

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

EMILY BROWN,)	
)	Case No. ST-09-DV-201
vs.)	
)	Action for Domestic Violence
BOYD B. BROWN, JR. and)	
LAURIE VAN BEVERHOUDT,)	
Defendants.)	
_____)	

**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR
DISQUALIFICATION/RECUSAL**

This matter is before the Court on the pleading filed by Defendant Boyd B. Brown, Jr. entitled APPLICANT RULE 7.3 MOTION FOR RECONSIDERATION TO COURT AFTER THE ENTRY OF THE ORDER OR DECISION and MOTION FOR DISQUALIFICATION/RECUSAL OF magistrate (sic) KATHLEEN MACKAY pursuant to Title 4 V.I. Code (3). The Plaintiff has filed no response to the motion. The Court will address the motion for reconsideration in a separate order.

Plaintiff Emily Brown filed a domestic violence complaint against her son, Defendant Boyd B. Brown, Jr., and his girlfriend, Defendant Laurie Van Beverhoudt, on July 28, 2009. That same day Magistrate Alan D. Smith entered an ex-parte temporary restraining order against the Defendants, pursuant to Title 16 Virgin Islands Code Section 98, and the matter came on for hearing on August 6, 2009. All parties appeared *Pro Se*, were sworn and testified.

The evidence revealed that Plaintiff and Defendants lived on the same property; Plaintiff occupied the upstairs unit and Defendants occupied a downstairs unit with

partial facilities but no bathroom. Plaintiff testified that she had been the object of Defendant Brown's continuous verbal abuse and haranguing since he had been released from prison, that his harassment had caused her physical maladies, specifically high blood pressure, that she was at her wit's end and could absolutely no longer tolerate his abuse. While the Plaintiff was testifying about the abuse to which she had been subject, Defendant Brown nodded his head. The Court found the Plaintiff credible. Therefore, the Court entered an Order requiring the Defendants to vacate the property and further restraining them from harassing, verbally abusing, threatening or intimidating Plaintiff Emily Brown or from otherwise subjecting her to any form of domestic violence. The Court further ordered Defendants to vacate the Plaintiff's property within two weeks.

Defendant Brown's motion for disqualification/recusal appears to be largely based upon the fact that prior to filing the domestic violence complaint, the parties had appeared, *Pro Se*, before the same undersigned magistrate in an action captioned Emily Brown v. Boyd B. Brown, Jr., Action for Forcible Entry and Detainer, Case No. ST-09-CV-323, which came before the court on July 28, 2009. The Court dismissed that forcible entry and detainer matter for lack of subject matter jurisdiction because the Defendant was not a paying tenant. The court pointed out to Plaintiff that her case sounded in domestic violence and directed her to the family court division to file a domestic violence complaint. It is apparent that the Plaintiff then filed the domestic violence complaint that initiated this action.

Defendant Brown's motion for disqualification/recusal argues, *inter alia*, that he was denied due process and the undersigned was prejudiced and biased against him because 1) the forcible entry and detainer matter came before the undersigned magistrate, and 2) the undersigned magistrate acted as an advocate for Plaintiff by referring her to the Family Court to file a domestic violence complaint.

Defendant Brown's motion relies upon V.I. ANN. Tit. 4, §284 (3) and (4), which applies to judges and justices only. Virgin Islands law defines a magistrate as a judicial officer, but not as a judge. V.I. ANN. Tit. 4, §122(d). The Virgin Islands Code recites no standard for a magistrate or judicial officer to be disqualified from a proceeding. Nevertheless, the Court will apply the standards applicable to judges and justices.

No judge or justice shall sit or act as such in any action or proceeding:

- (1) To which he is a party or in which he is primarily interested;
- (2) When he is related to either party, or to an officer of a corporation which is a party, by blood or marriage within the third degree;
- (3) When in the action or proceeding or in any prior action or proceeding involving the same issues, he has been of counsel for any party to the action or proceeding; or
- (4) When it is made to appear probable that, by reason of bias or prejudice of such judge, a fair and impartial trial cannot be had before him.

Title 4 V.I.C. §284.

Defendant Brown argues that the Court acted as counsel for Emily Brown or was biased against Defendant Brown in the action for forcible entry and detainer, and as a

result should be disqualified from presiding over the family court domestic violence case. However, the Court dismissed the action for forcible entry and detainer on the grounds that the landlord/tenant court did not have subject matter jurisdiction of the dispute as presented by the Plaintiff. The Defendant did not present any evidence or testimony in the forcible entry and detainer matter. A magistrate who dismisses an action for lack of subject matter jurisdiction cannot be deemed to have been biased against the defendant. The Court's recommendation to Plaintiff that she seek relief in the Family Court does not rise to the level of acting as an advocate for the Plaintiff in violation of Title 4 V.I.C. §284.

Defendant Brown had ample opportunity to present his case in the domestic violence hearing and no partiality was shown to Plaintiff during the hearing. In addition, the Motion for Disqualification/Recusal was filed after this case was decided. Consequently, the Defendant waived his right to request a recusal or disqualification by not objecting before the Court entered its order.

Accordingly, Defendant Brown's Motion for Disqualification/Recusal is **DENIED**.

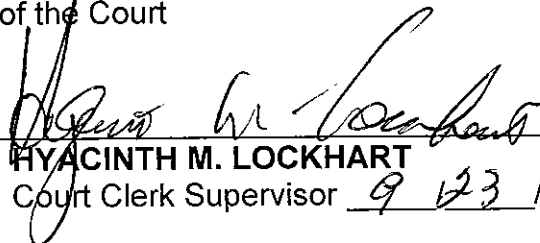
DATED: September 23, 2009



KATHLEEN MACKAY

Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: 

HYACINTH M. LOCKHART
Court Clerk Supervisor 9 23 109