

NOT FOR PUBLICATION

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

TAMARA MORRIS-LEONARD and FRANKLIN)
LEONARD d/b/a LENMORE ENTERPRIZE,)
Appellants,) D.C. Civ. App. No. 2001-188
v.) Re: Terr. Ct. S.C. No. 2001-806
ALFREDO LIMA,)
Appellee.)

On Appeal from the Territorial Court of the Virgin Islands

Considered: October 31, 2003
Filed: February 3, 2004

BEFORE: **RAYMOND L. FINCH**, Chief Judge of the District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **MARIA M. CABRET**, Presiding Judge of the Territorial Court of the Virgin Islands, Division of St. Croix, Sitting by Designation.

MEMORANDUM

PER CURIAM.

I. INTRODUCTION

Appellant has timely appealed this small claims court decision, arguing that the trial judge erred by (1) not limiting the trial to issues within the complaint; (2) not allowing appellant to present a proper defense or counterclaim for breach

of contract; (3) not recusing himself since an appellant was a court employee on St. Thomas; and (4) making inaccurate and ambiguous findings and conclusions. We find that the trial judge did not err but rather was acting within his broad discretion to conduct such proceedings. Furthermore, we find no clear error in the trial court's findings of fact. Accordingly, this Court affirms the judgment below.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 31, 2001, Alfredo Lima sued Tamara Morris Leonard and Franklin Leonard, doing business as the collection agency LenMor Enterprize ["LenMor"], in the Small Claims Division for breaching an agreement for debt collections. (Appellant's App. at Ex. 7.) At that time, Franklin Leonard was an employee in the Marshal's Office for the Territorial Court, Division of St. Thomas-St. John. (Appellant's Br. at 7.)

In the complaint, Lima alleged that under the agreement, LenMor was to receive a ten percent commission on their collections from Lima's debtors. (*Id.*) Lima also alleged that LenMor had collected \$5,350.00 from the debtor Fitzroy St. Luce but had not forwarded him the money. Therefore, Lima requested relief of \$4,815.00, which represented the St. Luce account minus the ten percent commission. (*Id.*)

On September 4, 2001, the trial judge held a hearing on this matter in small claims court. During the hearing, the agreement was admitted into evidence, and it indicated that LenMor's commission was to be one-third of the collections rather than one-tenth. (Trial Tr. at 4-5.) Lima, through his appointed representative, reduced his claim to \$3,568.45 to reflect this higher commission. (Trial Tr. at 8.)

Lima also submitted evidence of an April 2000 check for \$4,473.33 made out to his name from LenMor Enterprize. (Trial Tr. at 6-7.) He submitted further evidence that this check never cleared. (*Id.*) The check did not designate for what particular services payment was to be made. After further inquiry by the trial judge, Tamara Morris-Leonard explained that this was a general check for several accounts and was not specific to the St. Luce account. (*Id.* at 20.)

The trial judge then asked LenMor if they had a defense or counterclaim that offset the Luce claim or the returned check. (Trial Tr. at 19.) LenMor's representative first responded, "My counterclaim is not in regard to Fitzroy." (*Id.*) LenMor then stated that it was counterclaiming that Lima owed it outstanding commission on *all* accounts, not just the St. Luce account. (Trial Tr. at 24-25, 29.) LenMor alleged that they were owed approximately \$17,000.00 in commission for all these collections,

and after discounting the money Lenmor already had received, the balance was \$3,675.00. (*Id.*) Because the trial judge found no evidence before him to indicate that this total sum actually had been collected, he refused to deal with the counterclaim. (*Id.*)¹ Instead, he dismissed the counterclaim without prejudice so that the parties could pursue it in another proceeding. (*Id.* at 30.)

The trial judge, *inter alia*, made the following findings of fact and conclusions of law: (1) that LenMor Enterprize contracted with Lima in a December 28, 1999 agreement to collect "back-due rents"; (2) that in return Lima would pay LenMor one-third of all collections; (3) that the \$4,473.33 April check from LenMor was for money rightly owed to Lima; (4) that after Lima tried to deposit the check, the bank returned the check on April 12th with a \$20 return charge (Trial Tr. at 27-29.).² The trial judge discounted the \$5,350.00 collected from Fitzroy St. Luce by one-third and awarded judgment to Lima for \$3,568.45 plus \$70.00 in court costs. (Trial Tr. at 30.)

¹ Lima's representative also explained that there were several claims totaling above the \$5,000 jurisdictional limit of the small claims division. (Trial Tr. at 7.) Therefore, Lima limited his complaint to the St. Luce account. (*Id.*)

² Since there was not enough evidence, the trial judge did not make a finding as to why the check was returned. (Trial Tr. at 28.)

III. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has jurisdiction to review final judgments and orders of the Territorial Court in all civil cases. See 4 V.I.C. § 33; Section 23A of the Revised Organic Act.³ "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the territorial court to judge the credibility of the witnesses." 4 V.I.C. § 33. The standard of review for this Court in examining the Territorial Court's application of law is plenary. See *Nibbs v. Roberts*, 31 V.I. 196, 204, 1995 WL 78295 (D.V.I. App. Div. 1995).

B. The Trial Judge Did Not Commit Reversible Error

The trial judge properly exercised his discretion in limiting the scope of the trial and his findings to the St. Luce account and the returned check of \$4,473.33. Finding the contract valid and enforceable, he awarded appellants two-thirds of the disputed amount on the St. Luce account.

Moreover, once the trial judge designated the issue to be considered at trial, he did nothing to inhibit the appellants' "proper defense" to that claim. He did not prevent the appellants from putting forth evidence that the check cleared.

³ Revised Organic Act of 1954, § 23A, 48 U.S.C. § 1614, *reprinted in* V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 159-60 (1995) (preceding V.I. CODE ANN. tit. 1).

Furthermore, the trial judge did not improperly foreclose appellants' counterclaims but instead refused to hear and decide them at the small claims proceeding. He explained that there was insufficient evidence before him to consider such claims. Therefore, he properly dismissed those claims *without prejudice*.

The trial judge did not err by failing to recuse himself. At the time this case was filed, there was no administrative rule in effect requiring that cases brought in the Territorial Court's Division of St. Thomas-St. John in which a division employee was a litigant had to be transferred to the Division of St. Croix. Therefore, the appellant's employment did not warrant automatic recusal by the trial judge. Furthermore, the trial judge's factual findings on the limited issues of the St. Luce account and the check were clearly supported by the record. Thus, we find no clear error to support a reversal.

IV. CONCLUSION

Accordingly, this Court affirms the trial judge's rulings because he acted within his broad discretion and his findings of fact were not clearly erroneous.

ENTERED this 3rd day of February, 2004.

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ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk