

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

|                   |   |                        |
|-------------------|---|------------------------|
| JOSEPH RAWLINS,   | ) |                        |
|                   | ) | CIVIL NO. SX-12-CV-170 |
|                   | ) |                        |
| v.                | ) |                        |
|                   | ) | ACTION FOR UNJUST      |
| DIANE C. RAWLINS, | ) | ENRICHMENT, DEBT, &    |
|                   | ) | CANCELLATION OF        |
| Defendant.        | ) | INSTRUMENT             |
|                   | ) |                        |

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**MEMORANDUM OPINION AND ORDER**

THIS MATTER came on for hearing on June 23, 2016 on Defendant Diane C. Rawlins's Motion to Dismiss First Amended Complaint and Memorandum in Support (Motion), filed July 24, 2012;<sup>1</sup> Plaintiff's Response thereto (Response), filed August 13, 2012; and Defendant's Reply thereto (Reply), filed September 4, 2012.<sup>2</sup> For the reasons that follow, the Court denies Defendant's Motion to Dismiss.

**BACKGROUND**

This action stems from an agreement that Plaintiff Joseph Rawlins alleges he and his daughter, Defendant Diane C. Rawlins, entered into in January 2006, by which Defendant agreed to pay Plaintiff \$600.00 per month until a total of \$72,000 was paid in exchange for title to Plot No. 439 Estate Strawberry Hill, Christiansted, St. Croix (Plot 439). First Amended Complaint ¶¶ 5-7, 9. Pursuant to the parties' agreement, Plaintiff executed a Quitclaim Deed releasing Plot 439 to Defendant. *Id.* ¶ 10. Plaintiff alleges that he "had invested \$72,000 in material and labor to renovate [Plot 439] to make it attractive for Defendant." *Id.* ¶ 8. Plaintiff alleges that pursuant to

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<sup>1</sup> Plaintiff's initial Complaint was filed April 30, 2012, followed by Defendant's Motion to Dismiss, filed May 21, 2012 and Plaintiff's Response, filed June 11, 2012. In light of the filing of the First Amended Complaint, Defendant's Motion to Dismiss the initial Complaint was denied as moot.

<sup>2</sup> Following the hearing, the Court invited the parties to submit supplemental briefing. On June 29, 2016, Plaintiff filed his Supplemental Response to Defendant's Motion to Dismiss First Amended Complaint, and Defendant filed her Supplemental Brief in Support of Motion to Dismiss on July 13, 2016. Plaintiff argues that the doctrine of part performance "takes the agreement out of the statute of frauds." Supplemental Response ¶ 3 (quoting *Tyson v. Webster*, SX-14-CV-003, V.I. Super. Ct. November 12, 2015); *Henderson v. Resevic*, 262 F. Supp. 36, 38 (D.V.I. 1967)). Defendant responds that Plaintiff's reliance on the doctrine of part performance is untimely and inappropriate and, in any event, fails to defeat Defendant's Motion urging that the First Amended Complaint is subject to dismissal as violative of the statute of frauds. It is unnecessary for the Court to address this argument because Defendant's Motion to Dismiss is denied on other grounds.

the agreement, on January 9, 2008, Defendant made an initial payment of \$1,500 and subsequently made monthly payments of approximately \$600 per month until December 3, 2009. *Id.* ¶¶ 11-12. Plaintiff alleges that despite numerous requests, Defendant refused to make further payments toward the total \$72,000 owed and that on September 24, 2010, “Defendant caused the Quitclaim Deed from Plaintiff to be recorded as Document No. 2010003709, in P.C. 1248 at page 263.” *Id.* ¶¶ 13-15.

Plaintiff alleges that nearly a year later, on September 12, 2011, he attempted to memorialize the agreement, “failing which Plaintiff would evict Defendant.” *Id.* ¶ 16. Plaintiff alleges that “Defendant signed the written agreement and gave it back to Plaintiff, but soon thereafter Defendant experienced a case of ‘buyer’s remorse’ and tried to snatch the written agreement away from the Plaintiff.” *Id.* ¶ 17. Defendant then filed case number SX-11-DV-290, alleging domestic violence and requesting a temporary restraining order (TRO) against Plaintiff. *Id.* ¶ 19. The TRO was denied and the domestic violence action was dismissed with prejudice. *Id.* ¶ 20. Plaintiff alleges that despite the agreements between him and Defendant, Defendant has not made payments since February 2009, and “has been living rent free in Plaintiff’s house.” *Id.* ¶¶ 21-23.

Plaintiff alleges claims for Breach of Contract and Unjust Enrichment and seeks a Court order “vacating the Quitclaim Deed entered in the Recorder of Deeds Office on September 24, 2010,” and to order Defendant to pay the debt owed to Plaintiff for monthly installments from February 2009 to present as proven at trial and to grant fees and costs associated with this action to Plaintiff. *Id.* ¶¶ 24-34.

## **LEGAL STANDARD**

The Supreme Court of the Virgin Islands has articulated a three-prong analysis in reviewing motions to dismiss filed, as is Defendant’s here, pursuant to Fed. R. Civ. P. 12(b)(6):

First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient

remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.

*Joseph v. Bureau of Corrections*, 54 V.I. 645, 649-650 (V.I. 2011) (internal quotations and citations omitted); *see also Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471-472 (V.I. 2013); *Fleming v. Cruz*, 62 V.I. 702, 713-14 (V.I. 2015).

## DISCUSSION

### Count I: Breach of Contract

To succeed on a breach of contract claim, a plaintiff must show the existence of: (1) an agreement; (2) a duty created by that agreement; (3) a breach of that duty; and (4) damages. *Molloy v. Gov't of the V.I. & Dep't of Educ.*, 2016 V.I. LEXIS 76, \*11 (V.I. Super Ct. June 23, 2016) (citing *Arlington Funding Services, Inc. v. Geigel*, 51 V.I. 118, 134-35 (V.I. 2009)); *see also Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 473 (V.I. 2013); *Rainey v. Hermon*, 55 V.I. 875, 881 (V.I. 2011)).

Defendant argues that Plaintiff has failed to allege the existence of an enforceable agreement because Plaintiff has not alleged that the installment agreement had been reduced to writing, as required by the Statute of Frauds. Motion, at 2. Defendant also states that it is unclear whether the purported agreement was for the sale of the property or for payment of material and labor, but that nevertheless, “the lack of a writing memorializing an agreement to sell or purchase Plot No. 439 or for the Defendant to make monthly payments to the Plaintiff for the purchase of Plot No. 439 is fatal to the breach of the contract claim and request to vacate the Quitclaim Deed.” *Id.* at 6.

With regard to the Statute of Frauds, the Supreme Court of the Virgin Islands states:

[I]n the Virgin Islands, any agreement to be performed for a period greater than one year is void and unenforceable under the Statute of Frauds unless it is evidenced by a writing to which the party to be charged with the obligation has subscribed. And, an oral agreement regarding an interest in property for a period greater than one

year is void and unenforceable under the Statute of Frauds. *See* 28 V.I.C. § 244(1).<sup>3</sup> Because the original agreement between the parties was for an interest in real property with a 30-year mortgage, the purported agreement is precisely what the Statute of Frauds was created to prevent.

*Brouillard v. DLJ Mortg. Capital, Inc.*, 63 V.I. 788, 798 (V.I. 2015).

The Supreme Court has discussed the statute of frauds in two other cases: *Yusuf v. Hamed*, 59 V.I. 841, 853 (V.I. 2013) (finding that when a partnership is an indefinite at-will agreement, the statute of frauds is not implicated) and *Peppertree Terrace v. Williams*, 52 V.I. 225, 232 (V.I. 2009) (because the lease at issue was for a term of less than one year, it could have been created orally). The Superior Court has also noted that “[t]he law also requires the contract, note, or memorandum to be signed by the party to be charged or by his lawful agent under written authority.” *Modern Day Constr., Inc. v. Carty*, 2013 V.I. LEXIS 36, \*7 (V.I. Super. Ct. June 13, 2013). Here, the alleged agreement could not have been performed within one year because it would take 10 years, at \$600 per month, for Defendant to pay \$72,000 to Plaintiff; therefore, the Statute of Frauds applies and a writing is required.

Plaintiff alleges that the parties’ agreement here complies with the Statute of Frauds because the agreement was memorialized in a writing, signed by both parties. First Amended Complaint ¶16. Defendant avers that the purported written agreement attached, as Exhibit C to the First Amended Complaint, was signed by Defendant under duress and that even if it had been signed voluntarily, “the language of the purported agreement makes clear that it is not an agreement to sell [Plot 439] to Defendant as outlined in the original Complaint, but rather an agreement to ratify a purported verbal agreement by the Defendant to pay Plaintiff for material and labor.” Motion, at 2.<sup>4</sup> Plaintiff counters that the trier of fact must determine whether Defendant signed the agreement under duress, by stating “the claim of duress does not negate the fact that a

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<sup>3</sup> Title 28 V.I.C. § 241 provides:

- (a) Except for a lease for a term not exceeding one year, no estate or interest in real property, and no trust or power over or concerning real property, or in any manner relating thereto, can be created, granted, assigned, transferred, surrendered, or declared, otherwise than—
  - (1) by operation of law; or
  - (2) by a deed of conveyance or other instrument in writing, signed by the person creating, granting, assigning, transferring, surrendering, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

<sup>4</sup> Defendant explains that her signature on the agreement (Exhibit C to the First Amended Complaint) was followed by her written statement: “I on September 12, 2011 held under duress and upon my exit of 439 being block was forced....” The remainder of the statement is cut off in the incomplete copy of the document submitted. Motion, at 3.

contract existed,” rather it “goes to the enforcement of the contract.” Response, at 2. Plaintiff states, “[a]n agreement, signed under duress, is deemed *voidable* by the party that is the victim of the transaction.” *Id.* (emphasis in original) (citing Restatement (Second) of Contracts § 175).

Section 175 provides:

- (1) If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.
- (2) If a party's manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.

The Supreme Court of the Virgin Islands has relied upon the Restatement (Second) of Contracts § 175; however, it did so through the application of 1 V.I.C. § 4 stating that Restatement provisions “serve as rules of decision on this issue.” *Burd v. Antilles Yachting Servs., Inc.*, 57 V.I. 354, 359, n.1 (V.I. 2012).<sup>5</sup> Here, the Court accepts and adopts the Superior Court’s thorough *Banks* analysis in *Slack v. Slack*, 62 V.I. 366 (V.I. Super. Ct. 2015) and decides that the Restatement (Second) of Contracts § 175 is the best rule for the Virgin Islands to determine whether a party’s manifestation of assent was induced by duress at the execution of a contract, making the contract voidable. *See* 62 V.I. at 378-380 (“the soundest rule for the Virgin Islands would be [to] follow the Restatement (Second) of Contracts, Section 175 when determining whether duress existed at the execution of an antenuptial agreement”).<sup>6</sup>

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<sup>5</sup> Ironically, the Supreme Court in *Burd* cites its decision in *Banks v. Int’l Rental & Leasing Corp.* 55 V.I. 967, 980 (V.I. 2011) for the proposition that “by operation of 1 V.I.C. § 4, the Restatement provisions... serve as the rules of decision on this issue.” 57 V.I. at 359 n. 1. Actually, *Banks* and its progeny (*see e.g. Gov’t of the Virgin Islands v. Connor*, 60 V.I. 597, 602 (V.I. 2014)) require that, rather than mechanistically and reflexively applying Restatement provisions as the common law rules of decision in the Virgin Islands through 1 V.I.C. § 4, trial courts are to conduct an analysis, reviewing case law in this and other jurisdictions, to determine what is the most sound application of law for the Virgin Islands.

<sup>6</sup> The Court in *Slack* stated: “this Court finds it unnecessary to depart from the holding in *Burd*. A review of case law from other jurisdictions reveals that a majority of jurisdictions define duress by way of adopting the Restatement (Second) of Contracts, section 175 verbatim, or by implementing a rule similar to it. These jurisdictions include, but are not limited to, Colorado, Iowa, Pennsylvania, New York, Washington D.C., Utah, Arizona, Alaska, Hawaii, and Connecticut. *Slack*, 62 V.I. at 379 (citing *e.g. Vail/Arrowhead, Inc. v. District Court*, 954 P.2d 608 (Colo. 1998) (applying Section 175 to claims involving the sale of real property); *Andreini v. Hultgren*, 860 P.2d 916 (Utah 1993) (applying Section 175 to medical malpractice claims); *Naqvi v. Computers Assocs. Int’l*, 2008 N.Y. Misc. LEXIS 7512 (N.Y. Sup. Ct. 2008) (employment context)). The cases discussed in *Slack*, were not limited to antenuptial agreements. The Court does not find it necessary or reasonable to limit the application of Section 175 to antenuptial contracts, but rather applying Section 175 to all types of contracts, as a majority of jurisdictions have, is the soundest rule for the Virgin Islands.

Here, the Court finds that Plaintiff's allegations withstand the Motion to Dismiss. Plaintiff has alleged that there was a written agreement. First Amended Complaint ¶ 16. Whether Defendant signed the agreement under duress is a question for the trier of fact and one that shall necessarily be explored further throughout the course of the litigation. *See Meyer v. Guardian Trust Co.*, 296 F. 789, 792 (8th Cir. 1924) ("What constitutes duress is a matter of law. Whether such duress exists as to a particular transaction is a matter of fact"). It is not appropriate to dispose of the case at this stage of litigation. *See Lembach v. Antilles School, Inc.*, 2015 V.I. LEXIS 35, \*4 (V.I. Super. Ct. Apr. 7, 2015) (aff'd on other grounds, 2016 V.I. Supreme LEXIS 7 (March 14, 2016) (it is "the exclusive power of juries to weigh evidence and determine contested fact issues"). The finder of fact at trial will be required to determine Defendant executed the agreement under duress, thereby making the agreement voidable by Defendant as the victim of such duress.

Pursuant to the plain language of the written agreement that Defendant admits she signed, Plaintiff alleges that Defendant owed Plaintiff \$72,000, to be paid in installments of \$600 per month. First Amended Complaint ¶¶ 11, 12, 16. Plaintiff sufficiently alleges a breach of that agreement by stating that Defendant refused to pay the \$600 monthly installments she owes Plaintiff according to the terms of the agreement and that Defendant is indebted to him in the amount of \$24,000, as of June 2012. *Id.* ¶¶ 12, 15, 23, 25, 26. Plaintiff has sufficiently alleged a claim of breach of contract. Therefore, Defendant's Motion as to Count I is denied.

#### Count II: Unjust Enrichment

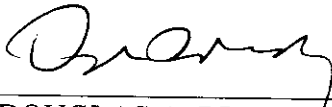
"A cause of action for quantum meruit, also known as unjust enrichment, will ordinarily lie in a case where the defendant 'receives something of value to which he is not entitled and which he should restore' to the plaintiff." *Walters v. Walters*, 60 V.I. 768, 776 (V.I. 2014) (quoting *Maso v. Morales*, 57 V.I. 627, 635 n.9 (V.I. 2012)). In *Walters*, the Supreme Court of the Virgin Islands recognized and set forth the elements necessary to establish an unjust enrichment claim. Plaintiff is required to prove: "(1) that the defendant was enriched; (2) that such enrichment was at the plaintiff's expense; (3) that the defendant had appreciation or knowledge of the benefit; and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff." *Id.* at 779-80.

Here, Plaintiff has sufficiently alleged facts to support a plausible claim of unjust enrichment against Defendant. Plaintiff alleges that Defendant was enriched by the transfer of real property by alleging that “on January 31, 2006, Plaintiff executed a Quitclaim Deed to Defendant for the transfer of Plot No. 439 Estate Strawberry Hill, Christiansted, St. Croix.” First Amended Complaint ¶¶ 10, 33. Plaintiff alleges that Defendant’s enrichment was at his expense by alleging that Defendant refuses to pay the agreed upon amount of \$600 per month until the full \$72,000 that Plaintiff invested in material and labor to renovate Plot 439 “to make it attractive for Plaintiff” was paid. *Id.* ¶¶ 9, 15, 32-34. Plaintiff alleges that Defendant had knowledge of the benefit, since she has not made a single payment since February 2009, and continues to live in the house rent free. *Id.* ¶¶ 22-23. Finally, Plaintiff alleges that the circumstances were such that in equity or good conscience Defendant should return the property or money to Plaintiff. Response, at 3. Therefore, Defendant’s motion is denied as to an unjust enrichment claim set forth in Count II.

On the basis of the foregoing, it is hereby

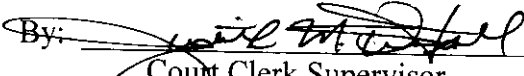
ORDERED that Defendant Diane C. Rawlins’s Motion to Dismiss is DENIED.

July 27, 2016

  
DOUGLAS A. BRADY  
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE  
Acting Clerk of the Court

By:   
Court Clerk Supervisor  
7/28/16