

U.S. Virgin Islands Debt Collection Laws

Submitted by Sarah R. Smith, Law Offices of Karin A. Bentz, P.C.

www.virginlaw.com

Published by The National List of Attorneys

www.nationallist.com

Sarah R. Smith is an attorney with the Law Offices of Karin A. Bentz, PC, located in St. Thomas. Sarah earned her BA degree from Colorado College, and her JD from the University of San Francisco School of Law. The firm, founded in 1993, represents insurance companies, businesses, large corporations and individuals doing business in the U.S. Virgin Islands. The firm is a general trial and appellate practice, focusing in commercial litigation, insurance defense, employment and labor law, trademark infringement, corporate and real estate law, Social Security and Veterans' disability matters, and environmental and personal injury law.

I. Virgin Islands Debt Collection Laws

The Territory of the U.S. Virgin Islands is a U.S. Protectorate, governed by the Organic Act of 1957. The USVI has a Federal District Court, as well as the Superior (formerly Territorial) and Supreme Court. Decisions by the 3-judge panel comprising the Virgin Islands Supreme Court are directly appealable to the United States Supreme Court. The local law is relatively young, and significantly informed by federal law, as well as the Restatements by the American Law Institute.

In the United States Virgin Islands, “the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary.” 1 V.I.C. § 4.*

There are few local statutes addressing the collection of debt. Collection of consumer debts is addressed by 12A V.I.C. § 101, et. seq., which outlines the Territory’s prohibition on unfair trade practices, including deceptive and unconscionable trade practices.

As defined in Section 102: a “‘deceptive trade practice’ means any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental, or loan of consumer goods or services, or in the extension of consumer credit or in the collection of consumer debts, which has the capacity, tendency or effect of deceiving or misleading consumers.”

Likewise, an “‘unconscionable trade practice’ means any act or practice . . . in the collection of consumer debts which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a

consumer; or results in a gross disparity between the value received by a consumer and the price paid, to the consumer's detriment; provided, that no act or practice shall be deemed unconscionable under this chapter unless declared unconscionable and described with reasonable particularity in the laws of the United States Virgin Islands, or in a rule or regulation promulgated by the Director of the Consumer Services Administration. § 102 Definitions, 12A V.I.C. § 102

As defined by the Code, (c) "Consumer goods, services, credit and debts" as used in sections 101, 102(a) and 102(b) of this chapter, means foods, services, credit and debts that are primarily for personal, household or family purposes. (Id.)

a. Statutes of limitations

Most statutes of limitation are prescribed by Title 5 of the Virgin Islands Code, Section 31. The statute of limitations for contract claims in the Virgin Islands is six years for "(A) An action upon a contract or liability, express or implied," excepting those upon a sealed instrument, and for "(B) An action upon a liability created by statute, other than a penalty or forfeiture." § 31 Time for commencement of various actions, 5 V.I.C. § 31.

This statute provides a 20-year limitation on "(B) An action upon a judgment or decree of any court of the United States, or of any State, Commonwealth, or Territory within the United States. A 10 year period applies for actions otherwise not provided for by statute. Id.

The statute of limitations in which to bring civil actions arising under Title 12A, the Virgin Islands Consumer Code, is three years after the date of the occurrence of the violation. However, the consumer is not barred from asserting a violation of this chapter in an action to collect a debt brought more than one year after the date of the occurrence of the violation, as a matter of defense by recoupment or set off. 12A V.I.C. § 291, Civil liability.

In any action to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side. However, when a period of more than one year has elapsed between any of a series of items or demands, they are not to be deemed such an account. § 33, Actions on Accounts, 5 V.I.C. § 33.

b. Bad check laws and civil penalties

While civil penalties for passing worthless or "bad" checks are not codified in the Virgin Islands Code, Title 14 on Crimes provides a penalty for the issuance of worthless checks, providing that whoever "makes,

draws, utters, or delivers any check, draft or order for the payment of money . . . upon any bank or other depository,” knowing at the time that the maker or drawer does not have sufficient funds or credit for the payment of the instrument in full, shall be subject to penalty. Where the amount is \$100 or more, the maker or drawer shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both. Where the amount is less than \$100, the maker or drawer shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both. § 835 Drawing and delivering worthless checks, 14 V.I.C. § 835.

The Taxation and Finance section of the Virgin Islands Code, 33 V.I.C. § 1285, addresses bad checks made payable to the Bureau of Internal Revenue, providing that where a check or money order purporting to pay taxes is not duly paid , a penalty equal to 1 percent of the amount of such check shall be assessed. If the amount of such check is less than \$500, the penalty under this section shall be \$5 or the amount of such check, whichever is the lesser. This section shall not apply if the person tendered such check in good faith and with reasonable cause to believe that it would be duly paid. § 1285 Bad checks, 33 V.I.C. § 1285.

c. General garnishment exemptions

The Virgin Islands provides for garnishment exemptions under Title 5, Judicial Procedure. In addition to the homestead of any family, which is exempted under § 478 Exemption of homestead, exemptions include (1) necessary wearing apparel, with the exception of watches or jewelry, (2) the tools, implements, apparatus or library necessary to enable any artisan, mechanic or professional person to carry on the trade, occupation or profession by which such person habitually earns his living, (3) household goods, furniture, and utensils to the value of three thousand dollars, if owned by the head of a family and in actual use, and (4) all property of any public corporation or the government of the Virgin Islands. § 479 Exemption of other property from execution, 5 V.I.C. § 479.

II. Debt collection licensing, bonding and other regulations

While there are no specific statutory requirements under the Virgin Islands Code governing debt collection licensing or bonding, Title 12A of the Virgin Islands Code contains the Virgin Islands Uniform Debt-Management Services Act, which seeks to protect residents by registering providers of debt-management services. An application for registration must contain 1) the proper fee to the Lieutenant Governor’s Office, 2) a bond, as set forth in Section 413, 3) identification of all trust accounts required by section 422 and an irrevocable consent authorizing the Lieutenant Governor to review and examine the trust accounts, 4) evidence of insurance in the amount of \$250,000 against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant, proof of compliance with title 27 Virgin Islands Code, chapter 9, and 6) evidence of not-for-profit status,

tax-exempt status where such is claimed. § 405 Application for registration: form, fee, and accompanying documents, 12A V.I.C. § 405.

However, if a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed. § 412 Registration in another state, 12A V.I.C. § 412. Relief under this statute is mutually exclusive with relief under the consumer fraud and deceptive business practices statute. § 436 Violation of consumer fraud and deceptive business practices statute, 12A V.I.C. § 436

III. Commercial and Consumer Collections

The U.S.V.I. has adopted the Uniform Commercial Code at Title 11A of the Virgin Islands Code. See, for example, § 9-607 Collection and enforcement by secured party, 11A V.I.C. Art 9 § 9-607. As a practical matter, the general procedure within the territory is to deliver correspondence to the debtor, advising of the delinquency and demanding payment. If the debt is not satisfied after issuance of the letter, the next step is to file suit in the Virgin Islands Superior Court.

IV. Court Filing Fees

In the Superior Court of the Virgin Islands Small Claims Court, which handles claims of \$10,000 or less, the charge to file a complaint is \$50, and the cost to serve each defendant is \$50. For Superior Court claims over \$10,000, the charge to file a complaint is \$75, and the process server fee is \$25. The cost to file a case in the Federal District Court of the Virgin Islands is \$350.

a. Service of Process

The Territory of the Virgin Islands does not appoint or elect sheriffs; the functions which would be performed by a sheriff are handled by Marshals of the Superior Court. As noted above, the cost to serve each defendant in Superior Court is \$50, and the cost in Small Claims Court is \$25.

The cost for a writ of garnishment is \$50. The code provides that executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner. § 272 Execution against garnishee; costs, 5 V.I.C. § 272.

A foreign Plaintiff filing suit in the Virgin Islands is responsible, upon motion of any defendant, to post security for costs for the pendency of the matter. Under Title 5 § 547 the cost is \$1,000, and \$500 per additional defendant, not to exceed \$3,000.

The Civil Court cost to a losing party is \$500, and the fee for a foreign judgment is \$150. More information for filing fees can be found at <http://www.visuperiorcourt.org/PSI/courtFees.aspx>. A list of process servers may be found on the website of the Superior Court.

Virgin Islands Superior Court Rule 52, Orders for Discovery, Supplementary Proceedings, addresses debtors' examinations in the Territory, stating that "(a) In aid of the judgment of execution, the judgment creditor or his successor in interest . . . may examine any person, including the judgment debtor."

In order to conduct the examination the judgment creditor must present to the Court a petition verified by oath, stating the amount due on such judgment and his belief that such judgment debtor has property or other things in action over and above such property as is or may be reserved by law.

Upon the filing of such petition, the Court shall issue an order requiring the judgment debtor to appear at a time and place specified in such order and make discovery on oath concerning his property and things in action before the Court, or a law clerk or attorney in the Territory, designated in the order by the Court. No more than one hearing can be held without further order of the court. VI ST. R. SUPERIOR CT. 52.

Pursuant to the Federal Rules of Civil Procedure, "[i]n aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person--including the judgment debtor--as provided in these rules or by the procedure of the state where the court is located." Fed. R. Civ. P. 69.

V. Significant Debt Collection Cases Brought by the Attorney General

In 1998, both the United States and the Government of the Virgin Islands filed a writ of execution against a vessel, pursuant to the Federal Debt Collection Procedures Act of 1990, 28 U.S.C.A. § 3001 et seq. ("Act"), which provides "the exclusive civil procedures for the United States ... to recover a judgment on a debt." The Act permits the enforcement of a judgment by writ of execution but requires that the judgment debtor be notified of the writ and given 20 days to request a hearing. See 28 U.S.C.A. § 3202(a),(b) (West 1994). The Court granted the Defendant's motion for a hearing on the writ of execution, and holding that: (1) the judgment debtor was entitled to hearing on issue of whether he was equitable owner of vessel; (2) during hearing, judgment debtor was entitled to determination of amount of restitution due and owing; (3) court lacked authority to entertain judgment debtor's challenge to validity of underlying criminal judgment;

(4) United States could obtain writ of execution for vessel in which judgment debtor allegedly owned equitable interest without first obtaining civil judgment; (5) restitution order's omission of United States as payee did not preclude government from collecting restitution through writ of execution under Act; (6) court had subject matter jurisdiction over mandamus action; and (7) insofar as vessel's ownership was concerned, court would consolidate criminal action and purported vessel owner's mandamus action. U.S. v. W. Indies Transport Co., Inc., 35 F. Supp. 2d 450 (D.V.I. 1998)

VI. Significant Debt Collection Case Law

A sum due a party for past services constitutes a debt within the meaning of this section, and in the absence of a statutory exemption, under section 479 of this title, such a debt may be reached by garnishment the same as any other debt. Giurdanella v. Giurdanella, 5 V.I. 475, 358 F.2d 321, 1966 U.S. App. LEXIS 6801 (3d Cir. 1966). § 256 Execution of writ, 5 V.I.C. § 256

In an action for foreclosure in the Virgin Islands, a court is required to address the outstanding debt, if any, in the judgment of foreclosure. See 28 V.I.C. § 531.5 Thus, when a plaintiff sues on a promissory note and mortgage in the Virgin Islands and obtains a judgment, both the mortgage and promissory note are extinguished and the judgment takes their place. U.S. Dept. of Agric. Rural Hous. v. Phillips, CIV 1:08-CV-00032, 2010 WL 1529297 (D.V.I. 2010)

Generally, debt actions are well suited for summary judgment. Because “of the relative simplicity of the issues involved, suits to enforce promissory notes are ‘among the most suitable classes of cases for summary judgment.’” Pemberton Sales & Serv., Inc. v. Banco Pop. de Puerto Rico, 877 F. Supp. 961, 971 (D.V.I. 1994) citing Topalian v. Ehrman, 954 F.2d 1125, 1137 (5th Cir.1992) (quoting Colony Creek Ltd. v. Resolution Trust Corp., 941 F.2d 1323, 1325 (5th Cir.1991) and Lloyd v. Lawrence, 472 F.2d 313, 316 (5th Cir.1973))

In a Virgin Islands case where a defendant corporation, which had executed and delivered a mortgage and promissory note to plaintiff, to which defense of usury was not available, and was in default under the terms of the mortgage, plaintiff was entitled to summary judgment against defendant corporation in action brought for debt and foreclosure of mortgage. 13 V.I.C. § 347. First Nat. City Bank v. Burton M. Saks Const. Corp., 70 F.R.D. 417 (D.V.I. 1976)

The Virgin Islands Territorial Court, predecessor to the Superior Court, considered the related question of whether a foreign corporation is entitled to access to the courts of this jurisdiction even though it is not “qualified” to do business in the Virgin Islands. A New York corporation, which was doing business in the Virgin Islands but was not registered to do business in the territory and had not paid a franchise tax,

brought a debt collection action. Defendants moved to dismiss asserting that the plaintiff was barred from prosecuting its claim under V.I. Code Ann. tit. 13, § 533(a). The court held that “the Virgin Islands statute does not specifically deny access to the courts to a non-qualifying foreign corporation.” 27 V.I. at 161. In so holding, the court relied on a narrow reading of section 533(a) because of the constitutional implications engendered by denying access to the courts. Vabefima Corp. v. Cintron, 1993-0002, 1994 WL 16043236 (D.V.I. 1994), citing Standex Co. v. John, 27 V.I. 157 (Terr.Ct.1992)

*For sources, see <http://www.lexisnexis.com/hottopics/vicode/>

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

©The National List of Attorneys, January 2013