

NOT FOR PUBLICATION - FOR UPLOAD

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

Caledonia Springs, Inc.,	)	
	)	
Plaintiff,	)	Civ. No. 1996-111
	)	
v.	)	
	)	
Royal Insurance Company of Puerto Rico, Inc.,	)	
	)	
Defendant.	)	
_____	)	

ATTORNEYS:

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Douglas A. Brady, Esq.  
St. Croix, U.S.V.I.  
*For the plaintiff.*

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*For the defendant.*

MEMORANDUM OPINION

Moore, J.

Royal Insurance Company of Puerto Rico, Inc. has moved for summary judgment against Caledonia Springs, Inc. Because I find that there are disputed issues of material fact, I will deny the motion.

**I. FACTUAL BACKGROUND**

Caledonia Springs, Inc. ["Caledonia"], has filed this action against Royal Insurance Company of Puerto Rico, Inc. ["Royal"] for bad faith, breach of contract, breach of fiduciary duty, and tortious misrepresentation. Caledonia is a bottled water company operating in St. Croix and was insured by Royal when it sustained property damage from Hurricane Marilyn in September of 1995. Royal did not maintain offices or employees on St. Croix in 1995, but instead hired Cunningham International ["Cunningham"] to adjust Caledonia's insurance claims.

Cunningham and Caledonia engaged in a series of negotiations regarding the claims, resulting in an agreement on the physical damage in October, 1995, and an agreement settling all claims related to business interruption and other losses on January 8, 1996. When each agreement was reached, Caledonia signed a "Form of Acceptance" evidencing its willingness to accept a particular sum of money from Royal in settlement of that part of its claim.<sup>1</sup> Caledonia alleges that it signed the January 8, 1996 Form of

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<sup>1</sup> The first Form of Acceptance was for \$76,750.00 in property damage only. The second Form of Acceptance was for \$97,803.18 due to business interruption and all other claims. Royal did not supply the Forms of Acceptance to Cunningham. Royal does not normally use a form of acceptance in settling claims but instead uses a proof of loss form. Apparently, the forms of acceptance were documents used by Cunningham and, in this case, Cunningham supplied the document to Caledonia on behalf of Royal.

Acceptance with the express understanding, as stipulated by both Caledonia and Cunningham at the time of signing, that Caledonia would receive the settlement funds no later than January 15, 1996. Royal, however, did not issue and dispatch the settlement money until February 21, 1996.

Royal claims that it had no direct contact with Caledonia and that Caledonia dealt only with Cunningham, whom Royal alleges was acting as an independent contractor. Caledonia counters that Cunningham was acting as Royal's agent. Caledonia also alleges that during the negotiations of the settlement of its business interruption losses, Cunningham represented that, if Caledonia experienced additional loss of business income, the claim would be further adjusted or an additional claim could be made. After Caledonia did not receive the payment for business interruption losses on January 15, 1996, it allegedly suffered additional business losses and now argues that Royal's agreement to compensate such losses, as represented by Cunningham, has not been fulfilled.

## **II. ANALYSIS**

### **A. Standard of Review**

Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue respecting any material fact and that the moving party is entitled to a judgment as a matter of law. FED. R. CIV. P. 56(c). The nonmoving party may not rest on mere allegations or denials, but must establish by specific facts that there is a genuine issue for trial from which a reasonable juror could find for the nonmovant. See *Saldana v. Kmart Corp.*, 42 V.I. 358, 360-61, 84 F. Supp. 2d 629, 631-32 (D.V.I. 1999), *aff'd in part and rev'd in part*, 260 F.3d 228 (3d Cir. 2001). Only evidence admissible at trial shall be considered and the Court must draw all reasonable inferences therefrom in favor of the nonmovant. *Id.*

### **B. Defendant's Motion is Denied because there are Genuine Issues of Material Fact**

The parties have presented a wide range of arguments in support of their positions on this summary judgment motion. I do not review all of these arguments, however, because I find sufficient reason to deny Royal's motion by addressing two of the

most central issues of this dispute, namely, (1) whether the January 8, 1996 Form of Acceptance was completely integrated and (2) whether Cunningham was acting as Royal's agent or as an independent contractor.

1. Whether the Form of Acceptance Was Fully Integrated Raises a Genuine Issue of Material Fact

Royal argues that the January 8, 1996 Form of Acceptance was fully integrated and that Caledonia now is attempting to avoid the agreement by bringing in parole evidence of Cunningham's alleged representations. Caledonia counters that the form was not fully integrated because Cunningham's representations constituted additional and consistent oral terms that, if proved at trial, could be considered part of the agreement.<sup>2</sup>

Evidence of a consistent additional term is admissible to supplement an integrated agreement, *unless* the agreement was completely integrated. See RESTATEMENT (SECOND) OF CONTRACTS § 216 (1981). The integration clause contained in the January 8, 1996, Form of Agreement is evidence that the form was fully integrated, but it is not conclusive. See *id.* at § 209 cmt. b (1981). Thus,

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<sup>2</sup> Caledonia argues that Cunningham's oral promises could be consistent with the terms of the form of acceptance that stipulate the agreement would be the "full and final" settlement of all claims. Plaintiff alleges that it signed the form with the express understanding that full settlement of the claim was contingent receiving the settlement funds no later than January 15, 1996.

Caledonia's argument depends on whether the agreement was completely integrated. Under section 214 of the Restatement (Second) of Contracts, evidence of an agreement or negotiations between Cunningham and Caledonia that occurred contemporaneously with the adoption of the January 8, 1996 Form of Acceptance may establish that it was not fully integrated. Taking as true Caledonia's allegations that, contemporaneously with its entering into the January 6, 1996 Form of Acceptance, Cunningham represented that the claim would be adjusted further if additional business losses were incurred, I find that Caledonia has raised a genuine issue of material fact under section 214. Accordingly, I cannot grant Royal's motion for summary judgment.

2. Whether Cunningham was an Independent Contractor or Royal's Agent Raises a Genuine Issue of Material Fact

Royal argues that even if Caledonia can demonstrate its settlement of the insurance claim was due to some material misstatement of Cunningham, it may not void its agreement with Royal under section 164 of the Restatement (Second) of Contracts. According to section 164, the settlement agreement could not be voided if Royal acted in good faith and had no reason to know of Cunningham's misrepresentation.<sup>3</sup> Royal's argument has merit *if*

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<sup>3</sup> Section 164(2) of the Restatement (Second) of Contracts states that:

If a party's manifestation of assent is induced by either a fraudulent

*it can be proved* that Cunningham was an independent contractor. Whether Cunningham was an independent contractor, however, turns on a factual analysis that must be left to the trier of fact. Thus, I will also deny the motion because Royal's own argument for summary judgment raises another genuine issue of material fact.

### III. CONCLUSION

As there are genuine issues of material fact in regard to the issues discussed above, I find that Royal is not entitled to judgment as a matter of law and will deny the motion for summary judgment.

**ENTERED this 25th day of November, 2003.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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or a material misrepresentation by one who is not a party to the transaction upon which the recipient is justified in relying, the contract is voidable by the recipient, unless the other party to the transaction in good faith and without reason to know of the misrepresentation either gives value or relies materially on the transaction.