

January 25, 2017

VIA CERTIFIED MAIL RETURN RECEIPT

Estates of Judith's Fancy Owners' Association, Inc.
4048 Judith's Fancy,
Christiansted, VI 00820-4446

RE: Plots 66, 66A and 67 Estate Judith's fancy

To Whom It May Concern:

Mr. HC Rupareliah, owner of the above-referenced plots within the Association, is outraged by the actions of the Board of Directors in allowing for the subdivision of plots and the waiver of setbacks by this Board last year followed by the recent letter seeks to unwind the Board's prior consent and waiver after the plots were separated. The arrogance of the Board in disregarding and countervailing prior consents and waivers it has executed indicates a serious breach of the duties of the Board and exposes the Board and its members to personal liability. Please see documents attached as **Exhibit A**.

Mr. Rupareliah is dismayed by the treacherous actions of the instant Board and has insisted that I file suit immediately. A draft Complaint is attached as **Exhibit B**. The current position of the Board is causing serious harm to Mr. Rupareliah as indicated in the correspondence from Attorney Groner in which Mr. Rupareliah is being denied financing for his properties as a result of current Board actions. See **Exhibit C**. Prior to filing the Complaint, I would like to meet with the Board and or its counsel prior to February 15, 2017 to attempt to amicably resolve the matter. If we cannot resolve the matter by that date, I have been authorized to file the attached lawsuit and serve it on the Board and its members immediately. Thanks in advance for your prompt review and consideration of this proposal.

Sincerely,



Scot F. McChain



1114 King Street, 3rd Floor
Christiansted, St. Croix VI 00820
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Gerald T. Groner, Esquire
gtg@gronerlaw.com

January 21, 2017

Scot F. McChain, Esq.
The McChain Nissman Law Group, LLC
53A Company Street
Christiansted, VI 00820

Via Email

Re: Hasmukh C. Ruparelia
Plot 66 Estate Judith's Fancy

Dear Scot,

Per our conversation I am writing to you in your capacity as lawyer for Hasumukh C. Ruparelia.. As you know, I am a principal of Island Title Services Corp. ("ITSC"). I also handle loan closings on St. Croix for First Liberty, a mortgage broker which generally places mortgages for Flagstar Bank..

Mr. Ruparelia has applied for mortgage refinancing on Plot 66 Estate Judith's Fancy with First Liberty and a title commitment order was placed with ITSC. I received the draft title commitment for review.

I have been advised that the Judith's Fancy Owners Association, Inc. has requested that Mr. Ruparelia recombine Plot 66-A with Plot 66 Judith's Fancy. I will have to note an exception on the title commitment to that effect. In my experience, Flagstar Bank will not approve a loan on Plot 66 Judith's Fancy with that exception on the title work.

Please don't hesitate to contact me if you have any questions.

Sincerely,

Gerald T. Groner, Esq.

Exhibit C

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: KINGSHILL

HASMUKH RUPARELIAH

Plaintiff

) CASE NO. SX-16-CV-_____

)
)
) BREACH OF EXPRESS WAIVER
) DECLARATORY JUDGEMENT
)

ESTATES OF JUDITHS FANCY OWNERS',)
ASSOCIATION, INC., MIKE EBNER, CHAD)
WALTER, ART WALKER, ROBERT)
MOREHEAD, DOUG MENZIES, BRETT)
ELLIS, JOHN DOES 1-10)
Defendants)

COMPLAINT

COMES NOW, HC Rupareliah (hereinafter "Plaintiff" or "Mr. Rupareliah" or "Homeowner") by and through his Counsel, Attorney Scot McChain, Esq. and submits this Action for Breach of Express Waiver and/or Contract and Declaratory Judgement as against The Estates of Judith Fancy's Homeowners' Association, Mike Ebner, Chad Walter, Art Walker, Robert Morehead, Doug Menzies, Brett Ellise and John Does 1-10 (hereinafter "Defendants" and "Homeowners' Association") and in support thereof states as follows:

1. This Court has jurisdiction pursuant to 4 V.I.C. Section 76.
2. Plaintiff Mr. Rupareliah ("Plaintiff") is a citizen of the Virgin Islands, residing in St. Croix, U.S. Virgin Islands.
3. Defendant Estates of Judiths Fancy Owners' Association, Inc. is a corporation organized in the U.S. Virgin Islands.

Exhibit B

4. The other Defendants are all residents of the U.S. Virgin Islands who are members of the Homeowners Association who have engaged in ultra vires acts for which they have personal liability.
5. In brief, Defendants are now attempting to renege on their express consent to abandon certain restrictive covenants in Homeowner's favor and to the Homeowner's significant detriment, after having been induced and paid consideration therefore and justifiably relied thereon.
6. Mr. Rupareliah seeks an action in breach with the alternative remedy of specific performance. In the alternative, or in addition to, Mr. Rupareliah prays for this Court's declaratory judgement regarding the rights and remedies of parties in the above-captioned matter.

FACTUAL BACKGROUND

7. Plaintiff was the owner of two (2) adjacent plots in Judith's Fancy identified as Numbers: 66 and 67. Subsequently, Mr. Rupareliah was expressly permitted to combine and subdivide such plots into three (3) separate and distinct properties identified as **Plots Rem 66, 66a and 67**.
8. Specifically regarding authorization or consent to subdivide the aforementioned properties, Mr. Rupareliah was in receipt of a letter on the Homeowner Association's letterhead, signed by the Construction Committee Chairman, Leslie Miller and dated February 2, 2014, which stated:

Judith's Fancy Construction Committee has reviewed the Plans submitted by HC Rupareliah for the subdivision of Plots No. 66 and 67 into Plots No. 66A, Rem 66 and 67. According to the Judith's Fancy Covenant section II, Boundaries and Easements, #1 Subdivision, finds **no objection to the subdivision**. (Emphasis added).
9. Next, on September 5, 2015, the Homeowner's Association issued and caused to be recorded, an express waiver for valuable consideration received, at the hand of the President and "by decision of the Board of Directors." Therein, Defendants acknowledged that Rem Plot 66 and improvements

violate the 20' setback provision, but that they "consent(s) to the maintenance, repair and replacement of the improvements as shown on the survey..." See: Exhibit A attached Hereto ('Express Waiver and Survey Map').

10. Significantly, the Homeowner's Association waived "any now or future cause of action seeking removal of certain improvements" and made such exception to applicable provisions "binding upon successors and assigns of Judith's Fancy Homeowners' Association"; providing that such waiver, filed with the Recorder of Deeds on September 14, 2015, "run with the land."
11. Nevertheless, approximately one (1) year later, on October 19, 2016, the Homeowner received an unexpected letter from the Association. To the Homeowner's surprise, it belatedly declared that the "subdivision of plots 66 and 67 into sub-plots 66, 66A and 67" does not "meet the requirements of [...] covenants."
12. The letter declared that the homeowner was in violation of the 20 feet setback ("violates building lines ... No construction within 20 feet of any boundary line"), the same restriction they had abandoned in the express waiver. The Association boldly instructed the Homeowner to either remove the "infringing dwellings" or "revert the subdivision back into the original plots 66 and 67."
13. But, it was too late. Mr. Rupareliah had already been induced and detrimentally relied upon the express representations of the Association. In fact, he had obtained separate mortgages and deeds on the properties.

RELEVANT RULES OF LAW

Waiver

14. We conclude that covenants attached to property in the Virgin Islands should continue to be construed narrowly to promote the free use of land. Thomas v. Virgin Islands Board of Land Use Appeals, 2014 WL 691657 (V.I.), 6, 60 V.I. 579, 593 (V.I., 2014).
15. Waiver is where one in possession of any right, whether conferred by law or by contract, and of full knowledge of the material facts, does or forbears the doing of something inconsistent with the existence of the right or of his intention to rely on it. Thereupon he is said to have waived it, and he is precluded from claiming anything by reason of it afterwards.' Bishop on Contracts, Sec. 792; Pokagama Sugar Pine Lumber Co. v. Klamath River Lumber & Improvement Co. (C.C.) 96 Fed. 34.

Kemp & Burpee Mfg Co v. Mitchell, 215 F. 935, 937 (D.C.Pa. 1914).

16. While a waiver is not in the proper sense of the term a species of estoppel, yet where a party to a transaction induces another to act upon the reasonable belief that he has waived or will waive certain rights, remedies, or objections which he is entitled to assert, he will be estopped to insist upon such rights, remedies, or objections to the prejudice of the one misled.’ Marine Iron Works v. Wiess, 148 Fed. 153, 78 C.C.A. 279. Kemp & Burpee Mfg Co v. Mitchell, 215 F. 935, 937 (D.C.Pa. 1914).

Declaratory Judgement

17. Courts of record within their respective jurisdictions shall have power to *declare rights, status, and other legal relations* whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. § 1261 Scope, 5 V.I.C. § 1261-72 [collectively known as the “The Virgin Islands Declaratory Judgments Act”].
18. The purpose of the Declaratory Judgments Act is to “settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” 5 V.I.C. 1270. The statute is to be liberally construed and administered. Id. Matter of Alison, No. C18/1983, 1985 WL 1264252, at *3 (Terr. V.I. Aug. 8, 1985).
19. The “decision to entertain a declaratory action is within the discretion of the Court.” Pate v. Gov't of the Virgin Islands, 2015 V.I. LEXIS 44, *17 (V.I. Super. Ct. 2015) (citing Flavo-Rich v. Quinn, 18 V.I. 530 (D.I. 1981), but doing so “is permissible only where a justiciable controversy exists.” Bd. of Dirs. of Shibui Condo. Ass'n v. Darian Solutions, LLC, 2015 V.I. LEXIS 100, *11 (V.I. Super. Ct. Aug. 31, 2015) (citations omitted).

ARGUMENTS

20. A breach of waiver generally is a failure to uphold the terms of a waiver. A waiver is the intentional

and voluntary giving up of something. A waiver may be made by an express statement or by conduct, such as not enforcing a right.

21. The Homeowner took a legitimate path to his home projects, receiving multiple green lights from those with proper authority. The Defendants were aware of Plaintiff's intent to separate the lots per his submitted plan referenced in the initial letter in which the Association had "no objection" as well as the survey recorded with the express waiver. These representations induced Mr. Rupareliah to incur significant costs and investment of time in the subdivision of his property. These properties are now legally separate by all evidence. Thus, specific performance is the only feasible way to maintain Homeowner's rights and status.
22. In the interest and balance of equities, it would be patently unjust to allow the Association to have led Plaintiff to the point of no economic return and be enriched by the consideration he paid to assure his security of tenure.

CONCLUSION

23. For the foregoing reasons, Petitioner prays for the following relief and for any other such relief as the Court deems just, requesting:
 1. A DECLARATION of rights and status as regards the property in controversy; and
 2. ORDER instructing specific performance as regards exclusion of aforementioned property as set forth in survey from violation of boundary line provisions; and
 3. ORDER taking Judicial Notice of Exhibit A attached Hereto ('Express Waiver and Survey Map').
 4. Judgment in favor of Plaintiff
 5. Recovery of Plaintiffs's costs and Attorney's fees.
 6. Any and all other relief this Court deems appropriate.

This 22th day of December, 2016

Respectfully Submitted,

Scot F. McChain, Esq.
Attorney for Plaintiff
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