

FOR PUBLICATION

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

HON. LEON A. KENDALL,)
)
Plaintiff,)
)
v.)
)
SEN. RONALD E. RUSSELL, LUIS)
MORALES, ROBERT O'CONNOR, JR.,)
ROBERT MOLLOY, and BRUCE MARSHACK,)
in their capacity as Members of the)
Virgin Islands Commission on)
Judicial Disabilities,)
)
Defendants.)
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Civil No. 2007-126

ATTORNEYS:

Howard M. Cooper, Esq.
Julie E. Green, Esq.
Boston, MA
For the plaintiff.

Maria T. Hodge, Esq.
St. Thomas, U.S.V.I.
For the defendants.

MEMORANDUM OPINION

GÓMEZ, C.J.

This matter is before the Court for a decision following a consolidated hearing on the plaintiff's motion for injunctive relief and a bench trial on the merits conducted on December 13, 2007. The Court, having considered the parties' various pleadings, witness testimony, exhibits, and the arguments of

Kendall v. Russell, et al.
Civil No. 2007-126
Memorandum Opinion
Page 2

counsel, now enters this Memorandum Opinion pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.¹

I. FINDINGS OF FACT AND PROCEDURAL BACKGROUND²

On September 9, 1976, the Legislature of the Virgin Islands (the "Virgin Islands Legislature" or the "Legislature") passed Act No. 3876 ("Act 3876" or the "Act"),³ which established the Virgin Islands Commission on Judicial Disabilities (the "Commission"). Act 3876 is codified at Title Four, Sections 651 through 659 of the Virgin Islands Code, and took effect on January 1, 1977.

Act 3876 empowers the Commission to retire or remove a judge of the Superior Court of the Virgin Islands or a justice of the Supreme Court of the Virgin Islands. See V.I. CODE ANN. tit. 4, § 651. The rules governing removal and involuntary retirement proceedings are found in Section 656 of the Virgin Islands Code, which provides, in part:

¹ Pursuant to Federal Rule of Civil Procedure 52(a), the Court may enter judgment following a trial without a jury. See FED. R. CIV. P. 52(a). In making a decision following a bench trial, "the court must find the facts specially and state its conclusions of law separately." *Id.*

² To the extent that any finding of fact reflects a legal conclusion, it shall be deemed a conclusion of law, and vice versa.

³ Act of Sept. 9, 1976, No. 3876, § 3, 1976 V.I. Sess. Laws 192.

Kendall v. Russell, et al.
Civil No. 2007-126
Memorandum Opinion
Page 3

- (a) (1) A judge of the Superior Court or justice of the Supreme Court of the Virgin Islands shall be removed from office upon the filing in the district court by the Commission of an order of removal certifying the entry, in any court within the United States, its territories and possessions or the Commonwealth of Puerto Rico, of a final judgment of conviction of a crime which is punishable as a felony under the law of the Virgin Islands.
- (2) A judge of the Superior Court or justice of the Supreme Court of the Virgin Islands shall also be removed from office upon a determination by the Commission of-
- (A) wilful misconduct in office, or
 - (B) wilful and persistent failure to perform judicial duties, or
 - (C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute, such removal to become effective upon affirmance of an appeal from an order of removal filed in the district court by the Commission (or upon expiration of the time within which such an appeal may be taken).

Id. at § 656.

Act 3876 further provides for the Commission to be composed of five members. Two members are appointed by the Governor of the Virgin Islands, two by the President of the Legislature, and one by the Board of Governors of the Virgin Islands Bar Association. Act 3876 provides for the members' compensation and authorizes the Commission to make rules and regulations for its operation. The Act also sets forth rules regarding the

Kendall v. Russell, et al.
Civil No. 2007-126
Memorandum Opinion
Page 4

procedures the Commission must follow during removal and involuntary retirement proceedings. The Act further mandates that such proceedings be kept confidential and provides for orders of removal and involuntary retirement by the Commission to be reviewed by this Court. *See generally id.* at §§ 651-659.

In addition to providing for the establishment of the Commission, Title Four of the Virgin Islands Code more generally provides for the organization of the judicial branch of the Government of the Virgin Islands. That title sets forth, *inter alia*, provisions regarding the establishment and operations of the Superior Court of the Virgin Islands⁴ and the Supreme Court of the Virgin Islands. *See generally* V.I. CODE ANN. tit. 4, §§ 71-88, 21-34. The judges of both the Superior Court and the Supreme Court are subject to the Commission's review. *See id.* at § 651.

The plaintiff in this matter, Leon A. Kendall ("Kendall"), is a sitting judge of the Superior Court. Kendall was nominated by Governor Charles W. Turnbull in 2003 and confirmed by the 25th Legislature of the Virgin Islands.

On or about April 26, 2007 and May 3, 2007, two complaints

⁴ The Superior Court was previously known as the Territorial Court, which was established by the Legislature by Act 3876. Effective January 1, 2005, however, the name of the Territorial Court changed to the Superior Court of the Virgin Islands pursuant to Act of Oct. 29, 2004, No. 6687, sec. 6, § 2, 2004 V.I. Legis. 6687 (2004).

Kendall v. Russell, et al.
Civil No. 2007-126
Memorandum Opinion
Page 5

against Kendall were filed with the Commission. Neither complaint alleged that Kendall had been convicted of a felony.⁵

On November 16, 2007, the Commission notified Kendall that it would conduct hearings regarding the two complaints on December 13, 2007 and December 17, 2007, respectively.

Thereafter, Kendall brought this two-count action,⁶ generally alleging a violation of the Revised Organic Act of 1954 (the "ROA").⁷ Specifically, in Count One, Kendall seeks a declaration from this Court that (1) the principle of separation of powers, as contemplated by the ROA, prohibits the Commission from conducting removal proceedings against him, and (2) Act 3876 is ineffective to authorize such proceedings because the legislative branch of the Government of the Virgin Islands may not grant itself the power to remove a member of the judicial branch. In Count Two, Kendall seeks injunctive relief to prevent

⁵ At the trial of this matter, Kendall sought to introduce into evidence the complaints against him before the Commission. The Defendants objected. The Court took the matter under advisement. In reaching a decision in this matter, the Court has not taken the complaints against Kendall into consideration.

⁶ Kendall has named as defendants the five current members of the Commission: Senator Ronald E. Russell; Luis Morales; Robert O'Connor, Jr.; Robert Molloy; and Bruce Marshack (collectively referred to as the "Defendants").

⁷ The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp.2001), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2001) (preceding V.I. CODE ANN. tit. 1).