

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

TROY M. HORTON)	
)	
Plaintiff,)	SX-10-SM-17
vs.)	
)	Action for Debt
GOVT. OF THE VIRGIN ISLANDS,)	
GOV. JOHN P. DE JONGH)	
Defendant.)	
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MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Government’s Motion for Reconsideration of the Magistrate’s Order, issued from the bench, denying its motion to transfer this matter to the General Civil Division of the Superior Court. In response to the Government’s Motion for Reconsideration, the Plaintiff filed a Motion to Strike or in the Alternative Opposition to Motion for Reconsideration on May 19, 2010. This matter is scheduled for hearing on June 18, 2010.

Discussion

The purpose of the Small Claims Division is to afford litigants, whose claims do not exceed \$10,000.00, inexpensive, expeditious and simple access to judicial relief. It is well established that under V.I. CODE ANN. tit. 4, Section 112(d), no party to a small claims action may be represented by counsel. However, the statute does not define “party” nor does it address representation of the Government of the United States Virgin Islands in a small claims action. The Government, in support of its contention that it is entitled representation by the Attorney General in this action, relies on V.I. CODE ANN. tit. 3, Section 114(a)(6). This section delineates the powers and duties of the Attorney General and states, in pertinent part, that the Attorney General “shall...appear for and represent the executive branch of the Government . . . in all legal or quasi-legal matters, hearings or proceedings.” The Plaintiff, on the other hand,

argues that the express provision of the small claims statute prohibiting representation by legal counsel in small claims controls. Accordingly, the issues in this case are whether (1) the Government, as the Defendant in a small claims action, has the right to representation by the Attorney General, and if it does, (2) should this matter be transferred to the General Civil Division of the Superior Court. Application of the general rules of statutory construction, leads this Court to conclude that the Government is entitled to representation by the Attorney General in all civil actions, including small claims, and that this matter should be transferred to the General Civil Division of the Superior Court.

V.I. CODE ANN. tit. 3, Section 114(a)(6) was enacted on March 29, 1962 and V.I. CODE ANN. tit. 4, Section 112(d) was enacted on or about February 9, 1967. Therefore, it is presumed that the Legislature was aware that the Government was entitled to representation by the Attorney General in all legal proceedings when it enacted the provision of the small claims statute that prohibits representation by an attorney in such actions.

Under the general rules of statutory construction, “[a]mendments by implication, like repeals by implication, should be based upon the Legislature’s clear and manifest intention.” *In re Guardianship of Penn*, 15 F.3d 292, 295 (3d Cir. 1994) (*aff’g In re Guardianship of Penn*, 1993 WL 664443, at *1 (D.V.I. 1993)). Furthermore, as it appears in the instant case, “[w]here provisions of two Acts are in conflict, standard statutory construction requires that a court adopt as controlling that provision more closely associated with the specific substance of the controversy.” *Bowman v. Tex. Educ. Found. Inc.*, 454 F.2d 1097, 1101 (5th Cir. 1972).

In the instant case there is a conflict between tit. 3, Section 114(a)(6) and tit. 4, Section 112(d). The substance of the controversy in this case is the Government’s right to representation

by the Attorney General in “all legal or quasi-legal matters, hearings or proceedings” including small claims cases. The primary purpose of the legislation creating the Small Claims Division of this Court is to provide members of the public with expeditious, inexpensive and simple access to the courts for claims not exceeding \$10,000.00. To facilitate that purpose the Legislature determined, among other things, that the practices and procedures provided in the court rules do not apply, the defendant is not required to file a written answer, and that parties cannot be represented by an attorney. On the other hand, the Legislature’s mandate that the Attorney General represent the Government arises from the fact that it is an entity that cannot appear “pro se”. The Government can only act through an authorized representative. In all legal actions that authorized representative is the Attorney General. The Legislature did not, with the passage of the small claims statute, manifest a clear and express intention to amend the statutory authorization of the Attorney General to represent the Government in all legal matters. Accordingly, this Court must read the statutes together and adopt as controlling the provision more closely associated with the specific substance of the controversy.

The fairest and most reasonable construction of the small claims statute is that the Legislature intended for the attorney general statute to be controlling. The plain language of the attorney general statute makes clear that the Attorney General is to appear for the Government in all legal matters, hearings or proceedings. All legal matters would unquestionably include small claims matters, despite not being mentioned. Furthermore, the small claims statute requires parties to appear in person. The statute makes exceptions for corporate parties, associations and partnerships—parties that cannot appear in court in person—to be represented by personal representatives. The Government of the United States Virgin Islands is similar to corporate

parties, associations and partnerships in that it cannot appear in court in person. The Government, as a party, must be able to represent itself in court. The Court will not read into the small claims statute a requirement that the Government relinquish its right to be represented by the Attorney General in small claims actions. To do so would undercut the Legislature's clear mandate that the Attorney General represents the Government in all legal matters.

Conclusion

Accordingly, 3 V.I.C. § 114(a)(6) is the controlling statute as is it more closely associated with the specific substance of this controversy. Therefore, the Government is entitled to representation in all legal actions, including those actions in which it is a defendant in a Small Claims Court. Having concluded that the Government is entitled to representation by the Attorney General in all legal proceedings, including small claims actions, it follows that this matter should be transferred to the General Civil Division of the Superior Court because neither party can be represented by an attorney in Small Claims Court. The Plaintiff will not be prejudiced in any way because he has the right, upon transfer, to appear *pro se* or be represented by counsel of his own choosing. Furthermore, in the General Civil Division of the Superior Court, the Plaintiff will be able to pursue his discovery, seek punitive damages and recover for his bodily injuries, pain and suffering which he contends may be "twenty-five (25) times the small claims jurisdictional limit".

Accordingly, it is hereby

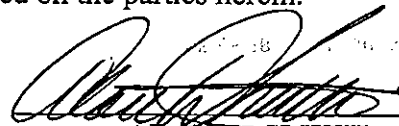
ORDERED, that the Defendant's Motion for Reconsideration is **GRANTED**; and it is further

ORDERED, that the Court's Order denying the Defendant's Motion to Transfer this matter to the General Civil Division of the Court is **VACATED**; and it is further

ORDERED, that this action is transferred to the General Civil Division of Superior Court of the Virgin Islands, District of St. Croix; and it is further

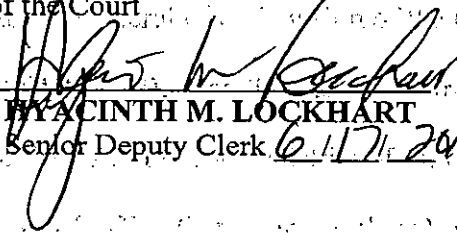
ORDERED, that a copy of this Order shall be served on the parties herein.

DATED: June 17, 2010


ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

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

By: 
HYACINTH M. LOCKHART
Senior Deputy Clerk 6/17/2010

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