

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

ST. THOMAS TAXI ASSOCIATION INC.)	
)	
Plaintiff,	)	ST-09-SM-24
vs.	)	Action for Debt
RONALD OLIVACCE)	
Defendant,)	
ST. THOMAS TAXI ASSOCIATION INC.)	
)	
Plaintiff,	)	ST-09-SM-25
vs.	)	Action for Debt
NILSA SERRANO)	
Defendant,)	
ST. THOMAS TAXI ASSOCIATION INC.)	
)	
Plaintiff,	)	ST-09-SM-26
vs.	)	Action for Debt
JOSE LUIS TAVARES)	
Defendant,)	
ST. THOMAS TAXI ASSOCIATION INC.)	
)	
Plaintiff,	)	ST-09-SM-28
vs.	)	Action for Debt
MARION VOLCY)	
Defendant,)	
ST. THOMAS TAXI ASSOCIATION INC.)	
)	
Plaintiff,	)	ST-09-SM-30
vs.	)	Action for Debt
BERNADETTE OTTLEY)	
Defendant,)	
)	

AMENDED MEMORANDUM OPINION AND ORDER

On January 14, 2009, the Plaintiff, St. Thomas Taxi Association (the “Association”), filed a Small Claims complaint for recovery of personal property against Defendants, Marian Volcy (“Volcy”), Ronald Olivacce (“Olivacce”), and Jose Luis Tavares¹ (“Tavares”). The complaints specifically requested return of—1. Radio: with the privileges to use the radio

¹ In its Memorandum Opinion and Order dated November 4, 2009, the Court inadvertently neglected to address Defendant Tavares’ letter. Therefore, said letter, which will be treated as a Motion, has been included and addressed in the instant Amended Memorandum Opinion and Order.

frequency and 2. Taxi light for roof to identify vehicle as a St. Thomas Taxi Association cab. At the September 29, 2009 trial the Association argued that the Defendants' memberships had been terminated and, as a consequence, they were no longer entitled to possession of the property. The Defendants asserted that they were still members because the Association had not properly terminated their memberships. Based on the testimony and the evidence, the Court concluded that the Association had not followed its own By-laws when it terminated the Defendants as members of the Association and entered an Order dismissing the Plaintiff's complaint with prejudice on September 29, 2009.

By separate letters dated October 15, 2009, Defendants, Volcy, Olivacce, and Tavares, asked that the Court amend its Order, dated September 29, 2009, to specifically provide reinstatement to membership in the Association. The Court will treat the letters of Defendants as motions to amend the Order to provide the affirmative relief requested by each of them.

Superior Court Rule 62 provides that the defendant in a small claims action is not required to file a written answer, plea or other defense in writing, except if the defendant asserts a set-off or counterclaim in which case submission of written plea is at the discretion of the Court. During the trial, none of the three above-mentioned Defendants asked for reinstatement in the Association or a determination that they were still bona fide members. All three are now asking the Court to convert its finding into an affirmative determination of reinstatement. This Court is not inclined to take this step. While this Court has discretion to allow a defendant to assert a counterclaim, it will not extend that discretion to encompass a counterclaim made after the conclusion of the trial on the merits.

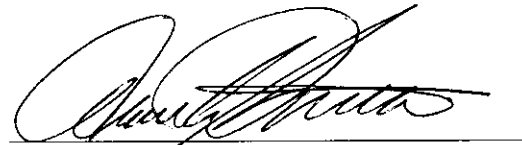
St. Thomas Taxi Association vs. Ronald Olivacce
Case No. ST-09-SM-24
St. Thomas Taxi Association vs. Jose Luis Tavares
Case No. ST-09-SM-26
St. Thomas Taxi Association vs. Marion Volcy
Case No. ST-09-SM-28
Order Page 3 of 3

Furthermore, the Court's September 29, 2009 Order did no more than terminate the Association's action against the Defendants. Therefore, any claim the Defendants had or may have to reinstatement must be the subject of a separate proceeding or action.

Accordingly, it is hereby

ORDERED that the requests of Defendants, Volcy, Olivacce, and Tavares to amend the Order dismissing the Association's complaint so that it affirmatively states that they are reinstated as members of the Association are **DENIED**.

Dated: November 12, 2009



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

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

By: 
PAULINE D. OTTLEY
Court Clerk Supervisor 11/16/09