NOT FOR PUBLICATION

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

AUSTIN THOMAS,	)	**S. Ct. Civ. No. 2007/042**
	)	Re: Super. Ct. S.C. No. 15/2007
Appellant/Defendant,	)	
	)	
v.	)	
	)	
ALFRED CANNONIER, d/b/a MOTOR TREND,	)	
	)	
Appellee/Plaintiff.	)	
	)	

On Appeal from the Superior Court of the Virgin Islands
Considered: December 17, 2008
Filed: April 7, 2009

BEFORE: **Rhys S. Hodge,** Chief Justice; **Maria M. Cabret,** Associate Justice; and **Ive Arlington Swan,** Associate Justice.

APPEARANCES:

Austin Thomas
St. Thomas, USVI
Pro Se

OPINION OF THE COURT

PER CURIAM.

This is an appeal from a small claims matter in which Alfred Cannonier, doing business as Motor Trend ("Motor Trend") sued Austin Thomas ("Thomas"). Motor Trend alleged that Thomas owed it money for overhauling the transmission on Thomas' automobile. Following a bench trial, the Small Claims Division of the Superior Court awarded a judgment in favor of Motor Trend. Thomas appeals, *pro se*, asserting that the trial court erred by (1) prohibiting him from presenting all of his evidence; (2) prohibiting him from asserting a counterclaim for loss of business; and (3) concluding that he was liable for the entire invoice for automotive services

presented by the defendant. Motor Trend did not file an Appellee's brief. For the reasons which follow, the trial court's judgment will be affirmed.

We have jurisdiction to review the trial court's judgment pursuant to title 4, section 32(a) of the Virgin Islands Code, which vests the Supreme Court with jurisdiction over "all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court."

In this appeal, our review of Thomas's asserted errors is significantly hindered because he has not provided the Court with a sufficient record. The appendix submitted by Thomas contains only eight, selected pages of the trial transcript, a copy of the repair estimate, and a copy of the final invoice. We have read the portion of the transcript that Thomas provided, and it does not show that the trial court prohibited him from presenting evidence or a counterclaim or that the court erred by issuing a judgment for virtually the entire amount due under the invoice. In fact, to the extent that we are able to glean anything from the sparse record submitted by Thomas, it appears that the price Motor Trend ultimately charged him for the overhaul, $2,719.01, was relatively close to the $2,563.85 repair estimate it had earlier provided. An estimate, by definition, is only an approximate calculation. *See The New American Heritage Dictionary of the English Language* 628 (3d ed. 1992) (defining "estimate" as "[t]o calculate approximately (the amount, extent, magnitude, position, or value of something)"). Although Thomas submitted only one page of the transcript from Alfred Cannonier's testimony, that testimony reveals that Motor Trend provided an estimate because it could not precisely determine which parts needed to be replaced until the transmission was removed from the vehicle and disassembled. Thus, the fact that Motor Trend determined, after disassembling the transmission, that it needed to replace additional parts is not a tenable basis for reversing the trial

court's judgment. Based on the evidence, the trial court awarded Motor Trend $984.00, slightly less than the $1,000.00 balance reflected on the invoice. Under these circumstances, we cannot say that the trial court conducted the trial in such a manner, or issued a judgment, that failed to do substantial justice. *See* Super Ct. R. 64.

Even though we consider Thomas's brief under a less stringent standard due to his *pro se* status, his "self-representation 'is not a license [excusing compliance] with relevant rules of procedural and substantive law.'" *Ballentine v. Roberts*, No. 2008-60, 2008 WL 4560742, at *1 n.1 (D.V.I. Oct. 8, 2008) (quoting *Faretta v. California.,* 422 U.S. 806, 835 n. 46, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). Thus, he is still bound by the age-old axiom imposing on appellants the burden of showing the appellate court, by the record, that the trial court erred. *See Bagnell v. Broderick*, 38 U.S. 436, 441 (1839) ("The presumption is that the judgment of the Circuit Court is proper, and it lies on the plaintiff in error to show the contrary."); *see also Ada County Highway Dist. v. Total Success Invs., LLC*, 179 P.3d 323, 333 n.4 (Idaho 2008) ("[A]ppellant has the burden of showing that the district court committed error . . . [and such e]rror must be affirmatively shown on the record." (citation omitted)); *State v. Moncla*, 936 P.2d 727, 736 (Kan. 1997) ("The defendant has the burden of furnishing a record which affirmatively shows that prejudicial error occurred in the trial court. In the absence of such a record, an appellate court presumes that the action of the trial court was proper." (citation omitted)); *Groves v. Roy G. Hildreth and Son, Inc*., 664 S.E.2d 531, 536 (W.Va. 2008) ("On an appeal to this Court the appellant bears the burden of showing that there was error in the proceeding below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial court." (citation omitted)). We cannot assume that

the trial court erred, but instead presume that the trial court's judgment is "valid and in conformity with the law." *Abdul-Akbar v. Watson*, 4 F.3d 195, 205 (3d Cir. 1993).

Upon reviewing the sparse record submitted by Thomas in this case, we conclude that he has not met his burden of affirmatively showing, on the record, that the trial court erred. Accordingly, the trial court's judgment will be affirmed.

Dated this 7th day of April, 2009.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court