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**IN THE SUPREME COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

S. Ct. Civ. No. 2022-0023

JANET V. JULIEN

Appellant/ Defendant,

v.

VICTOR S. MATTHEW,

Appellee/ Plaintiff.

APPEAL FROM THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Re: Super. Ct. Civ. No. SX-2022-RV-00003

APPELLANT'S BRIEF

Dated: August 13, 2022

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The Superior Court, sitting in Small Claims capacity, tried the case on March 10, 2020. Subject matter jurisdiction in the Superior Court existed, if at all, pursuant to 4 V.I.C. Section 111-112. The Court entered its ruling from the bench on March 10, 2020. An Amended Judgement was entered March 19, 2020

Notice of Appeal from the final order of the Magistrate Division was timely filed on March 23, 2020 with the Appellate Division of the Superior Court.

The Supreme Court of the Virgin has jurisdiction over all appeals arising from final judgments, final decrees, or final orders of the Supreme Court, or as otherwise provided by law. 4 V.I.C. Section 32(a).

No cross appeal was filed by the Appellee. There is no other related case or proceeding of which Appellant is aware.

STATEMENT OF ISSUES PRESENTED

- I. Whether the Trial Court Improperly Shifted the Burden of Proof to Appellant/ Defendant.
- II. Whether the Trial Court Effectively Denied Appellant / Defendant's Right to Witnesses.
- III. Whether the Trial Court Improperly Compensated Appellee/Defendant for Electrical Work.

STANDARD OF REVIEW

In general, a court abuses its discretion "when the action of the trial judge is clearly contrary to reason and not justified by the evidence." *Vizzini v. Ford Motor Co.*, 569 F.2d 754, 760 (3d Cir. 1977). An abuse of discretion may be found when the court's decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact. *International Union v. Mack Trucks, Inc.*, 820 F.2d 91, 95 (3d Cir. 1987), *cert. denied* 111 S.Ct. 1313 (1991).

The court's findings of fact are reviewed under the clearly erroneous standard. *Sheet Metal Workers International Association Local 19 v. 2300 Group, Inc.*, 949 F.2d 1274, 1278 (3d Cir. 1991). Whether the trial court committed reversible error where its decision rests upon an improper application of the facts is a legal question subject to plenary review. *United States v. Bagnall*, 907 F.2d 432, 435 (3d Cir. 1990).

STATEMENT OF FACTS

On or about June 1, 2019, the Appellant / Defendant and Appellee / Plaintiff entered into an agreement to complete Appellant / Defendant's kitchen cabinets, counter, and to tile the kitchen and dining room floors. (JA17) With the subject titled " Julien kitchen project ", (JA17) Appellee / Plaintiff emailed the following scope of work to Appellant / Defendant on June 9, 2019.

"this is an estimated cost to upgrade kitchen cabinets and replace with new ones. To remove existing cabinets and replace with new ones that's \$4,800 that includes cabinets, black(sp) splash, and countertop and removed tiles and installed new ones \$1,200.00 total project cost is \$6,000. Owner provides all materials except adhesive caulking and epoxy for countertop and backsplash. The tiles is kitchen and dining room and also to fabricate and installed bar top". (JA41)

The Appellee / Plaintiff begun the scope of work the last week of June 2019 by removing the old kitchen cabinet including backsplash and countertop along with floor tiles. (JA3) On June 29, the Appellee / Plaintiff started tiling the kitchen floor and directed Appellant /Defendant to purchase concrete mix as he stated that the kitchen floor was not level. (JA3) But after mixing the concrete and tiling the kitchen floor, the Appellee / Plaintiff failed to state that the kitchen floor was still not level. (JA3)

While installing the kitchen cabinets, Appellee / Plaintiff started cutting the length of the cabinets. (JA3) Appellee / Plaintiff was told to stop. (JA3). Upon the arrival of Appellant/ Defendant's new appliances, the cabinet over the refrigerator and the refrigerator panels were so

low that the appliances could not fit and Appellant /Defendant thus had to hire someone to retrofit the cabinets. (JA4).

Finally, the Appellee / Plaintiff cut the electrical wire to appliances without asking Appellant / Defendant to make changes. The Appellant / Defendant stopped Appellee / Plaintiff from proceeding and called in an electrician professional to complete the job. (JA19)

All told, Appellant / Defendant paid the Appellee / Plaintiff \$4,000.00 out of the \$6,000.00 agreed upon price for the work. (JA17) Frustrated with the Appellee / Plaintiff's poor workmanship that cost money to complete and, or repair , Appellant / Defendant stopped Appellee / Plaintiff from completing the work.(JA4)

On February 10, 2020, Appellee / Plaintiff filed a Verified Complaint in the Small Claims Division of the Superior Court. (JA10) Appellee / Plaintiff sought a judgment in the amount of \$2,850.00 for the work. (JA17) Appellant / Defendant in turn filed a Counterclaim in the Small Claims Division of the Superior Court dated February 21, 2020 seeking a judgment in the amount of \$5,000.00. (JA18)

The matter came before the Magistrate Division for a hearing on March 10, 2020. (JA42) In an Amended Judgment dated March 10, 2020, the Court found that the Appellee /Plaintiff was owed \$2,850.00 for the value of the work performed. (JA8) The Court also found that the Appellant/ Defendant was entitled to credit for the work not completed in the amount of \$1,1400.00. (JA8) The Court then ordered that " because Plaintiff's Complaint was off-set by Defendant's Counter-Claim. Defendant will pay the balance of \$1,706.00 to the Court's registry ". (JA8) On or about March 10, 2020, Appellant /Defendant filed a Notice of Appeal from the Magistrate Division. (JA2) In an Order entered March 22, 2022, the Superior Court affirmed the

Judgment of the Magistrate Division. (JA7) Notice of Appeal to the Supreme Court was filed on April 20, 2022. (JA11)

ARGUMENT

I. The Trial Court's Erred By Improperly Shifting the Burden of Proof to Appellant/Defendant.

Sup. Ct. R. 64 provides in pertinent part: "The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings, or evidence, except such provisions relating to privileged communications." Thus, while the Superior Court Rule 64 requires the Superior Court to do substantial justice between the parties, it must do so "according to the rules of substantive law" *Mill Harbor Condo Owners Ass'n v. Marshall*, 53 V.I. 581.588 (V.I. 2010). And the standard of proof in a civil case is beyond a preponderance of the evidence. *Armstrong Ford, Inc. v. Cambell*, 14 VI 337 (D.V.I. 1977)

The trial court here improperly shifted the burden of proof from the Appellee /Plaintiff to the Appellant / Defendant. When the case was first called , the Court asked the Appellee / Plaintiff if he had any witnesses. The Appellee / Plaintiff stated that he had no witnesses but "**only just some pictures and documents(emphasis added).**"(JA44) After a brief recess, the Court asked the Appellee / Plaintiff the basis of his claim. After stating that the Appellant /Defendant had hired him to install some cabinets and tiles for the sum of \$6000.00 and that he had been paid \$4,000.00, the Appellee / Plaintiff stated he found a breaker box inside one of the cabinets that should not have been there. (JA47) Appellee / Plaintiff stated the Appellant /Defendant agreed that he would remove it for the sum of \$2,850.00. (JA47) At this point, the

she said “yes I do. And that the witness was presently off island due to medical, that she didn’t know if you want to contact her, by phone and that she will return in May” (JA45) And then the Court responded. “Well, it was your responsibility, ma’m to make a request to the court to either continue the matter to a time where he could be present or to make arrangements to contact her telephonically. So we will see whether or not we need her.” (JA45)

At this threshold stage of the proceedings, the Court could have done substantial justice by granting the Appellant/ Defendant a continuance until the end of May for her witness. Doing so would have been in accordance with 4 V.I.C. Section 11, which states that “there is in the Superior Court a small claims division, in which, the procedure shall be as informal summary as is consistent with justice”.

However, the Court would once again act in an inexplicable way. After the trial had begun in earnest, the Appellant/ Defendant stated that she had the numbers for two men that had to correct or otherwise repair the Plaintiffs work - Peter Gilbert and Miguel Guadeloupe (JA82) This request by Appellant/ Defendant for both individuals to testify was neither improper nor untimely as the Court had told the Appellant /Defendant when the case was first called that it may or may not allow witnesses.

But what happened next was both improper and unreasonable. It was at this point that the Court stated “that this is not how this works. We don’t call witnesses who are not here to testify”. (JA82) In so stating, the Court directly contradicted its earlier determination that “Well it was your responsibility, ma’m to make a request to the court to either continue the matter to a time where he could be present or to make arrangements to contact her telephonically. So we will see whether or not we need her. (emphasis added) (JA45)

Clearly, it was understandable for the Court to decide to not call witnesses in the middle of a court case in the absence of prior arrangements. Nonetheless, it was patently misleading and a major subversion of substantial justice for the Court to state when the case was first called that the Court would have some consideration for the Appellant / Defendant's request for a witness and then to categorically reject Appellant / Defendant witness request in the middle of the trial. Had the Appellant / Defendant been made aware when the case was first called that the Court would not have any witnesses appear telephonically, then she could have requested a continuance of the matter. And while a request for a continuance might not have been granted, Appellant/ Defendant would at the very least have known early enough to present her Counter-Claim and evidence accordingly.

To be sure, the trial court voided the Appellant / Defendant right to have a witness at the hearing, by deferring its decision on Appellant / Defendant's request for a witness when the case was first called and then denying outright any witnesses after case had commenced. In so doing, the trial court deprived the Appellant / Defendant of substantial justice in the trial.

III. The Trial Court's Erred By Rewarding the Electrical Fee To Appellee/Plaintiff

At the beginning of the case, the Appellee / Plaintiff stated he was owed a total of \$2,850.00 - this sum reflected the total of \$2000.00 balance for work done on the cabinets and tiles, and \$850.00 for electrical work. (JA47)

But when the Appellant / Defendant stated in sworn testimony in court that she asked the Appellee / Plaintiff if he had a license to be an electrician, she said he told her no, but that "he

has friends that sign off on his electrical work". (JA50) This sworn testimony was uncontested by the Appellee / Plaintiff . Appellee / Plaintiff did not state that he had an electrician's license or was otherwise trained to do electrical work. The Appellee / Plaintiff did not state that he had friends sign off on his work , nor did the Appellee / Plaintiff submit any document indicating that his work was signed off on by a licensed electrician. The Appellant / Defendant went on to testify that "she reached out to someone that does electrical, that it did not look correct, and asked him come look at this and fix it for me because I do not want my house to burn down". (JA50)

As the Appellant / Defendant was ultimately rewarded \$150.00 in costs for the electrical repair work (JA108), it was very clear that the Court determined the validity and need for the electrical repair based on the parties testimony. Still, as there was no testimony from the Appellee/ Plaintiff himself that he had an electrician license and as the court failed to question Appellee / Plaintiff on same, it is entirely unclear what could be the possible basis for any compensation for the Appellee/Plaintiff for electrical work . Yet, when it issued its ultimate findings of fact at the closing of the case, the Court did not address or challenge the \$850.00 (JA102-108) As such, it was clear that the Court compensated the Appellee / Plaintiff \$700.00 for his "electrical work" . (the sum total of the \$850.00 sum the parties had agreed on minus the cost of the \$150 repair job.) And while an appellate court must defer to the credibility decision of the factfinder, *Moore v. Walters*, 61 V.I. 502 (V.I. 2014), this is not about credibility but instead concerns the objective factual record, or more precisely, the lack of a factual record supporting any payout to the Appellee for the alleged electrical work performed.

And even if the Court could still have found that the Appellee /Plaintiff should have been paid for his 'electrical work' how could such a payment amount to a 400% multiple (\$150.00 multiplied by 4 is \$600.00) of the cost of the electrical repair. The trial court could have easily verified whether Appellee/ Plaintiff was a licensed electrician or had his work signed off on by a licensed electrician but failed to do so. Instead, the Court made erroneous findings and conclusions and compensated the Appellee / Plaintiff for faulty electrical work that he was not licensed to perform in the first instance.

Accordingly, the Court must reverse this patently unjust award of \$700.00 to the Appellee / Plaintiff for faulty unlicensed work.

CONCLUSION

Based on the foregoing, Appellant /Defendant requests that the decision of the lower court be reversed and that this Court remand the matter with further instruction such that substantial justice prevails.

Dated: August 13, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing APPELLANT'S BRIEF was sent via U.S Mail, postage prepaid to the following individual on this 13th day of August 2022:

Victor S. Matthew
P.O. Box 4311
Kingshill, VI 00851



JANET V. JULIEN

Dated: August 13, 2022

By:



JANET V. JULIEN

P.O. Box 224272

Christiansted, VI 00822

Email: janetjulien@hotmail.com

Tel. No. 340-690-4272

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