

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

ALBERT MERCER,)	CIVIL NO. ST-09-SM-345
)	
Plaintiff,)	
)	
vs.)	ACTION FOR DEBT
)	
ISLANDER TAXI SERVICE, INC.,)	
)	
Defendant.)	
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MEMORANDUM OPINION

THIS MATTER is before the Court on appeal from an August 5, 2009 Order of dismissal by the Honorable Magistrate Alan Smith of the Magistrate Division of the Superior Court. For the reasons stated below, the Court will reverse the Order and will enter Judgment in favor of Plaintiff.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Background¹

Plaintiff Albert Mercer (“Mercer”) previously served as president of Islander Taxi. Between 1987 and 1989, he lent Seven Thousand Five Hundred Dollars (\$7,500) to the association so that it could pay insurance premiums for its members.² He retired from the position in 1989. Thereafter, he sought to be repaid. He stated that Islander Taxi had an agreement with him that it would repay the loan as it obtained sufficient funds to do so, because, as a non-profit organization that survived off the dues of its members, who did not always pay on time, he understood that the full amount of the debt could not be repaid all at once.

¹ The Court, in conducting a trial *de novo* to resolve the issues presented to it on appeal, received testimony from Plaintiff Albert Mercer and from the current President of Islander Taxi Service, Inc., Alvin Raymond.

² A number of the checks Mercer wrote to Islander Taxi were produced at the July 27, 2009 hearing, and an additional check was provided at the March 22, 2010 hearing.

In 1992, David Williams, the president of Islander Taxi at the time, signed a written acknowledgement of Islander Taxi's debt to Mercer. Islander Taxi made its first payment on the loan some time between 1989 and 1992. It made its last payment in October 2004. Mercer stated that each time he received a payment on the loan, he was told that the association understood he was owed the debt and that it would pay him as it had the funds to do so. At some point after October 2004, Islander Taxi began to refuse to pay the debt. At this time, Mercer states, and Islander Taxi does not contest, that the amount remaining due on the loan is One Thousand Five Hundred Dollars (\$1,500).

Raymond, currently the president of Islander Taxi, stated that he did not contest the amounts Mercer alleges are due, but that he does not have independent documentation to verify those amounts. It appears that Islander Taxi's paperwork and books were misplaced or destroyed as a result of Hurricane Marilyn and several transitions in Islander Taxi's leadership. Islander Taxi's defense, according to Raymond, is that the Seven Thousand Five Hundred Dollars (\$7,500) represents an investment Raymond made on behalf of the association that was a "poor business decision," and that it is not fair that the present members of Islander Taxi should pay this debt.

B. Proceedings in the Magistrate Division

Mercer filed his small claims Complaint on June 16, 2009. A trial was held on July 27, 2009. The Magistrate received testimony from Mercer, former Islander Taxi president David Williams, and Raymond.³ The Magistrate initially raised the question of whether there had been proper service on Islander Taxi as a corporation. The Magistrate, after being satisfied that

³ Carlyle Smalls, a member of Islander Taxi, and Davis Gumbs, a former President, were sworn in and identified themselves on the record but did not provide any substantive testimony.

service was proper, considered Mercer's evidentiary exhibits, including a number of checks written by Mercer to Islander Taxi. The Magistrate finally concluded that the matter must be dismissed because the statute of limitations had run and issued an Order to that effect on August 5, 2009.

C. Proceedings on Appeal

Mercer filed his appeal on August 12, 2009. The Court held an evidentiary hearing on March 22, 2010. Mercer appeared *pro se*. Islander Taxi also appeared *pro se* through its current president, Raymond. The Court heard testimony from both Mercer and Raymond. The Court also reviewed the evidence provided at the hearing in the Magistrate Division and received further evidence in the form of exhibits.

At the hearing, Mercer stated that he lent Seven Thousand Five Hundred Dollars (\$7,500) to Islander Taxi, Six Thousand Dollars (\$6,000) of which has been repaid. He stated that the remaining balance due is One Thousand Five Hundred Dollars (\$1,500). Islander Taxi did not contest Mercer's statement that Mercer made such a loan, or that Islander Taxi has repaid him Six Thousand Dollars (\$6,000). Instead, Islander Taxi stated that Mercer, as president of Islander Taxi, simply made a poor business decision when he loaned the association the funds. Islander Taxi also objected to the fact that Mercer waited until 2009 to file his Complaint.

II. JURISDICTION AND STANDARD OF REVIEW

A. Appellate Jurisdiction of the Superior Court

This Court has jurisdiction over appeals from the Magistrate Division. V.I. CODE ANN. tit. 4, § 125 (1997) (providing that appeals from the Magistrate Division shall be heard in the Superior Court, unless otherwise provided by law). On appeal, the Court has the authority to review *de novo*

the Magistrate's ruling. FED. R. CIV. P. 72(b)(3) (requiring the judge to "determine de novo any part of the magistrate judge's disposition that has been properly objected to" and allowing the judge to "accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions").⁴ Accordingly, the Court held a hearing *de novo* on this matter on March 22, 2010.

B. Jurisdiction of the Magistrate Division To Hear the Matter in the First Instance

The Court also finds that the Magistrate Division had jurisdiction to hear this matter. V.I. CODE ANN. tit. 4, § 123(a)(4) provides that the Magistrate Division has jurisdiction to hear small claims cases. Small claims matters involve those civil actions in which the amount in controversy does not exceed Ten Thousand Dollars (\$10,000). Tit. 4, § 112. As this case involves an amount in controversy less than Ten Thousand Dollars (\$10,000), it was properly heard in the Magistrate Division.

III. DISCUSSION

A. Islander Taxi Owes Mercer the Remaining Balance of the Loan.

The Court finds that Mercer and Islander Taxi had an oral agreement by which Mercer was to loan Islander Taxi Seven Thousand Five Hundred Dollars (\$7,500) and Islander Taxi was to repay the loan when it became able to do so. Conditional promises to pay are no less enforceable than any other kind of contractual agreement. RESTATEMENT (SECOND) OF CONTRACTS § 2.⁵ In

⁴ The Federal Rules of Civil Procedure are made applicable to matters before this Court by Superior Court Rule 7, where not inconsistent with the Rules of the Superior Court.

⁵ Where not inconsistent with local laws, the Restatements of Law provide the binding rules of decision for the courts of the Virgin Islands. V.I. CODE ANN. tit. 1, § 4 (1994).

fact, Islander Taxi's president, Raymond, did not contest that there was such an agreement at the time that the loan was made. Rather, he states that Islander Taxi's current position is that such a loan represented a poor business decision on Mercer's behalf and that Islander Taxi should not have to repay the loan at this time. However, the Court will not inquire as to the soundness of Mercer's decision, absent some evidence that the loan was made to benefit Mercer himself, which Raymond acknowledged was not the case, or that Mercer failed to act in good faith to advance Islander Taxi's interests.

Mercer's testimony, which is uncontested evidence, establishes that there was a contract at the time the loan disbursements were made. Moreover, it appears that the debt was acknowledged several times over the course of the years. In 1992, then-president of Islander Taxi David Williams wrote that he "acknowledged" the debt owed. Mercer also testified that each time Williams gave him a check, Williams acknowledged that Islander Taxi still owed Mercer money and that the money would be forthcoming as Islander Taxi found the ability to repay.⁶ Therefore, the Court finds that there was an unwritten conditional promise to repay the loan between Mercer and Islander Taxi.

The Court will not award Mercer the additional sums he requests for an alleged loan for the purchase of phone equipment (\$698.50), and for funds provided for previous cases filed on behalf of Islander Taxi (\$250), because there is no evidence Islander Taxi ever agreed to or acknowledged those "loans."

⁶ Williams' statement as president of Islander Taxi constitutes a vicarious admission on behalf of Islander Taxi, which is an exception to the rule prohibiting the admission of hearsay. V.I. CODE ANN. tit. 5, § 932(9).

B. Islander Taxi Has Been Properly Served.

In his July 27, 2009 hearing, Magistrate Smith raised questions regarding whether Mercer had properly served Islander Taxi. Superior Court Rule 27 provides that the methods of service in the courts of the Virgin Islands are governed by Federal Rule of Civil Procedure 4. Rule 4(h)(1)(B) provides that service is complete if a copy of the summons and complaint is delivered to an “officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.” The record reflects that Alvin Raymond was served with a summons and a copy of the Complaint on July 8, 2009. Because Raymond was president of Islander Taxi at the time of service, Mercer has perfected service according to Rule 4.

C. The Statute of Limitations Has Not Run.

Magistrate Smith dismissed this action because he ruled that the statute of limitations had run on Mercer’s Complaint. The Court will reverse the dismissal because it finds that the statute of limitations did not run by the time the Complaint was filed. The statute of limitations for “an action upon a contract or liability, express or implied” is six years. V.I. CODE ANN. tit. 5, § 31 (1997). When a party has breached its promise under the contract, the limitations period begins from the time of the last payment made on the contract. Tit. 5, § 40. Mercer stated, and Islander Taxi did not contest, that the last payment on Islander Taxi’s debt was made in October 2004. The Complaint in this action was filed on June 16, 2009. Therefore, the Complaint was filed within the statute of limitations.

CONCLUSION

Islander Taxi owes Mercer One Thousand Five Hundred Dollars (\$1,500) on the loan

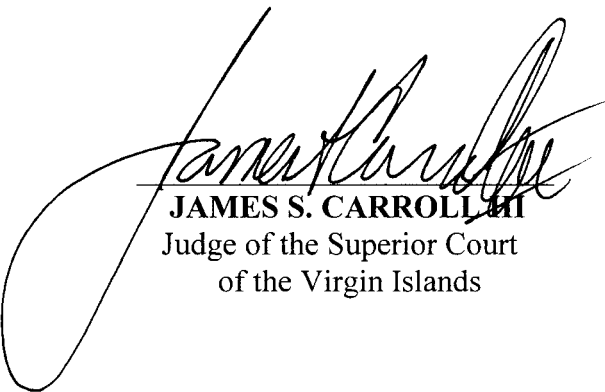
Mercer made to Islander Taxi. Islander Taxi made some payments between 1989 and 2004 but then ceased making payments on the loan and has thereafter refused to pay the remaining portion of the debt. The Complaint for that sum owed was timely filed. Therefore, the Court will enter Judgment on even date in favor of Mercer for the sum of Two Thousand Seven Hundred Ninety-Five Dollars and Fifty-Five Cents (\$2,795.55), which includes the principal of One Thousand Five Hundred Dollars (\$1,500.00) plus One Hundred Ninety-Five Dollars (\$195.00) in court costs and One Thousand One Hundred Dollars and Fifty-Five Cents (\$1,100.55) in interest accruing from October 30, 2004, to the date of this Judgment.

DATED: March 25, 2010

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

BY: 

ESTRELLA GEORGE
Court Clerk Supervisor


JAMES S. CARROLL
Judge of the Superior Court
of the Virgin Islands

3976, 2010