defendant hangs her argument on the second factor, claiming that that there was sufficient evidence, that if properly considered by the Magistrate, would have divested the Magistrate of jurisdiction in this matter. (Def.'s Pet ¶ 5.) Defendant's support for this assertion is based on receipts allegedly submitted to the Court evidencing Defendant's contribution to the purchase and upkeep of the subject property and Defendant's civil actions currently pending before this Court. *Richardson v. Sanderson* (SX-10-CV-184) and *Richardson v. Sanderson* (SX-10-CV-185.))

The problem with Defendant's argument lies in the very support it rests on. Defendant alleges that the Magistrate did not review the receipts submitted in this matter before issuing the writ. In the Amended Order of Restitution entered on May 17, 2011 the magistrate refutes Defendant's allegation; noting that Defendant never submitted receipts to the Court. Upon review of both the hearing in this matter and the evidence submitted prior to Defendant's Petition for Review, the Court cannot find any evidence of submission of receipts by Defendant. Defendant's receipts do not seem to make an appearance until they were attached to her Petition for Review. (Def.'s Pet. Review filed May 23, 2011.) If evidence is not submitted to the Court, the Magistrate cannot consider it and the "jurisdiction of a forcible entry and detainer proceeding is not ousted by

a mere averment in a defendant's pleading; the Court is duty-bound to proceed with the evidence until it appears that issue as alleged by defendant do in fact exist. *Inter Car Corp., v. Discount Car Rental*, 21 V.I. at 159, *See also* 28 V.I.C. 781-789. The Court notes that receipts were submitted in in the above-referenced civil actions. But even if the Magistrate had accepted the receipts filed in Defendant's pending civil actions as part of the evidence in this matter, this would not have given Defendant a colorable claim to title. Neither of Defendant's pending civil actions or the receipts submitted support Defendant's claim that she has even a potential right to title in this matter. In *Richardson v. Sanderson*, SX-10-CV-184, Defendant claims breach of contract and requests a pre-judgment lien for a taxi van she purchased for Sanderson prior to his death. (Pl.'s Compl. filed April 22, 2010.) In *Richardson v. Sanderson*, SX-10-CV-185, Defendant asks for equitable reimbursement and monetary damages for contributions to the purchase and upkeep of the subject property. (Pl's Compl. filed April 22, 2010.) But as Plaintiffs correctly point out, "[t]he simple claim of an equitable lien does not give rise to title nor does it throw title into question." (Pl.'s Memo. Jurisdiction filed April 20, 2011.) This is established property law. *American Jurisprudence Proof of Facts: Proving the Property and Other Rights of Cohabitants and Domestic Partners* gives a succinct summarization of the remedies available to Defendant

When a relation of confidence has been abused, and the person has never had title to the property, but has expended money for improvement of the property on the basis of an oral promise to convey, and the money expended does not constitute the entire consideration for the purchase of the interest claimed, the person expending the money has been held to be entitled to, not a conveyance of the property, but only to an equitable lien on the property for the amount expended.

(emphasis added) 95 Am. Jur. 3d 1: *Proving the Property and Other Rights of Cohabitants and Domestic Partners* § 10 (2007)). Defendant's claim that the above – referenced civil actions give rise to a claim on the subject property is not supported by either the record herein or property law. It was not clear error for the Magistrate to determine that the facts before the Court did not give evidence that Defendant had a colorable claim to title of the subject property.

CONCLUSION

The Court understands that Defendant has lived on the subject property for thirteen years. But Defendant has had ample opportunity to find an alternative living arrangement. Further, it would be manifestly unfair to deny Plaintiffs their rights under the law. Based on the Court's exhaustive review of the record herein, the Court concludes that the facts found by the Magistrate

are supported by the record and not clearly erroneous. Further, the Court finds that under the applicable law, the Magistrate reached the correct conclusion in this matter. Accordingly, under separate order of even date, Defendant's Petition for Writ of Review will be granted and the Order of the Magistrate granting Plaintiff's request for Writ of Restitution affirmed.

ORDER

The Court, having rendered a Memorandum Opinion this date, and in accordance with that Opinion, it is hereby

ORDERED that the Petition for Writ of Review is hereby **GRANTED**. It is further

ORDERED that Defendant's Motion for Temporary Restraining Order and Preliminary Injunction is **DENIED** as **MOOT**. It is further

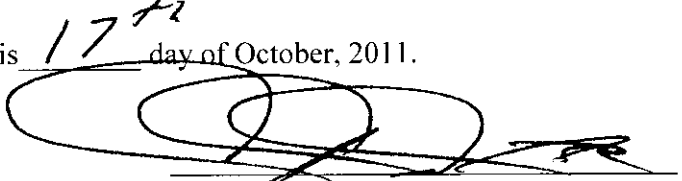
ORDERED that Defendant's Motion Expedited Motion to Stay Magistrate's Amended Order of Restitution Pending Appeal is **DENIED** as **MOOT**. Further it is

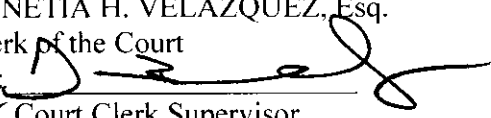
ORDERED that Defendant's Motion to Transfer File Out of Magistrate Division is **DENIED** as **MOOT**. Further it is

ORDERED that the Amended Order of the Magistrate, entered May 17, 2011, is hereby **AFFIRMED**. Finally it is

ORDERED that the final judgment against Defendant in favor of Plaintiffs is hereby entered and Respondent's request for a **WRIT OF RESTITUTION** is **GRANTED**.

DONE AND SO ORDERED this 17th day of October, 2011.


DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior Court

ATTEST:
VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court
By: 
Court Clerk Supervisor
Dated: 10/17/11