

Court found the defendants below jointly and severally liable in the amount of \$5,000.00 to Isaac A. Martin, Jr. ["Martin or "appellee"], a former jet ski concession operator at the Ritz-Carlton Hotel, on his claim that they intentionally and improperly interfered with his concession contract with the hotel. One of the defendants, Joe Campana ["Campana" or "appellant"], filed this timely appeal. For the reasons that follow, the Court will affirm the trial court's judgment.

FACTUAL BACKGROUND

In June 1998, Martin entered into a one-year concession agreement with the Ritz-Carlton, St. Thomas ["Ritz-Carlton"] to provide jet ski rental services to guests and patrons of the Ritz-Carlton. The contract was due to expire on or about June 23, 1999.

On May 14, 1999, Ramon Fuertes, head of the Virgin Islands Jet Ski Association ["Jet Ski Association"], wrote a letter to the Ritz-Carlton in which he stated that he had observed Martin's jet ski patrons operate jet skis unescorted and in high traffic and/or restricted areas. The letter also included "a whole long list of allegations" concerning Martin's improper operation of

his jet skis.¹ As head of the Jet Ski Association, Mr. Fuertes wrote (as paraphrased by the trial judge) that he had "personally observed and [had] received many reports that [Martin] is the only commercial operator in this territory [who] is not conf[or]ming with [the association's] standard of operation." (Tr. at 60.) The letter was faxed to the Ritz-Carlton by the appellant, Joe Campana, a jet ski concessionaire at the Elysian Beach Resort on St. Thomas who had previously competed with Martin for the jet ski concession at the Ritz-Carlton and who is also a member of the Jet Ski Association. On May 17, 1999, the Ritz-Carlton instructed Martin to cease operation of his jet ski concession at the Ritz-Carlton beach pending an investigation of the claims contained in the letter. The next day, Martin filed his complaint with the Small Claims Division of the Territorial Court, naming Ramon Fuertes, Joe Campana, and the Jet Ski Association as defendants and alleging that the defendants intentionally interfered with his contractual relationship with the Ritz-Carlton.

¹ Although the letter is the star subject of most of his arguments on appeal, the appellant, who is represented by counsel on appeal, chose not to include it in his proposed appendix, nor does he explain its absence. The letter is without doubt a highly relevant portion of the record below, and its absence from the appendix is a violation of Rule 24(a) of the Virgin Islands Rules of Appellate Procedure. See VIRAP 24(a). The pro se appellee has not filed a brief, and the Territorial Court clerk's office has been unable to locate its file. Thus, the letter itself is not before this Court. Choosing to resolve this appeal on the merits, the Court has derived the basic gist of the letter from the full transcript.

On June 14, 1999, Martin met with William J. Friese, Assistant Director of the Rooms Division at the Ritz-Carlton, who asked Martin to remove his equipment from the beach because the matters raised by Fuertes' letter would not be resolved before the termination of the concession contract on June 23, 1999. Martin agreed to do so. His contract expired and was not renewed.

Trial was held on September 12, 2000 before Judge Rhys S. Hodge. At trial, Fuertes testified that he wrote the letter because Campana, who is also a member of the Jet Ski Association, asked him to write the letter. On questioning by the plaintiff, Fuertes stated that he had himself seen Martin's jet skis in restricted areas without guides. (See Tr. at 46.) Campana testified that he asked Fuertes to write the letter because Armando Falcoff, the concessionaire for scuba diving services at the Ritz-Carlton, had asked Campana to write the letter on behalf of the Jet Ski Association. Falcoff told Campana that he had spoken with Doug Brooks ["Brooks"], the then-general manager at the Ritz-Carlton, who told Falcoff that the Ritz-Carlton was concerned about Martin's performance under that contract and wanted the Jet Ski Association to write a "letter of concern" to the Ritz-Carlton regarding safety issues having to do with the unsupervised jet ski patrons and the potential deleterious effect

on the jet ski industry. Campana replied that he could not write the letter himself but that he would pass the request on to the Jet Ski Association. According to Campana, he understood that the letter was never intended to cause Martin to lose his concession, but rather was intended to simply state the Jet Ski Association's concern that Martin did not follow the association's guidelines and policies.

Before Martin got the jet ski concession at the Ritz-Carlton, Falcoff was the jet ski concessionaire there. At the time of the events in question, Falcoff held the scuba diving concession at the Ritz-Carlton and managed the call-list for outside vendor services at the Ritz-Carlton. As holder of the jet ski concession for Ritz-Carlton, Martin was high on the list of jet ski service providers to be called by Falcoff. Campana's operation at the Elysian, located next door to the Ritz-Carlton, was lower on the list, to be called in the event that Martin was not available. In the words of the trial judge, the relationship between Martin and Falcoff "wasn't the best," and questioning by Martin suggested that there were brewing resentments regarding the award of jet ski contract to Martin instead of Falcoff. (Tr. at 38-39.) The record suggests that at the time of the incidents at issue, Falcoff had submitted a proposal to the Ritz-Carlton to provide full water activity services, including jet ski services,

to the Ritz-Carlton at beach property under expansion at the Ritz-Carlton.

Consistent with Campana's testimony, Falcoff testified that he requested the letter from Campana because Brooks had asked him to request the letter from the Jet Ski Association due to safety concerns about Martin's operations. Falcoff elaborated that Brooks had spoken with him about Martin's jet ski operation during a meeting during which Brooks and Falcoff discussed "a number of issues related to watersports." According to Falcoff, "[o]ne situation that Brooks wanted to solve [was] to grant a small space for [Falcoff's] scuba program." (Tr. at 27.) Falcoff explained that "[t]he man of the wave runners [Martin] was cast because management was 'not too happy with Mr. Martin's operation.'" (*Id.*) Brooks then asked Falcoff's opinion about Martin's performance and the jet ski industry. As a result of the conversation, which purportedly included a discussion about reports of unsupervised jet ski operation by Martin's patrons, Brooks asked Falcoff to request a letter from the Jet Ski Association "to formally notify the [Ritz-Carlton] of [Martin's] practices." Brooks soon transferred to another Ritz-Carlton property in Jamaica was not called as a witness by any defendant.

The trial judge found that the letter was "generated at the request of Mr. Falcoff," whose own testimony indicated his

understanding that the intent of the letter was to provide a basis for terminating Martin's contract. The judge further found that the letter was faxed by Campana, who also knew that the purpose of the letter was to have Martin removed from the Ritz property. (Tr. at 60-61.) Notably, the judge did not find that the letter was requested by the Ritz-Carlton. The judge also questioned the legal existence of the "Virgin Islands Jet Ski Association," and further found that the letter caused the Ritz-Carlton to terminate Martin's contract. (Tr. at 61.) Applying section 766 of the Restatement (Second) of Torts ["Restatement"], which sets forth the general rule for liability for the tort of intentional interference with contracts, the judge concluded that the defendants had improperly interfered with the contract between Martin and the Ritz-Carlton, causing the Ritz-Carlton to terminate the contract and causing Martin to incur damages in the amount of \$5,000.00.

On appeal, Campana argues that the trial judge should have found that the letter was not an improper interference because it conveyed information that was true. See Restatement § 772. In the alternative, he argues that, by sending the letter, he acted properly to protect his own economic interest because Martin's conduct could "ruin the reputation of the industry and impact Appellant's business if an accident should involve one of

Appellant's contract." (App. Br. at 14-15 (citing Restatement § 767).) Campana also argues that the trial court's interpretation of Falcoff's testimony, that he asked for the letter because Brooks wanted to get rid of Martin and needed an excuse, was not supported by the evidence. Finally, Campana argues that the trial court committed clear error in finding that Falcoff, Campana, and Fuertes intended the letter to cause the Ritz-Carlton to terminate its contract with Martin.

DISCUSSION

This Court has appellate jurisdiction to review judgments and orders of the Territorial Court in all civil cases. See V.I. Code Ann. tit. 4, § 33; Revised Organic Act of 1954 § 23A.² We exercise plenary review over the Territorial Court's application of legal precepts and review its findings of fact for clear error. 4 V.I.C. § 33. As this Court has repeatedly stated, "it is the role of the judge in a small claims action to achieve substantial justice, even if it means that a liberal reading would afford relief to a pro se small claims litigant which would not be available to a pro se or other litigant in the Civil

² 48 U.S.C. § 1613a. The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2002), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2002) (preceding V.I. CODE ANN. tit. 1).

Division of the Territorial Court." See *Ryans Restaurant v. Lewis*, 949 F. Supp. 380, 383 (D.V.I. App. Div. 1996). The Court should conclude that, in light of the evidence presented at trial and in light of the fact that the trial judge was in the best position to judge the credibility of the witnesses, the Territorial Court achieved substantial justice by ruling in Martin's favor.

Section 766 of the Restatement (Second) of Torts³ sets forth the general rule for liability for improper interference with a contractual relationship by a third person:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Restatement § 766. In determining whether conduct constitutes "improper" interference, the court balances the factors set forth in section 767:

In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors:

³ By statute, this case is governed by the rules set forth in the Restatement. See 1 V.I.C. § 4; see also *Saldana v. Kmart*, 260 F.3d 228, 233 (3d Cir. 2001).

- (a) the nature of the actor's conduct,
- (b) the actor's motive,
- (c) the interests of the other with which the actor's conduct interferes,
- (d) the interests sought to be advanced by the actor,
- (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
- (f) the proximity or remoteness of the actor's conduct to the interference and
- (g) the relations between the parties.

Restatement § 767.

Campana's primary argument is that, because the information contained in Fuertes' letter on behalf of the Jet Ski Association was truthful, it could not have constituted an improper interference with Martin's contract with Ritz-Carlton. He relies on section 772, which states a "specific application of the [section 767] factors." Section 772 provides:

One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person

- (a) truthful information, or
- (b) honest advice within the scope of a request for the advice.

Restatement § 772. At the outset, the Court should note that this argument - that the information was true and thus not improper - was not presented to the trial judge. Ordinarily, this Court will not reach the merits of an appellant's argument if it has failed to raise it in the court below. See *Prosser v.*

Prosser, 40 V.I. 241, 247, 40 F. Supp. 2d 663, 667 (D.V.I. App. Div. 1998), *rev'd on other grounds*, 186 F.3d 403 (3d Cir. 1999); *Nibbs v. Roberts*, 31 V.I. 196, 222-23 (D.V.I. App. Div. 1995).

But the goal of the Small Claims Division is to achieve "substantial justice," not to impose the technical procedural requirements on unrepresented litigants. Thus, if under all the circumstances, this Court is of the opinion that the evidence at trial established that the information conveyed in the letter was truthful, regardless whether the point was clearly raised by the defendants, then I would suggest that the Court consider reversing the trial court on the basis of section 772. See, e.g., *Allen v. Safeway Stores Inc.*, 699 P.2d 277, 280 (Wyo. 1985) (granting summary judgment to a defendant who conveyed purportedly truthful information where "the record contains nothing to contest the truth of the contents of the letters."). But the full transcript reveals that there was scant evidence supporting the allegations in the letter, and an equal amount disputing it. Falcoff testified that he had heard reports of and had personally seen Martin's skis out unescorted and/or in restricted areas, and Fuertes testified that he had personally seen Martin's skis out unescorted. For his part, Martin vehemently contested the truthfulness of the information conveyed, and expressly denied ever having allowed his jet ski

clients to go out unescorted. Presented in the first instance with conflicting testimony regarding the truth of the allegations, this Court can infer that, by ruling in favor of Martin and considering all the circumstances surrounding the letter, the trial judge credited Martin's testimony and found the letter to convey information that was something other than the kind of "truthful" information that would protect the defendants from liability under section 772. This latter seems to us to be the thrust of the judge's ruling, and by which substantial justice was achieved.

Campana's second argument is that the judge improperly applied the general balancing test set forth in section 766 to find that the letter was improper. The trial judge specifically found that "the relationship between the parties [was] competitive and they were fighting for the same business."⁴ As he saw it, the relevant section 767 factor was clause (e), by which the social interest in competition is weighed against protecting Martin's private interest in his established contractual relationship. (See Tr. at 63.) The trial judge also considered whether the safety concerns raised by the letter were of such a public interest as to render the letter not improper, which goes to the factor in clause (d) ("the interest sought to

⁴ This factual finding is not challenged on appeal.

be advanced by the actor). (See *id.*)⁵ He concluded that the "real motive was to create a concern . . . for the hotel which would then cause them [sic] to terminate the contract." (*Id.* (emphasis added).) The only evidence presented that the Ritz-Carlton had its own prior concern about Martin's performance and wanted a letter from the Jet Ski Association was Falcoff's interested testimony to that effect. Comments made by the trial judge prior to his ruling indicate that he viewed Falcoff's testimony regarding the alleged conversation between Falcoff and Brooks with some skepticism, interpreting it to mean, at best, that according to Falcoff Brooks wanted the jet ski concession changed and that he "need[ed] some excuse." (Tr. at 53.) As the judge asked the appellant at trial, "[i]f Mr. Brooks had some concern why didn't he just go to Mr. Martin?" (*Id.*) It seems that although the judge did not necessarily credit Falcoff's testimony that Brooks actually requested the letter, he took

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When considering the public interest factor,

relevant questions in determining whether his interference is improper are: whether the practices are actually being used by the other, whether the actor actually believes that the practices are prejudicial to the public interest, whether his belief is reasonable, whether he is acting in good faith for the protection of the public interest, whether the contractual relation involved is incident or foreign to the continuance of the practices and whether the actor employs wrongful means to accomplish the result.

Falcoff's testimony that Brooks was trying to come up with room for his concession and "cast" Martin's name as the one to be rid of as evidence of Falcoff's understanding of the intent of the letter as being something other than simply a "letter of concern" that would result in increased public safety and preservation of the reputation of the jet ski industry. In his ruling, the judge noted the "way [the letter] was generated," that it was written by the president of the Jet Ski Association on the mere request of another member, without having been presented to the association's board for decision, and was done "simply without any concern" on the part of the president. (Tr. at 63.) All in all, the judge's ruling indicates that he did not believe that the defendants below had a good faith concern for public safety or a prospective economic interest that outweighs Martin's established contractual relationship, but rather "created" a concern in order to have the hotel terminate Martin.

The record amply demonstrates that the trial judge carefully followed the process of weighing the factors in section 767. The evidence that the hotel itself had a concern was sketchy at best, and the evidence that the appellant had no idea that the letter was meant to get Martin fired could have reasonably been discredited by the trial judge as a matter of credibility. Further, there was sufficient evidence for the trial judge to

find that the letter was not intended to serve the social or economic interest Campana now purports that it served, but was instead intended to "create" a concern that was not really there in the hope that the Ritz-Carlton would terminate Martin's contract. Accordingly, we will affirm the judgment of the Small Claims Division of the Territorial Court as having rendered substantial justice between the parties on the record before it.

AND NOW, this 4th day of September, 2002, having considered the parties' submissions and arguments, and for the reasons set forth in the Court's accompanying Opinion of even date, it is hereby

ORDERED that the judgment of the Territorial Court is **AFFIRMED**.

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:

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