

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

GOVERNMENT OF THE VIRGIN ISLANDS

Plaintiff,

SX-18-CV-23

v.

**0.429 U.S. ACRES OF LAND CONSISTING OF
REMAINDER PLOT NO. 40-KB ESTATE LA
GRANGE WEST END QUARTER, ST. CROIX
and 5.225 U.S. ACRES OF LAND CONSISTING
OF REMAINDER PLOT NO. 40-KC ESTATE
LA GRANGE WEST END QUARTER VIRGIN
ISLANDS; DR. RAFAEL G. GARCIA, a/k/a
RAFAEL G. GARCIA, a/k/a RAFAEL GARCIA
GARCIA; and UNKNOWN OWNERS AND
ALL OTHERS CLAIMING AN INTEREST
THEREIN,**

ACTION FOR CONDEMNATION

Defendants.

MEMORANDUM OPINION

BEFORE THE Court is Plaintiff, Government of the Virgin Islands' (hereinafter "Government") Motion for an Order of Publication of Service (hereinafter "Motion") filed on January 31, 2018. The Motion shall be granted in part and denied in part.

BACKGROUND

This matter arises out of an action "brought by the Government of the U.S. Virgin Islands to obtain property under its statutory authority of eminent domain, in exchange for just compensation to be paid to the owners and all parties in interest."¹ Governor Kenneth E. Mapp signed a declaration of taking to exercise the power of eminent domain for the completion of Phase II of the Frederiksted Economic Revitalization Project on St. Croix, USVI, pursuant to

¹ Compl. ¶1.

Title 28, V.I.C § 411 *et seq* and Virgin Islands Rule of Civil Procedure 71.1.”² “The subject property to be acquired in fee simple absolute is Remainder Plot No. 40-KB Estate La Grange West End Quarter, St. Croix, consisting of 0.429 U.S. acres and Remainder Plot No. 40-KC Estate La Grange West End Quarter Virgin Islands, consisting of 5.225 U.S. acres (hereinafter “Properties”).”³ Garcia is named in the Complaint as an owner or interested party along with Unknown Owners and All Others who may claim an interest in the Properties.⁴ “Pursuant to Title 28 V.I.C. §421 the Government filed a Declaration of Taking and deposited in the court \$225,750 which was allegedly estimated by appraisers as just compensation for taking the Property.”⁵ Dr. Rafael Garcia (hereinafter “Garcia”) is named in the Complaint as an owner or interested party along with “Unknown Owners and All Others” claiming an interest in the action. The Government moves to serve Garcia, Unknown Owners and All Others who may claim an interest in the Properties with a copy of the Notice by publication.

DISCUSSION

Virgin Islands Rule of Civil Procedure 71.1 governs “proceedings to condemn real and personal property by eminent, except as this rule provides otherwise.”⁶ According to Rule 71.1(c)(1), the Government must name “at least one owner of some part of or interest in the property.”⁷ “Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later.”⁸

² Compl. ¶¶8,11.

³ Compl. ¶11.

⁴ Compl. ¶¶12-13.

⁵ Compl. ¶14.

⁶ V.I. R. CIV. P. 71.1(a).

⁷ V.I. R. CIV. P. 71.1(c)(1).

⁸ V.I. R. CIV. P. 71.1(c)(4).

Garcia is named in the Complaint as an owner or interested party along with Unknown Owners and All Others who may claim an interest in the Properties. Upon careful review of the record, the Notice was properly prepared and delivered to the Clerk of the Court pursuant to Rules 71.1(d)(1) and (2). Therefore, only issues before the Court are (1) whether the Notice was properly served on Garcia—the only named Defendant and (2) whether it is proper to grant the Government leave to serve the Notice by publication to the Unknown Owners and all others claiming an interest in the properties.

I. Garcia should be served personally with a copy of the Notice—not by publication.

Since Garcia was individually named in the Complaint, the court must determine whether he was properly served with the Notice. “Personal service of the notice shall be made in accordance with Rule 4.”⁹ “Rule 4(l) governs proof of service.”¹⁰ When serving an individual within the Virgin Islands, Rule 4(e) provides that

Unless law of the Virgin Islands provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in the Virgin Islands by doing any of the following:

- (1) delivering a copy of the summons and the complaint to the individual personally;
- (2) leaving a copy of the summons and complaint at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (3) delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process; or
- (4) completing service in another manner approved by order of the court in the pending case upon a showing:
 - (A) that plaintiff has exercised due diligence in attempts to complete service using the methods provided in subparts (d)(1) to (d)(3) of this Rule but specific circumstances have made these efforts ineffectual in completing service upon one or more defendants; and

⁹ V.I. R. CIV. P. 71.1(d)(3).

¹⁰ V.I. R. CIV. P. 71.1(d)(5).

(B) that alternative methods to be specified by order of the court will provide protections calculated to afford proper notice to the defendant(s) involved, and will comport with the requirements of Due Process.

According to Rule 71.1(d)(3), Garcia must be properly served with a copy of the Notice.¹¹

“Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.”¹² It appears that the Government wishes to serve Garcia with the Notice by publication pursuant to Virgin Islands Rule of Civil Procedure 4-1 and 5 V.I.C §112. Although Garcia was not specifically named in the Government’s Motion for an Order of Publication of Service, the Court notes that Garcia was named in the proposed order for publication which accompanied the Government’s Motion.¹³

The Government has not provided proof that it exercised due diligence in attempting to locate Garcia to personally serve him with a copy of the Notice in compliance with Rules 4(e) and (1).¹⁴ In addition, there is nothing on the record indicating that Garcia has “departed from the Virgin Islands and remained absent therefrom for six consecutive weeks” or that he “is not a resident of the Virgin Islands, but has property therein.”¹⁵ Significantly, there is no record that the Government attempted to serve Garcia with the Notice. At this juncture, serving Garcia by publication does not comport with Rule 4-1 or 5 V.I.C. §112. The Government, by exercising due diligence, must attempt to locate and personally serve Garcia with a copy of the Notice

¹¹ V.I. R. CIV. P. 71.1(d)(3).

¹² V.I. R. CIV. P. 71.1(d)(4).

¹³ See Proposed Order Attached to the Mot. at 1.

¹⁴ See *Raimer v. Raimer*, 2017 V.I. LEXIS 67, *1 n.3 (citing *Fredericks v. Tourism Indus.*, 1995 V.I. LEXIS 37, *10-11, 33 V.I. 23, 28, [WL] (V.I. Terr. Ct. 1995) (“Personal service on a defendant is preferred over service by publication because service by publication is the least calculated method to bring to a potential defendant's attention the pendency of judicial proceedings. Therefore, counsel must exercise due diligence in attempting to serve a defendant personally before moving for substituted service by publication, because service by publication should be a last resort after other methods at actual service have failed”)).

¹⁵ 5 V.I.C. § 112(a)(2) and (3).

utilizing the methods of service prescribed by Rule 4(e) and provide proof of service to the court pursuant to Rule 4(l).¹⁶

II. The Unknown Owners and all others claiming an interest in the Properties should be served by publication.

The Government moves to serve Unknown Owners and all others claiming an interest in the Property who were joined as defendants with a copy of the Notice by publication.¹⁷ Along with its Motion, the Government attached a Certificate Pursuant to Rule 4-1(a) (hereinafter “Certificate”) certifying that the Unknown Owners and all others claiming an interest in the Properties “cannot be personally served because after diligent inquiry within the Virgin Islands none have been found upon whom personal service may be made.”¹⁸

Virgin Islands Rule of Civil Procedure 4-1 governs service when service cannot be made as prescribed in Rule 4. According to Rule 4-1(a),¹⁹

When service of the summons and complaint cannot be made as prescribed in Rule 4, and the requirements set forth in 5 V.I.C. § 112(a) for obtaining substituted service by publication are established by affidavit, and the prerequisites stated in that statute are satisfied, the court may grant an order that service be made by publication in accord with the provisions of that statute.

Title 5, Section 112(a) of the Virgin Islands Code, prescribes in pertinent part that service by publication is proper where “service of the summons cannot be made as prescribed in Rule 4 [] and the defendant after due diligence cannot be found within the Virgin Islands.”²⁰

¹⁶ V.I. R. CIV. P. 4(e) and 4(l).

¹⁷ V.I. R. CIV. P. 71.1(c)(3).

¹⁸ See Certificate at 1.

¹⁹ V.I. R. CIV. P. 4-1(a).

²⁰ 5 V.I.C. § 112(a).

MEMORANDUM OPINION

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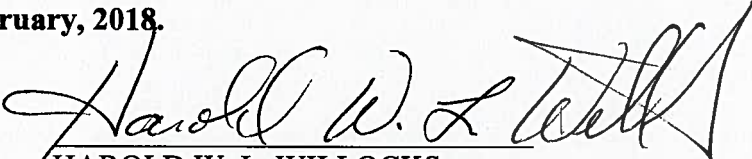
The Certificate is sufficient evidence that service of the Notice on the Unknown Owners and all others claiming an interest in the Properties cannot be “made as prescribed in Rule 4, and the requirements set forth in 5 V.I.C. § 112(a).”²¹ Consequently, effectuating service by publication of the Notice on the Unknown Owners and all others claiming an interest in the Properties is proper.²²

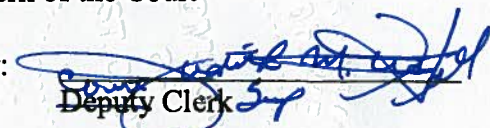
CONCLUSION

In light of the foregoing, the Motion to Serve the Notice on the Unknown Owners and all others claiming an interest in the Properties by publication shall be granted. The Motion to Serve Garcia by publication shall be denied. The Government must attempt to locate and serve Garcia personally utilizing the methods of service prescribed by Rule 4(e) and provide proof of service to the court pursuant to Rule 4(l). An Order consistent with this Memorandum Opinion follows.

DATED this 12th day of February, 2018.

ATTEST:
Estrella George
Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By: 

Deputy Clerk

Dated: 2/14/18

²¹ V.I. R. CIV. P. 4-1(a).

²² 5 V.I.C. § 112(b) and (c).