

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

\*\*\*\*\*

FORTUNA BUILDING CORP., by RONALD  
MARTIN of RELIABLE REALTY,

Plaintiff,

v.

JAMES D. MOODY,

Defendant.

CIVIL NO. ST-15-CV-140

ACTION FOR FORCIBLE ENTRY  
AND DETAINER

PATRICIA O'NEAL, by Power of Attorney for  
VIRGIN ISLANDS COMMUNITY  
HOUSING, LP,

Plaintiff,

v.

BERNARD CANNONIER,

Defendant.

CIVIL NO. ST-15-CV-212

ACTION FOR FORCIBLE ENTRY  
AND DETAINER

ROXANN MCMAHON, Agent for FOUR  
WINDS INVESTMENT, INC.,

Plaintiff,

v.

CARMEN HODGE and WAYNE DAWSON,

Defendants.

CIVIL NO. ST-15-CV-227

ACTION FOR FORCIBLE ENTRY  
AND DETAINER

**Fortuna Building Corp. v. James D. Moody**  
**Civil No. ST-15-CV-140**  
**Patricia O'Neal v. Bernard Cannonier**  
**Civil No. ST-15-CV-212**  
**Roxann McMahon v. Carmen Hodge and Wayne Dawson**  
**Civil No. ST-15-CV-227**  
**Memorandum Opinion**

**RONALD MARTIN**  
P.O. Box 10360  
St. Thomas, VI 00801

**PATRECIA O'NEAL**  
1100 Patriot Manor  
St. Thomas, VI 00802

**ROXANN MCMAHON**  
19-2-163 Smith Bay  
St. Thomas, VI 00802

**JAMES MOODY**  
8168 Crown Bay Marina, #310157  
St. Thomas, VI 00802

**BERNARD CANNONIER**  
1110 Patriot Manor  
St. Thomas, VI 00802

**CARMEN HODGE**  
**WAYNE DAWSON**  
17A & 17B Hospital Line  
St. Thomas, VI 00802

**CHRISTIAN, ADAM G., Judge**

---

---

**MEMORANDUM OPINION**

(Filed: June 28, 2015)

The above-captioned actions for forcible entry and detainer came on for separate trials on Friday, June 12, 2015, before the undersigned judicial officer.<sup>1</sup> Because the three matters presented the same legal deficiency, the Court called the three cases together. In view of the apparent confusion the Court's decisions caused among the persons attending these hearings, the Court further explains its reasons for dismissing these actions without prejudice.

**I. FACTUAL AND PROCEDURAL BACKGROUND.**

Case No. ST-15-CV-140 was filed on April 1, 2015, with a caption stating that the action is being brought by "Fortuna Building Corp., by Ronald Martin of Reliable Realty." Paragraph 3 of the complaint avers that "Plaintiff is the resident agent and manager for landlord Fortuna Building Corp." However, in the signature space, the complaint is executed by "Ronald Martin Pro se". On April 17, 2015, the matter came on for a trial, at which Ronald Martin of Reliable Realty appeared "*pro se*" on behalf of Fortuna Building Corp. Although the record reflected that he had been properly served, Defendant James D. Moody did not appear. Hence, the Court proceeded to try the case via the default procedure. Based upon the evidence presented, the Court found in favor of Plaintiff and awarded it restitution of the subject premises. The written Default Judgment is dated May 13, 2015.

---

<sup>1</sup> Although the undersigned is a Superior Court judge, when hearing a forcible entry and detainer action, I sit as a magistrate, and the procedures applicable to the Magistrate Division govern. See, *Brown v. Brown*, 59 V.I. 583, 587-89 (V.I. 2013).

**Fortuna Building Corp. v. James D. Moody**  
**Civil No. ST-15-CV-140**  
**Patricia O'Neal v. Bernard Cannonier**  
**Civil No. ST-15-CV-212**  
**Roxann McMahon v. Carmen Hodge and Wayne Dawson**  
**Civil No. ST-15-CV-227**  
**Memorandum Opinion**

However, on April 15, 2015, Defendant Moody filed "Defendant (sic) Petition for Extension of Time and Moves for Default Judgment Against Plaintiff for Re-Schedule of Restitution Hearing" ("Defendant Moody's Motion for Continuance") which, construing this submission liberally, sought a continuance of the trial and affirmative relief against Plaintiff. Upon being apprised of Defendant Moody's requests, the Court vacated the default judgment pursuant to Rule 50 of the Superior Court Rules, and set the matter for a new trial on June 12, 2015. On June 11, 2015, Defendant Moody filed what the Court designates "Defendant Moody's Counterclaim"<sup>2</sup> seeking affirmative relief against Plaintiff for "restitution and compensation." At the June 12, 2015, trial hearing both Ronald Martin and James D. Moody personally appeared.

In Case No. ST-15-CV-212, the complaint was filed on May 18, 2015. The caption indicates that it is brought by "Patrecia O'Neal By Power of Attorney for Virgin Islands Community Housing, LP." The first sentence of the pleading's body denotes she is proceeding "*pro se*." And, in the signature space of the pleading, it is executed by "Patrecia O'Neal for VI Community Housing, LP." Appended to the complaint is an "Authorization and Consent" indicating that Virgin Islands Community Housing LP is a limited partnership with its managing member being WBP-VI, Inc., a U.S. Virgin Islands corporation. The Authorization and Consent purportedly authorizes Patrecia O'Neal to represent it in eviction proceedings among other things. Defendant Bernard Cannonier did not file an answer to or move against the complaint. Although it appears that Defendant Cannonier was personally served with the summons and complaint on May 20, 2015, he did not appear for the June 12, 2015 trial hearing.

In Case No. ST-15-CV-227, the complaint was filed on May 22, 2015. The caption provides that the case is brought by "Roxann McMahon, Agent for Four Winds Investment, Inc." The signature section of the complaint reflects the same information. Defendants Carmen Hodge and Wayne Dawson did not file a written answer or motion in this matter, but both personally appeared at the June 12, 2015 trial.

The Court called all three cases together and Ronald Martin, Patrecia O'Neal, and Roxann McMahon were all placed under oath. The Court asked each person whether they were licensed attorneys, to which they each responded "no." The Court then dismissed the cases without prejudice, stating its reasons on the record. Ronald Martin noted that, acting in the same capacity, he was able to obtain the May 13, 2015 default judgment in Case No. ST-15-CV-140. He also expressed concern and disagreement with the Court's decision. Both Patrecia O'Neal and Roxann McMahon appeared uncertain about the basis for the Court's ruling, despite the reasons placed on the record. Notwithstanding the misgivings of these individuals, the Court maintains that they do not have the legal authority to represent the respective companies in these forcible entry and detainer actions.

---

<sup>2</sup> The full title of Defendant Moody's Counterclaim, as written, is "Defendant Amend to Complaint for Claim of Restitution for Breach of Action for Forcible Entry, Breach of Detainer, Malicious Procurement of Warrant and Moves for Inadvertent Breach of Adjudged Decree of Court Order by Plaintiff Against Defendant for Disposal of Property Stolen Pursuant to Chp. 337 of the Virgin Islands Code."

## II. LEGAL DISCUSSION.

The first basis for the Court's decision to dismiss these cases is founded upon the principle that only attorneys-at-law who are licensed by the Supreme Court of the Virgin Islands ("Supreme Court")<sup>3</sup> and in good standing with the Virgin Islands Bar Association ("VIBA") may represent other persons in our courts of law. This tenet is unambiguously articulated in 4 V.I.C. § 443(a),<sup>4</sup> which provides,

Except as otherwise provided by law or rule of court, and excepting court personnel acting in the performance of their court duties, the unauthorized practice of law shall be deemed to mean the doing of any act by a person who is not a member in good standing of the Virgin Islands Bar Association for another person usually done by attorneys-at-law in the course of their profession, and shall include but not be limited to:

---

the appearance, acting as the attorney-at-law, or representative of another person, firm or corporation, before any court, referee, department, commission, board, judicial person or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation and/or filing of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the same.

The salutary purpose of this statute prohibiting the unauthorized practice of law is to protect the public from the problems which arise when persons untrained in the specifics of the law attempt to vindicate the legal rights of others.<sup>5</sup> Therefore, in civil actions in this Court, including those for forcible entry and detainer, a non-attorney individual may only represent him or herself under Virgin Islands law. The enforcement of this statute rests in the Territory's Judicial Branch, in both the Supreme Court<sup>6</sup> and the Superior Court.<sup>7</sup> In implementing the policies set forth in this law, the Court must give effect to the plain language used by the Legislature.<sup>8</sup>

In these three cases, Plaintiffs are two corporations and one limited partnership,<sup>9</sup> and not the individuals before the Court. These persons, purporting to be the duly authorized

---

<sup>3</sup> "The Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the practice of law." V.I. CODE ANN. tit. 4, § 32(e).

<sup>4</sup> See, *In re Campbell*, 59 V.I. 701, 710 (V.I. 2013) (noting that 4 V.I.C. § 443(a) both describes and prohibits the unauthorized practice of law in the Virgin Islands).

<sup>5</sup> See, e.g., *Dressel v. Ameribank*, 664 N.W.2d 151, 154-55 (Mich. 2003) (en banc); *N.C. State Bar v. Lienguard, Inc.*, No. 11 CVS 7288, 2014 NCBC LEXIS 11 at \*43-44 (N.C. Super. Ct. Apr. 4, 2014).

<sup>6</sup> *In re Motylinski*, 60 V.I. 621, 634 (V.I. 2014).

<sup>7</sup> *In re Campbell*, 59 V.I. at 727.

<sup>8</sup> See, e.g., *Lopez v. People*, 60 V.I. 534, 537-38 (V.I. 2014); *People v. Baxter*, 49 V.I. 384, 388-89 (V.I. 2008).

<sup>9</sup> Although 4 V.I.C. § 443(a) does not specifically refer to limited partnerships, under Virgin Islands law, such entities are considered persons. See, 1 V.I.C. § 41 (defining "person" to include partnerships).

**Fortuna Building Corp. v. James D. Moody**  
**Civil No. ST-15-CV-140**  
**Patricia O'Neal v. Bernard Cannonier**  
**Civil No. ST-15-CV-212**  
**Roxann McMahon v. Carmen Hodge and Wayne Dawson**  
**Civil No. ST-15-CV-227**  
**Memorandum Opinion**

representatives of the corporate landlords, stated under oath on June 12, 2015, that they are not attorneys licensed to practice law in the United States Virgin Islands. Yet, all three persons executed and filed complaints with the Superior Court on behalf of these legally-created entities, and appeared to represent these companies at the scheduled trials. Applying Section 443(a) to the uncontradicted sworn testimony and the record before the Court, clearly, Ronald Martin, Patrecia O'Neal, and Roxann McMahon did not have the legal authority to undertake these actions on behalf of the named businesses.<sup>10</sup>

The second foundation for the Court's decision is a direct offshoot of the plain language of Section 443(a). Specifically, the rule of law is that a business entity must be represented in Virgin Islands courts by a licensed attorney.<sup>11</sup> This precedent also is uniformly established in federal<sup>12</sup> and state<sup>13</sup> jurisdictions throughout the country. Thus, while a corporation may generally authorize its officers, agents, and employees to act on its behalf, it may not designate such persons to represent it in court when they are not licensed attorneys-at-law,<sup>14</sup> even with a power of attorney.<sup>15</sup> ~~In our jurisdiction, the lone exception to this legal caveat is in small claims cases where~~ "...corporate parties, associations and partnerships...may appear by a personal representative."<sup>16</sup> There is no similar exception carved out for forcible entry and detainer actions. Jurisdiction over

---

<sup>10</sup> In a generally disfavored practice, the Court raised these issues *sua sponte* without giving prior notice to Ronald Martin, Patrecia O'Neal, and Roxann McMahon. See, *United Corp. v. Tutu Park, Ltd.*, 55 V.I. 702, 711 (V.I. 2011) (noting that the trial court erred by addressing an issue *sua sponte* on a motion for summary judgment without giving the non-movant notice and an opportunity to be heard). See also, *Street v. Fair*, 918 F.2d 269, 272 (1st Cir. 1990) (*sua sponte* dismissal of complaint without notice to plaintiff was reversible error). However, in this Court, "Individual judges and magistrates are, among other things, expected to...only allow appearances by members of the Virgin Islands Bar Association." *In re Campbell*, 59 V.I. at 727. Given this obligation and the fact that the record is clear the persons at issue are not attorneys and had no legal authority to undertake representation of the companies before this Court, the lack of prior notice is not necessarily improper in this instance. See, *Baker v. Dir., U.S. Parole Comm'n*, 916 F.2d 725, 726-27 (D.C. Cir. 1990) (the *sua sponte* dismissal of a complaint for failure to state a claim without notice to plaintiff was not reversible error where the claim could not be sustained under any circumstance); *Malak v. Associated Physicians, Inc.*, 784 F.2d 277, 280-81 (7th Cir. 1986) ("We have previously held that although a district court certainly should give notice to the parties when the court converts a 12(b)(6) motion into a motion for summary judgment, the failure to do so does not necessarily mandate reversal where nothing else could have been raised to alter the entry of summary judgment.").

<sup>11</sup> *Mill Harbour Condo. Owners' Ass'n v. Marshall*, 53 V.I. 581, 583 n. 3 (V.I. 2010); *Lettsome v. VI Sea Trans*, 52 V.I. 109, 114 (V.I. Super. Ct. 2009).

<sup>12</sup> E.g., *Sky Harbor Air Serv. v. Reams*, 491 F. App'x 875 892 (10th Cir. 2012); *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983) ("Since, of necessity, a natural person must represent the corporation in court, we have insisted that that person be an attorney licensed to practice law before our courts.") (citations omitted).

<sup>13</sup> E.g., *Rabb Int'l. Inc. v. SHL Thai Food Serv., LLC*, 346 S.W.3d 208, 209 (Tex. App. 2011); *Cedar Prof'l Ctr., LLC v. Bernhardt*, No. 63712-6-I, 2012 Wash. App. LEXIS 2727 at \* 6-7 (Wash. Ct. App. Nov. 26, 2012).

<sup>14</sup> *Quinn v. Hous. Auth. of Orlando*, 385 So.2d 1167 (Fla. Dist. Ct. App. 1980) (...a corporation cannot designate a non-attorney employee to represent it.).

<sup>15</sup> See, e.g., *Cleveland Bar Ass'n v. Para-Legals, Inc.*, 835 N.E.2d 1240, 1242 (Ohio 2005) ("Respondents... engaged in the unauthorized practice of law by attempting to represent the Florida corporation in municipal court through the sham authority of a power of attorney.").

<sup>16</sup> 4 V.I.C. § 112(d).

**Fortuna Building Corp. v. James D. Moody**  
**Civil No. ST-15-CV-140**  
**Patricia O'Neal v. Bernard Cannonier**  
**Civil No. ST-15-CV-212**  
**Roxann McMahon v. Carmen Hodge and Wayne Dawson**  
**Civil No. ST-15-CV-227**  
**Memorandum Opinion**

both small claims and forcible entry and detainer actions resides in the Magistrate Division of this Court. However, small claims matters fall under a specific statutorily-created division of this Court,<sup>17</sup> while forcible entry and detainer cases are a special proceedings falling within the auspices of the Civil Division. Absent specific governing statutes or court rules, forcible entry and detainer actions are handled in the same manner as all other cases within the Civil Division.<sup>18</sup> Therefore, the exception made for small claims cases cannot be applied to forcible entry and detainer actions.

The foregoing legal rationale establishes that Ronald Martin, Patrecia O'Neal, and Roxann McMahon lacked the legal authority to file these cases on behalf of, and to appear in court for, Fortuna Building Corp., Virgin Islands Community Housing, LP, and Four Winds Investment, Inc. respectively. Thus, they engaged in the unauthorized practice of law.<sup>19</sup> The remaining question is what is the appropriate remedy for their illegal representation? The Supreme Court previously noted, but did not firmly hold, that, in the context of the filing of a notice of appeal, it may be appropriate to allow a corporation or other business entity an opportunity to cure the deficient representation by having a licensed attorney to appear on its behalf.<sup>20</sup> Some courts expressly follow this process, but will dismiss the case thereafter if the circumstance is not rectified.<sup>21</sup> Other courts support the proposition that dismissal is appropriate even without providing an occasion to remedy the circumstance.<sup>22</sup> In addition, instances of the unauthorized practice of law may be referred to the Board on the Unauthorized Practice of Law for investigation and to make recommendations for action to the Supreme Court.<sup>23</sup>

I conclude that dismissing these cases is the appropriate remedy under the circumstances presented. The actions of the individuals clearly violated Section 443(a), and the Court has a duty to terminate existing, and discourage future, illegal court representation. Further, these matters were at the trial stage of the proceedings. Forcible entry and detainer actions are designed to move forward speedily to quickly address certain limited issues which may arise between a landlord and a tenant. Continuing these matters for a period of time to allow the companies to select and retain counsel, and for counsel to become familiar with the case, would defeat the legislative intent to ensure that a forcible entry and detainer action proceed from filing to disposition as quickly as practicable. Therefore, the Court determines that dismissal of these civil actions without prejudice is the appropriate exercise of discretion under the circumstances.

---

<sup>17</sup> 4 V.I.C. § 111.

<sup>18</sup> 28 V.I.C. § 784.

<sup>19</sup> *E.g., In re Nevis*, 60 V.I. 800, 803-04 (V.I. 2014).

<sup>20</sup> *Mill Harbour Condo. Owners' Ass'n v. Marshall*, 53 V.I. at 583 n. 3.

<sup>21</sup> *See, Boydston v. Strole Dev. Corp.*, 969 P.2d 653, 656-657 (Ariz. 1998) (en banc); *Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So.2d 247, 250-52 (Fla. Dist. Ct. App. 1985).

<sup>22</sup> *See, Concept Analysis Corp. v. I.R.S.*, Case No. 04-71282, 2004 U.S. Dist. LEXIS 23732 (E.D. Mich. Oct. 21, 2004); *Land Mgmt., Inc. v. Dept. of Envtl. Prot.*, 368 A.2d 602 (Me. 1977).

<sup>23</sup> V.I. S.Ct. R. 203(d)(3). *See also, In re Motylinski*, 60 V.I. at 634-35 n. 4.

**Fortuna Building Corp. v. James D. Moody**  
**Civil No. ST-15-CV-140**  
**Patricia O'Neal v. Bernard Cannonier**  
**Civil No. ST-15-CV-212**  
**Roxann McMahon v. Carmen Hodge and Wayne Dawson**  
**Civil No. ST-15-CV-227**  
**Memorandum Opinion**

With respect to any other sanctions, it appears that at least one representative, Ronald Martin, was able to proceed to judgment on a forcible and detainer action filed on behalf of a corporation, notwithstanding that he is not a licensed attorney. As noted above, Patricia O'Neal and Roxann McMahon appeared to be surprised and uncertain after hearing the Court's pronouncements from the bench. Given our inconsistent treatment of this situation, I determine that a referral to the Board on the Unauthorized Practice of Law for further proceedings would be unfair and inappropriate. Therefore, the only sanction imposed by the Court is the dismissal of these cases without prejudice.

Finally, the Court still has before it Defendant Moody's Motion for Continuance and Defendant Moody's Counterclaim which both seek affirmative relief against Fortuna Building Corp. However, insofar as Defendant Moody asks for damages against Fortuna Building Corp., such issues may not be raised and determined in an action for forcible entry and detainer.<sup>24</sup> He must seek relief through any of the other processes available in this Court. Therefore, his requests will also be dismissed without prejudice.<sup>25</sup>

### **III. CONCLUSION.**

Ronald Martin, Patricia O'Neal, and Roxann McMahon are not attorneys licensed to practice law in the U.S. Virgin Islands and, consequently, may not appear in court on behalf of anyone other than their individual selves. Further, all business entities must be represented in the courts of the Virgin Islands by duly licensed attorneys in all cases, except for small claims matters. Therefore, the above-captioned actions for forcible entry and detainer, both direct claims and counterclaims, will be dismissed without prejudice in appropriate orders of even date.

Dated: June 28, 2015

  
**Hon. Adam G. Christian**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:  
Estrella George  
Acting Clerk of the Court

By:   
Donna D. Donovan  
Court Clerk Supervisor 6 / 29 / 15

<sup>24</sup> SUPER. CT. R. 37 ("...nor shall a defendant, in any [forcible entry and detainer] proceeding, be permitted to file a counterclaim or third-party complaint...").

<sup>25</sup> See, *Lehtonen v. Payne*, 57 V.I. 308, 312-15 (V.I. 2012).