

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

ROBERT KING AS THE TRUSTEE)	
FOR WINSTON LIBURD)	
Plaintiff,)	
)	Civil No. 194 / 2010
vs.)	
)	
MACKCHESNEY APPLETON)	Action for Forcible Entry
Defendant.)	and Detainer
)	
)	
)	

MEMORANDUM OPINION AND ORDER

This Matter came on for hearing on Tuesday, April 27, 2010, before the Honorable Alan D. Smith, Magistrate of the Superior Court of the Virgin Islands. Plaintiff, Robert King as the Trustee for Winston Liburd, appeared personally and was represented by Clive Rivers, Esq. Defendant, Mackchesney Appleton (“Appleton”), appeared *pro se*. Both parties offered sworn testimony and evidence, and thereafter the Court took the matter under advisement to determine whether the Defendant offered sufficient evidence to demonstrate that he has a “facially bona fide and good faith claim of right” to continued possession of the property in dispute.

The following relevant evidence was presented at trial.

1. The property in dispute consists of land and buildings known as and located at Anna’s Retreat 173B-60, 173B-61, and 173B-61A, St. Thomas, Virgin Islands (the “Property”). Plaintiff’s Ex. No. 1-4, 6; Defendant’s Ex. No. 1-2, 4-5.

2. The Defendant’s father, Gilbert Appleton, Sr. (“Appleton, Sr.”) was the owner of the Property until he defaulted on his mortgage payments and his financial institution foreclosed. Plaintiff’s Ex. No. 4.

3. Allan E. Harrigan (“Harrigan”) purchased the Property at the foreclosure sale for \$144,177.01 plus accrued interest and other fees and costs and was issued a District Court Marshal’s Deed dated May 27, 2003. Defendant’s Ex. No. 5.
4. Defendant, Mackchesney Appleton, testified that in 2003 he entered into an agreement with Harrigan to purchase the Property from him and paid him \$50,000.00 up front and would make monthly payments thereafter until the mortgage was paid off. Appleton further testified that Harrigan agreed to use the monthly payments that he received from him to pay the mortgage that Harrigan had with the bank.
5. In further support of his claim, Appleton produced a document styled “Contract of Sale” (the “Contract”) for the Property. According to the document, Appleton was, among other things, to pay Harrigan \$185,436.57 for the Property. Defendant’s Ex. No. 2.
6. Although the Contract never signed by the parties, Appleton testified that he made an “up front” payment of \$50,000.00 and began making monthly payments to Harrigan on or about August 14, 2003. Appleton further testified that he continued to make payments to Harrigan, for which he received receipts, until February 15, 2008, at which time, on the advice of counsel, he stopped making the payments. Defendant’s Ex. No. 3.
7. Appleton further testified that on four occasions in 2008, he made mortgage payments directly to Banco Popular, the bank that held Harrigan’s mortgage. Appleton produced receipts which evidence the following payments to Banco Popular: \$1,571.00 on April 21, 2008; \$1,400.00 on June 2, 2008; \$700.00 on June 5, 2008; and \$1,600.00 on August 7, 2008. Defendant’s Ex. No. 4.
8. On October 21, 2008, Harrigan, as owner of the Property, successfully filed an FED action against Appleton, Sr. and was granted possession and restitution of the premises on December 8, 2009. See Harrigan v. Gilbert Appleton, Sr., Civil No. ST-08-CV-462. Plaintiff’s Ex. No. 4.

9. In the body of its Order, the Court specifically noted that Appleton, Sr. claimed that he no longer occupied the premises and that based on the testimonies, it appeared that “Mackchesney Appleton” and others live on the Property. The Court also stated and expressly ordered “That the Plaintiff is entitled to possession and restitution of the [Property], from the Defendant Gilbert Appleton, Sr., only”. Plaintiff’s Ex. No. 4.
10. On or about December 11, 2008, Harrigan conveyed the Property to Robert King, In Trust for Winston Liburd (“King”), in consideration of the sum of \$214,000.00. Plaintiff’s Ex. No. 3.
11. King testified that, at the time the Property was conveyed, he knew that Appleton was living on the Property without an oral or written lease agreement with Harrigan.
12. King filed this action on February 18, 2010 after having served Appleton with a Notice to Quit on November 13, 2009... Plaintiff’s Ex. No. 2.

In *Inter Car Corp. v. Discount Car Rental*, 21 V.I. 157, 159 (Terr. Ct. 1984), the Court held

that:

[A] FED action will lie if any of the following conditions exists and is properly pleaded and proved to the Court:

1. Entry on the premises by force;
2. Entry on the premises peaceably but possession is detained or continued by force;
3. There is an undisputed oral or written lease agreement, and rent is due and owing thereon; or
4. There is an undisputed oral or written lease which has expired. . . .

[H]owever, a FED cause of action will not lie where:

1. Title to the premises is in question; or

2. Where there is proved to the Court to exist a bona fide question of the existence of a lease at law or in equity, which has not yet expired.

The Virgin Islands Supreme Court, in *Virgin Islands Port Auth. v. Joseph*, 49 V.I. 424, 431 (V.I. 2008), reiterated the long standing rule that a court's FED jurisdiction ceases upon a showing that the evidence is sufficient to establish a "facially bona fide and good faith claim of right" in the defendant to continued possession of the premises. See *Estate of Thomas Mall*, 923 F.2d 258, 260 (3d Cir. 1991); *C.M.L., Inc. v. Dunagan*, 904 F.2d 189, 191 (3d Cir. 1990); and *Inter Car Corp. v. Discount Car Rental*, 21 V.I. 157, 158-159 (Terr. Ct. 1984). In, the Court also made clear that there is no requirement that the "possessory interest at issue in an FED action be created by a written agreement." *Id.* at 430. The Court in *Joseph* also took note of the fact that "in *Thomas Mall*, the Court recognized that the trial judge in an FED action cannot "adjudicate a right of possession that depends on an equitable interest in the premises [] or inquire into equitable rights and give relief to which the party might be entitled in equity.'" *Joseph* at 430 (discussing *Thomas Mall* at 264).

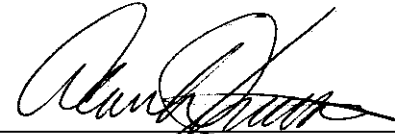
The evidence offered by the parties during the FED proceeding was sufficient to create a bona fide question regarding Appleton's equitable interest in the Property. As this Court cannot, in an FED action, adjudicate a defendant's equitable interest in the premises or inquire into equitable rights and give relief to which the party might be entitled, this matter will be dismissed. See *Joseph*, 49 V.I. at 431. The Plaintiff may file an appropriate action in the Civil Division of this Court.

Accordingly, it is hereby

ORDERED that Plaintiffs' Complaint for Forcible Entry and Detainer is **DISMISSED**;
and it is further

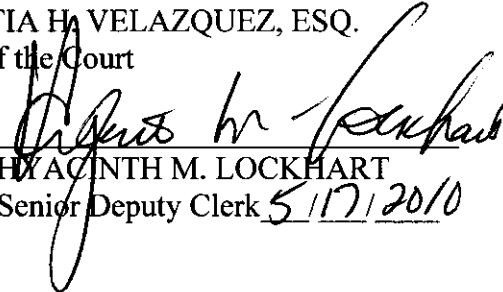
ORDERED that copies of this Order be served upon the parties and a copy thereof be directed to Clive Rivers, Esq.

Dated: May 17, 2010



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

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

By: 
HYACINTH M. LOCKHART
Senior Deputy Clerk 5/17/2010