

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

CHESTER HODGE,

Petitioner,

v.

SYLVIA ROBERTS,

Respondent.

CASE NO. ST-2019-RV-001

CASE NO. ST-2018-SM-277

Cite as 2019 V.I. Super 84 U

Carty, Renée Gumbs, Judge

MEMORANDUM OPINION

¶ 1. Pending before the Court is Petitioner Chester Hodge’s (“Hodge” or “Petitioner”) appeal of a judgment issued by Magistrate Judge Henry V. Carr, III on February 22, 2019. On April 2, 2019, Hodge filed a notice of appeal to this Court to review the Magistrate Judge’s decision. For the following reasons, the Magistrate Judge’s judgment will be affirmed.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2. Hodge has been a licensed contractor in the Virgin Islands since 1981.¹ Respondent Sylvia Roberts (“Roberts” or “Defendant”) owns the property situated at 148-175 Anna’s Retreat on St. Thomas, Virgin Islands, which was damaged by the hurricane(s) during the 2017 hurricane season.² Both individuals have known each other since 1969.³ In July 2018, Hodge and Roberts communicated by phone about obtaining an estimate for the construction work to be done at Roberts’ premises.⁴ Subsequently, they met at her home where they spoke about the settlement she made with

¹ Hodge’s Testimony Trial Tr. 4: lines 4-8; Hodge’s license was valid from November 1, 2017 to October 31, 2018. Plaintiff’s Exhibit 3.

² Roberts’ Testimony Trial Tr. 35: lines 18-24.

³ Hodge’s Testimony Trial Tr. 17: lines 4-5.

⁴ *Id.* at 5: lines 4-8.

her insurance company Real Legacy, which amounted to \$35,006.18.⁵

¶ 3. Hodge examined the damages of the house to see how much it would cost based on L.E.B.G. Enterprises, LLC's (Lincoln O. Gumbs) estimate of \$111,660.00 and determined that the proceeds she initially received were not commensurate with the money necessary to make the repairs.⁶ Respondent consulted with her insurance company and increased her settlement to \$100,000.00, which she summarily told Petitioner.⁷ Hodge contends that his suggestion to Roberts that she was shortchanged by her insurance company prompted her to speak to her insurance company and increase the settlement.⁸ Roberts denies that and claims that she discovered that fact on her own and had her insurance company adjust the claim accordingly.⁹ In fact, her insurance adjuster Curt Danielsen went back to inspect the house after Roberts provided him with the estimate from Mr. Gumbs.¹⁰

¶ 4. In order to procure the settlement money from the bank, Roberts needed to produce the contractor's estimate, business license, and copy of contractor's liability insurance.¹¹ However, after inspecting the premises, Hodge concluded that Gumbs' estimate was unreliable because he believed it was out of proportion and was missing some items.¹² Consequently, he prepared his own estimate which he calculated as \$87,750.00.¹³

¶ 5. Although Hodge contends that Roberts orally agreed to have him work on the house, neither Roberts nor Hodge reached a written agreement about retaining Hodge's services to repair the

⁵ The settlement was made on May 15, 2018. (Government's) Plaintiff's Exhibit 1A.

⁶ Hodge's Testimony Trial Tr. 9: lines 15-17.

⁷ The maximum amount Roberts could have obtained from her insurance company from the damages was \$100,000.00. Defendant's Exhibit 3.

⁸ Hodge's Testimony Trial Tr. 9: lines 21-25; 10: lines 1-3.

⁹ Roberts' Testimony Trial Tr. 55: lines 2-7; Defendant's Exhibit 3.

¹⁰ Roberts' Testimony 53: lines 14-21; Defendant's Exhibit 3.

¹¹ Hodge's Testimony Trial Tr. 11: lines 8-9; copy of Contractor's liability insurance. Plaintiff's Exhibit 4.

¹² *Id.* lines 17-23.

¹³ Plaintiff's Exhibit 2.

hurricane damages to her residence for the sum of \$87,750.00.¹⁴ Ultimately, Roberts opted to not have Hodge work on the house. Instead, she hired Franklin Weeks and another person to do the work.¹⁵ Hodge learned of this three weeks after the fact.¹⁶ Subsequently, Hodge sent her a bill for a total of \$5,793.00 on November 6, 2018.¹⁷ The payment breakdown is provided as follows: 29 sheets of Styrofoam insulation for \$643.80, delivery charges for \$150.00, and professional service charge for \$5,000.00.¹⁸

¶ 6. Hodge testified that his rate ranges between \$75-250 per hour.¹⁹ The \$5,000 for his professional services emanates from 25 hours of work at \$200 per hour.²⁰ However, the document that breaks down the hours he spent working on the project amounted to 24.5 hours.²¹ Respondent claims that the 25 hours derived from the time he spent surveying the house and cost estimation of the materials. Subsequently, nine days after Hodge submitted the bill to Roberts, Hodge texted her to “please respond.”²² Roberts responded that she wanted to receive a breakdown of the professional services, which Hodge replied that the documents he submitted showed what the professional services entailed.²³ Hodge admitted through testimony that he never discussed his rate with Roberts before submitting the bill to her,²⁴ neither did he provide any contemporaneous recordings of the time that he spent working on each item.²⁵

¶ 7. The Court concluded that \$200 an hour was unreasonably high for the work that he did on the

¹⁴ Hodge’s Testimony Trial Tr. 16: lines 2-4.

¹⁵ Roberts’ Testimony Trial Tr. 3: lines 6-9; Hodge’s Testimony Trial Tr. 14: lines 14-21.

¹⁶ Hodge’s Testimony, Trial Tr. 17: lines 17-23.

¹⁷ Plaintiff’s Exhibit 5.

¹⁸ *Id.*

¹⁹ Hodge’s Testimony Trial Tr. 4: lines 11-13.

²⁰ *Id.* 21: line 21-24.

²¹ A document he prepared and submitted to Magistrate Judge Carr’s law clerk on May 7, 2019. Plaintiff’s Exhibit 6.

²² Defendant’s Exhibit 2A.

²³ *Id.*

²⁴ Hodge’s Testimony Trial Tr. 22: lines 19-22.

²⁵ *Id.* at 25: lines 1-8.

project and therefore reduced the amount to \$75 an hour for 15 hours. The Court also added the charges for the delivery and the 29 sheets of Styrofoam insulation. In total the Court awarded the Petitioner the sum of \$1,919.80, plus \$100 for court costs and 4 percent in post-judgment interest per annum.

II. LEGAL DISCUSSION

¶ 8. The Appellate Division of the Superior Court “has jurisdiction to review judgments and orders issued by a Magistrate Judge, as a result of the Magistrate [Judge]...exercising [his or her] original jurisdiction as provided for at 4 V.I.C. § 123(a).”²⁶ Under Rule 322.3(b) of the Virgin Islands Superior Court, the Appellate Division reviews a Magistrate Judge’s factual determinations for “clear error” and legal findings are “afforded plenary review.”²⁷ In order to meaningfully review the factual determinations and legal findings of the Magistrate Court, the Appellate Court must have sufficient findings and conclusions to review.²⁸ An appellate court ought not to “substitute [its] credibility determinations for those of [the trial court].”²⁹

¶ 9. Under Rule 322.3(c) of the Superior Court, trial judges are generally discouraged from conducting hearings upon reviewing magistrate judge’s orders or decisions. However, trial judges may conduct a hearing when the case presents a novel issue and the outcome will have significant precedential value, requires clarification of the issues or facts given the state of the case record, or relies on subsequent judicial decision or a change in the law.³⁰

²⁶ *Payne v. Lehtonen*, 55 V.I. 286, 289 (V.I. Sup. Ct. 2011); Super Ct. R. 322.1(a).

²⁷ Super. Ct. R. 322.3(b). “Plenary review means applying the same legal standard as the trial court to the same record.” *Henry v. Dennery*, 55 V.I. 986, 991 (V.I. 2011); *see also Hodge v. McGowan*, 52 V.I. 294, 304 (V.I. 2009) (defining clear error as a determination that is “completely devoid of minimum evidentiary support” or that it bears no rational relationship to the supportive evidentiary data).

²⁸ *People v. Reyes*, 68 V.I. 432, 441 (V.I. Super. Ct. 2018).

²⁹ *See Nanton v. People of the Virgin Islands*, 52 V.I. 466, 486 (V.I. 2009) (citing *United States v. Dillon*, 532 F.3d 379, 385 (5th Cir. 2008)).

³⁰ Super. Ct. R. 322.3(c).

A. Petitioner's *Quantum Meruit* Claim

¶ 10. Where no contract exists, the court will construe an implied-in-law contract under the *quantum meruit* theory to award the aggrieved party for the services he provided.³¹ A cause of action for *quantum meruit* is established when a benefit is conferred upon the defendant by the plaintiff, an appreciation or knowledge by the defendant of the benefit, and the acceptance of the benefit would make it inequitable for the defendant to retain it.³² Once the plaintiff establishes damages, he must demonstrate the reasonable value of the services he provided.³³

¶ 11. In this matter *sub judice*, neither party disputes that Petitioner conferred a benefit upon the Respondent. Hodge expended an unknown number of hours estimating the costs for the repairs to Roberts' house. Additionally, Hodge has provided a copy of his statement regarding the purchase of the Styrofoam insulation for \$643.00 and delivering the materials for \$150.00. The Magistrate Judge made such determinations in his order.

¶ 12. The issue is whether Hodge's \$5,000 charge was a fair and reasonable value for the services he provided. Petitioner challenges the Magistrate Judge's judgment on his breach of contract claim, asserting that Respondent owes him \$5,000 for the professional services he provided. Hodge argues that the Magistrate Judge failed to consider the entirety of the work entailed in his services. The Magistrate Judge reasoned that the \$200 per hour rate for 25 hours was unjustifiable for the type of services he provided and therefore reduced the \$5,000 claim to \$1,125. At no point did Hodge present uncontroverted evidence to reflect 25 hours of professional services work. Further, \$200 per hour was highly unreasonable and he did not itemize the professional services until the morning of the court hearing. Furthermore, Hodge admitted that he never discussed his rates with Roberts prior to charging her.

³¹ See *University of Virgin Islands v. Peterson-Springer*, 232 F. Supp. 2d 462, 471 (D.V.I. 2002).

³² *Walters v. Walters*, 60 V.I. 768, 776 (V.I. 2014).

³³ See *Leslie v. Quest Diagnostics, Inc.*, 2018 WL 1535235, at *7 (D.N.J. 2018).

¶ 13. The Magistrate Judge concluded that he could not reasonably award the Petitioner his desired charge given the lack of a written agreement, correspondence, or any evidence besides Hodge's bare testimony. Even with the handwritten cost breakdown that the Petitioner provided to aid the Magistrate Judge, it provided no mechanism as to how the Petitioner arrived at \$5,000.00.

¶ 14. This Court cannot conclude that the Magistrate Judge rendered a judgment in clear error. Although the Petitioner could not show breach of contract, he was entitled to some damages under the *quantum meruit* theory since the Petitioner conferred some benefit to the Respondent. However, the Petitioner has provided absolutely no evidence on the record that would justify 25 hours of work demonstrating Hodge's professional services in the amount of \$5,000. More specifically, a review of Petitioner's construction estimate leaves much to be desired, as it provides absolutely no itemized breakdown of labor, materials, overhead costs, or any other costs. Accordingly, this Court determines that the Magistrate Judge had a sufficient basis for its findings.

III. CONCLUSION

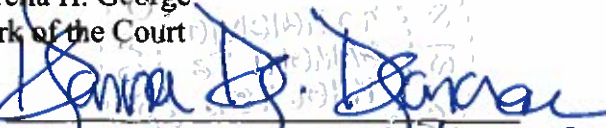
¶ 15. Based on the foregoing reasons, this Court affirms the Magistrate Judge's ruling. The Respondent shall pay \$1,919.80 in damages and \$100 in court costs. Additionally, Respondent shall pay 4% in post-judgment interest per annum from the date of entry of this Order until the judgment is satisfied. Attached is the Order of even date.

Dated: June 13, 2019

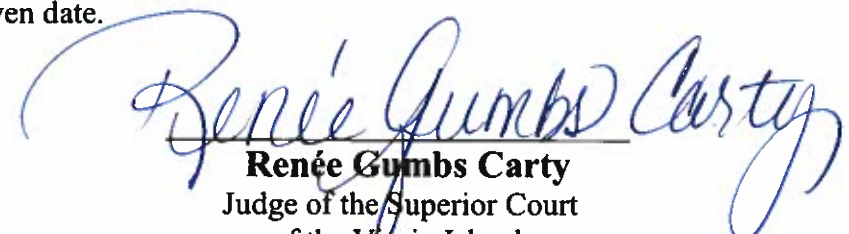
ATTEST:

Estrella H. George
Clerk of the Court

By:


Donna D. Donovan
Court Clerk Supervisor

6/14/2019


Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

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ORDER

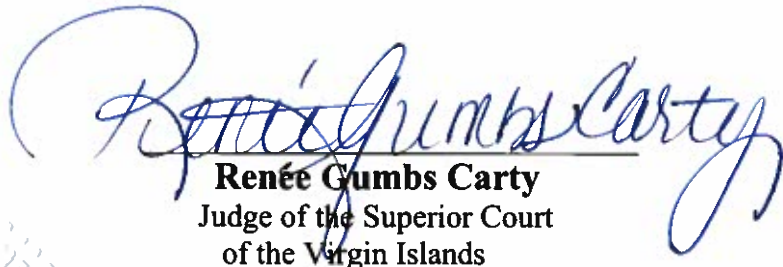
THIS MATTER is before the Court on Petitioner's Notice of Appeal of the Magistrate Judge's judgment filed on April 2, 2019. On February 22, 2019, the Magistrate Division of the Superior Court ("Magistrate") entered Judgment in favor of the Petitioner in the amount of \$1,919.80, plus \$100 in court costs and 4% in post-judgment interest per annum. The Court being satisfied in its premises, it is hereby

ORDERED that the Magistrate Judge's judgment is **AFFIRMED**; and it is further

ORDERED that post-judgment interest of 4% shall accrue as of the date of entry of this Order until judgment is satisfied; and it is further

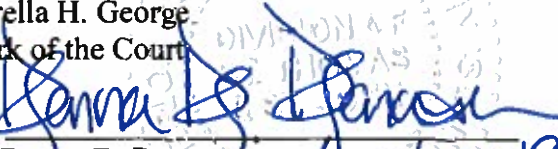
ORDERED that a copy of this Order shall be served upon Chester Hodge at 320 Hospital Ground, St. Thomas, VI 00802 and Sylvia Roberts at 148-175 Estate Anna's Retreat, St. Thomas, VI 00802.

Date: June 13, 2019


Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

ATTEST:

Estrella H. George
Clerk of the Court

By: 

Donna D. Donovan
Court Clerk Supervisor

6/14/2019