IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

V.I. PORT AUTHORITY, Plaintiff, v. **JUSTINE CALLWOOD and SHANNA JAMES d/b/a BAREFOOT BUDDHA,** Defendants.	)	**CASE NO. ST-11-CV-305** **ACTION FOR ACCOUNTING AND DEBT**

MEMORANDUM OPINION

Defendants Justine Callwood, Shanna James and Barefoot Buddha[1] filed a Daubert motion to exclude the testimony of Steven Jamron, on January 31, 2014. On February 10, 2014, Plaintiff V.I. Port Authority ("VIPA") filed an opposition to Defendants' Daubert motion to which Defendants replied on February 20, 2014.

Plaintiff seeks to present evidence through its expert, Steven Jamron, in support of its argument that "the fair market rental value of the property is the best metric that can be used to gauge VIPA's expectation interest in the property."[2] Defendants argue that Jamron should not be allowed to testify because his "testimony is not relevant" and "will unfairly prejudice the trier of fact."[3] Plaintiff responded by reiterating their position that Jamron's testimony "will help the trier of fact determine VIPA's expectation interest in the profit-sharing agreement."[4] Defendants

[1] Defendants Callwood, James and Barefoot Buddha argue that Defendants James and Barefoot Buddha are not liable under the contract and should be dismissed as parties. Unless specifically stated otherwise, Defendants are referenced collectively throughout this Opinion for ease of understanding only.
[2] Plaintiff's February 10, 2014, Opposition to Defendants' Daubert Motion to Exclude the Opinion Testimony of Steven Jamron, p. 4.
[3] Defendants' January 31, 2014, Daubert Motion to Exclude the Testimony of Steven Jamron, p. 6.
[4] Plaintiff's February 10, 2014, Opposition to Defendants' Daubert Motion to Exclude the Opinion Testimony of Steven Jamron, p. 1.

then countered that expectation damages are not the proper measure of damages for Plaintiff's claims.

Defendants filed a Trial Brief on February 11, 2014, whereby they raised, for the first time, the defense of "gist of the action."[5]

The Court has already held that Jamron's testimony regarding the market rental value of the property is improper as a means to measure damages under its claim for fraudulent misrepresentation if that claim sounds in contract, as rents were never contemplated by the profit-sharing agreement.[6,7] Plaintiff responded that its fraudulent misrepresentation claim sounds in tort.

The Court now holds that the testimony of Steven Jamron is irrelevant and excluded because the damages under a claim for fraudulent misrepresentation that sounds in tort are measured by out of pocket expenses, rescission or benefit of the bargain.[8] Additionally, the gist of the action doctrine does not bar a claim for fraudulent inducement.[9]

FACTUAL HISTORY[10]

On November 29, 2009, Defendant Justine Callwood entered into an Agreement with VIPA for a term of 10 months to open and run a daiquiri bar and barbeque restaurant called Jumbies Barbecue Joint ("Jumbies"). Callwood signed the Agreement as owner of Barefoot

[5] Defendants' February 11, 2014, Trial Brief, p. 6.
[6] Order issued from the bench on February 24, 2014.
[7] The Agreement lacks a clause allowing for lost rents if Net Revenues over $30,000 were not realized. *See* Parties November 29, 2009, Agreement for Operation of Visitor Lounge and Daiquiri Bar. Thus rents are not a "benefit of the bargain" under the contract.
[8] This measurement would, then, also apply to Defendants' fraudulent inducement counterclaim.
[9] This Memorandum Opinion addresses neither Plaintiff's debt and unjust enrichment claims nor Defendants claims for breach of contract, negligent misrepresentation and unjust enrichment.
[10] Facts were taken from Defendants' December 31, 2013, Statement of Undisputed Facts in Support of Their Motion for Summary Judgment; Plaintiff's February 03, 2014, Opposition to Defendants' Statement of the Undisputed Facts; Plaintiff's February 03, 2014, Statement of Additional Facts; and Defendants' February 11, 2014, Response to Plaintiff's Statement of Additional Facts.

Buddha, a partnership she shares equally with Defendant Shanna James. James never gave Callwood consent to use James's name to enter into an Agreement with VIPA to operate Jumbies, nor was James aware that Callwood was making representations to VIPA that Jumbies would be owned by Callwood and James d/b/a Barefoot Buddha.

Sixty-six thousand six hundred dollars ($66,600.00) in depreciation expenses were to be paid within the term of the Agreement.[11] Defendants were allowed to deduct certain expenses, including depreciation expenses and utilities, from Gross Revenues to calculate Net Revenues. Under the terms of the Agreement, every 60 day period VIPA was to be paid a portion of the Net Revenues realized over $30,000.00, but if the Defendants did not make Net Revenues of $30,000.00 during the 60 day period the Defendants owed nothing to VIPA for that term.

On February 09, 2010, VIPA wrote a letter to the Defendants in which VIPA revised the revenue sharing terms of the Agreement to allow Defendants to keep Net Revenues for 14 days after all capital improvements were completed, with the revenue sharing becoming effective on February 15, 2010. VIPA billed the Defendants for both utilities and depreciation costs, but VIPA does not know exactly how much the Defendants owe, if anything, in Net Revenues.

The Plaintiff and the Defendants agree that the Agreement was poorly drafted.

[11] The Court found that the Agreement was ambiguous as to which party is responsible for depreciation costs. February 21, 2014, Memorandum Opinion. *See also* Plaintiff's June 26, 2013, First Amended Complaint, paras. 13 and 16 ("Defendants were required to pay Plaintiff... a Depreciation expense equal to Six Thousand Six Hundred Sixty Dollars ($6,600.00) per month"); Defendants' December 31, 2013, Memorandum of Law in Support of its Motion for Summary Judgment, pp. 9 and 10 (Defendants argue that nothing in the Agreement holds the Defendants responsible for these costs).

STANDARD OF REVIEW – DAUBERT MOTION

FED. R. EVID. ("FRE") 702 governs the admission of testimony by an expert witness.[12]

Pursuant to FRE 702:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert has reliably applied the principles and methods to the facts of the case.

Therefore, "(1) the witness must be an expert; (2) the procedures and methods used must be reliable; and (3) the testimony must 'fit' the factual dispute at issue so that it will assist the jury."[13] As such, the evidence must be both relevant and reliable.[14]

"[B]efore expert testimony... may be admitted, the Court must act as a gatekeeper and determine what evidence helps the jury to resolve the issues presented."[15] The U.S. Supreme Court reasoned in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* that "evidence which does not relate to any issue in the case is not relevant and, thus, is not helpful."[16] "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[17] However, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading

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[12] 5 V.I.C. § 911 (Expert Testimony) - and the rest of the Uniform Rules of Evidence ("URE") - was repealed on April 07, 2010. Upon repeal, the URE was then replaced with the Federal Rules of Evidence ("FRE"). *Fontaine v. People*, 56 V.I. 571, n. 10 (V.I. 2012).
[13] *Belofsky v. General Electric Co.*, 980 F.Supp. 818, 821 (D.Vi.1997).
[14] *Gov't v. Jackson*, 47 V.I. 123 (V.I. Super. Ct. 2005) (citing *Belofsky*, 980 F.Supp. at 821).
[15] *Gov't v. Jackson*, 47 V.I. 123 (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993))
[16] *V.I. v. Todmann*, 53 V.I. 431 (V.I. 2010) (citing *Daubert*, 509 U.S.at 591).
[17] FRE 401.

the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."[18]

"[R]eliability requires a detailed inquiry into the methodology used to form the expert's conclusion. This inquiry ensures that the methodology is grounded in good science based on more than mere 'subjective belief or unsupported speculation.'"[19] The Court reviews 8 nonexclusive factors to be weighed and considered in the totality when determining scientific reliability:

> (1) whether the theory or technique can be tested;
> (2) whether the methodology is subject to peer review and publication;
> (3) whether, and how frequent, the methodology leads to erroneous results;
> (4) the known or potential rate of error;
> (5) whether the theory or technique has been generally accepted in the relevant scientific field;[20]
> (6) the relationship of the technique to methods which have been established to be reliable;
> (7) the qualifications of the expert witness testifying based on the methodology; and
> (8) the non-judicial uses to which the method has been put.[21]

"No one factor is dispositive" and "[a]s such, the Court's inquiry must focus solely on principles and methodology, not on the conclusions generated therefrom.[22] The party who seeks to introduce the expert testimony bears the burden of "showing that a technique is reliable by more than a prima facie showing."[23]

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[18] FRE 403.
[19] *Gov't v. Jackson*, 47 V.I. 123 (V.I. Super. Ct. 2005) (citing *Belofsky*, 980 F.Supp. at 821).
[20] *Daubert*, 509 U.S. at 593
[21] *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 742 n. 8 (3d Cir. 1994) (citing *U.S. v. Downing*, 753 F.2d 1224 (1985).
[22] *Gov't v. Jackson*, 47 V.I. 123 (citing *Daubert*, 509 U.S. at 595).
[23] *Belofsky*, 980 F. Supp. at 822 (citations omitted).

DISCUSSION

I. GIST OF THE ACTION

Plaintiff alleges that "Callwood misrepresented to [VIPA] that James and the Barefoot Buddha partnership would own the Jumbies venture."[24] Defendants for the first time challenge the fraudulent misrepresentation[25] claim as being barred by the gist of the action doctrine in their February 11, 2014, Trial Brief.

The gist of the action doctrine was developed in response to "the difficulties inherent in allowing a party to proceed with both tort and contract claims for harm that arose in connection with the contractual relationship."[26] Courts are rightfully concerned that "[b]lurring the bright line between tort and contract could diminish confidence in the value of the negotiated instrument and deter private parties from entering into contracts."[27] Therefore, the gist of the action doctrine "is designed to maintain the conceptual distinction between breach of contract claims and tort claims" and, "[a]s a practical matter, the doctrine precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims."[28] "To be construed as in tort… the wrong ascribed… must be the gist of the action".[29] The gist of the action doctrine bars tort claims:

> (1) arising solely from a contract between the parties;
> (2) where the duties allegedly breached were created and grounded in the contract itself;

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[24] Plaintiff's February 03, 2014, Cross-Motion for Summary Judgment, p. 14.

[25] Although some courts make a distinction between fraudulent misrepresentation and fraudulent inducement, our Supreme Court and local courts not made such a distinction. Therefore, as the Plaintiff alleges that the fraudulent misrepresentation induced it to enter into the Agreement with the Defendants, the terms "fraudulent misrepresentation" and "fraudulent inducement" are used interchangeably here.

[26] *Pediatrix Screening, Inc. v. TeleChem Intern., Inc.*, 602 F. 3d 541, 548 (3d Cir. 2010) (citing *Glazer v. Chandler*, 200 A.2d 416, 418 (1964)).

[27] *Pediatrix*, 602 F. 3d at 548.

[28] *Pediatrix*, 602 F. 3d at 548 (quoting *eToll, Inc. v. Elias/Savion Adver., Inc.*, 811 A.2d 10, 14 (2002)).

[29] *eToll,* 811 A.2d at 14.

(3) where liability stems from a contract; or
(4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on terms of a contract.[30]

"Although the gist of the action question is a legal one... it often requires a fact-intensive analysis as to the true nature of a claim."[31,32] The doctrine is applicable in the U.S. Virgin Islands pursuant to the Third Circuit Court of Appeal's binding holding in *Addie v. Kjaer*.[33]

Plaintiff argues that its claim for fraudulent inducement sounds in tort[34] and alleges that: Callwood misrepresented James and Barefoot Buddha's role in Jumbies; VIPA entered into the contract because of the alleged misrepresentations; VIPA justifiably relied on the misrepresentations; and VIPA was harmed as a result of the reliance.[35]

"The important difference between contract and tort actions is that the latter lie from the breach of duties imposed as a matter of social policy while the former lie for the breach of duties imposed by mutual consensus."[36] "Where fraud claims are 'inextricably intertwined' with the

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[30] *Ringo v. Southland Gaming*, 2010 WL 7746074, at *6 (V.I. Super. Ct. Sept. 22, 2010) (citing *Addie v. Kjaer*, Civil No.2004–135, 2009 WL 453352, at *3 (D.V.I. Feb. 23, 2009)).
[31] *Pediatrix*, 602 F. 3d at 551 (citing *eToll*, 811 A.2d at 15 and *Baker v. Family Credit Counseling Corp.*, 440 F.Supp.2d 392, 418 (E.D.Pa.2006)).
[32] *Pediatrix*, 602 F. 3d at 550 (Court held that "there was too much uncertainty" to determine whether the fraudulent inducement was collateral to the contract); *Penn City Investments, Inc. v. Soltech, Inc.*, 2003 WL 22844210, 2003 U.S. Dist. LEXIS 22321 (E.D.Pa. Nov. 25, 2003) (Court held that the fraudulent inducement claim was barred because the "pre-contractual statements concerned specific duties that the parties later outlined in the contract"); *Williams v. Hilton Group PLC*, 93 Fed. Appx. 384, 387 (3d 2004) (Court held that the actions that constituted the claim for fraudulent inducement were addressed within the contract); *eToll*, 811 A.2d at 20 (application of the doctrine turns on the question of whether the fraud concerned fraud in the performance versus fraud in the inducement); *Air Products v. Eaton Metal*, 256 F. Supp. 2d 329, 341 (E.D. Pa. 2003) ("The distinction between fraud in the inducement and fraud in the performance claims with regard to the gist of the action doctrine is crucial"); *Advanced Tubular Products, Inc. v. Solar Atmospheres*, 149 Fed. Appx. 81, 85 (3d 2005) ("the gist of the action doctrine may not cover fraud in the inducement"); *Berger v. Zeghibe*, 465 Fed. Appx. 174, 184 ("[T]he doctrine has no application when the contractual relationship is collateral to the tortious conduct");
[33] 737 F. 3d 854, 867 (3d Cir. 2013).
[34] February 24, 2014, hearing.
[35] Plaintiff's February 03, 2014, Cross-Motion for Summary Judgment, p. 14. Plaintiff cites to RESTATEMENT (SECOND) OF TORTS 525 and First American Development Group v. WestLB AG, 55 V.I. 316, 331-332 (V.I. Super. Ct. 2011).
[36] *Redevelopment Auth. v. International Ins. Co.,* 685 A.2d 581, 590 (1996) (en banc).

contract claims, the gist of the action is contractual, and the fraud claim should be dismissed."[37] However, "[t]he distinction between fraud in the inducement and fraud in the performance claims with regard to the gist of the action doctrine is crucial" as "fraud to *induce* a person to enter into a contract is generally *collateral to (i.e., not 'interwoven' with)* terms of the contract itself."[38]

Under the gist of the action doctrine, the Court must determine from the facts whether a fraudulent misrepresentation claim – despite how the movant couches it – sounds in tort or contract. Plaintiff contends that Callwood's representations as to the involvement of James and the Barefoot Buddha partnership induced it to enter into the contract. Without such inducement, according to the Plaintiff, there would not have even been a contract. Thus the Court finds that Plaintiff's claim for fraudulent inducement is a tort claim, not "a breach of contract by another name."[39]

Allowing a claim for fraudulent misrepresentation that induces one to enter into a contract is the soundest application of the gist of the action doctrine because such misrepresentation "implicate[s] the 'larger social policies' of a tort action (e.g., society's desire to avoid fraudulent inducement[])."[40] This approach highlights the "extra-contractual, independent obligation[s]" and "special duties of parties who deal with one another in a business setting" to not cause each other harm.[41] Therefore, Plaintiff's claim for fraudulent inducement is not precluded under this doctrine.

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[37] *Pediatrix*, 602 F. 3d at 548 (citing *eToll*, 811 A.2d 10, 20-21).
[38] *Air Products v. Eaton Metal*, 256 F. Supp. 2d 329, 341 (E.D. Pa. 2003) (emphasis added).
[39] *Air Products*, 256 F. Supp. 2d 329 (citations omitted).
[40] *Id.*
[41] *Addie v. Kjaer*, 51 V.I. 836 (D. V.I. 2009) (rev'd in part, 737 F.3d 854 (2013) on other grounds) (citations omitted).

II. MEASURE OF DAMAGES FOR FRAUDULENT MISREPRESENTATION

In *Island Insteel Systems, Inc. v. Waters*,[42] the Third Circuit of Appeals defined fraudulent inducement that sounds in tort as: "[o]ne who fraudulently makes a [material] misrepresentation of fact for the purpose of inducing another to act or refrain from action in reliance upon it [and the other party reasonably relies upon the misrepresentation to his or her detriment], is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation."[43,44] A misrepresentation is fraudulent if made: with knowledge or belief of falsity; without confidence in the truth; or with knowledge that he does not have the basis for his representation.[45] The Third Circuit cited to RESTATEMENTS (SECOND) OF TORTS 525 and 526 in support of these elements. Because the Third Circuit's holding is binding upon this Court, RESTATEMENTS (SECOND) OF TORTS 526 and 526 comprise the common law of our jurisdiction.

[42] 296 F. 3d 200, 212 (3d Cir. 2002) (citing to and quoting RESTATEMENT (SECOND) OF TORTS 525).
[43] The Supreme Court has not addressed the elements of common law fraudulent misrepresentation. The Third Circuit addressed the common law elements of fraudulent misrepresentation in 2 pre-*Banks* cases dealing with Virgin Islands law: *Island Insteel Systems, Inc. v. Waters*, 296 F. 3d 200 (3d Cir. 2002) and *Berroyer v. Hertz*, 672 F. 2d 334 (3d Cir. 1982). The Third Circuit did not conduct a *Banks* like analysis before applying the Restatements, and the cases cited by the Third Circuit as additional authority dealt with local law of other jurisdictions. Although the V.I. Supreme Court stated in *Gov't v. Connor*, S. Ct. Civ. No. 2013-0095 (V.I. Feb. 24, 2014), that the Superior Court "need not consider itself foreclosed from adopting a different common law rule" than those cited by otherwise binding authority, the Superior Court, did not do – and is not required to do – a *Banks* analysis here because this Court finds no reason to deviate from the Third Circuit's application of Restatements (Second) of Torts 525, 526 and, consequently, 549. The Court finds the elements in this binding case - in the absence of Virgin Islands Supreme Court precedents otherwise - to be the appropriate common law rule based on the unique characteristics and needs of the Virgin Islands.
[44] For a claim of fraudulent misrepresentation that sounds in contract, the misrepresentation need not be material. RESTATEMENT (SECOND) OF CONTRACTS 162, cmt. c.
[45] *Island Insteel*, 296 F. 3d 200 (citing RESTATEMENT (SECOND) OF TORTS 526).

RESTATEMENT (SECOND) OF TORTS 549, which provides the common law measure of damages for a claim of fraudulent misrepresentation under RESTATEMENTS (SECOND) OF TORTS 526 and 526,[46] states that:

> (1) The recipient of a fraudulent misrepresentation is entitled to recover as damages in an action of deceit against the maker the pecuniary loss to him of which the misrepresentation is a legal cause, including
> (a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and
> (b) pecuniary loss suffered otherwise as a consequence of the recipient's reliance upon the misrepresentation.
> (2) The recipient of a fraudulent misrepresentation in a business transaction is also entitled to recover additional damages sufficient to give him the benefit of his contract with the maker, if these damages are proved with reasonable certainty.

A. Damages under Clause (1)

"Under the rule stated in Clause (1)(a), the recipient of a fraudulent misrepresentation is entitled to recover from its maker in all cases the actual out-of-pocket loss which, because of its falsity, he sustains through his action or inaction in reliance on it."[47] Damages recovered under Clause (1)(b) "must be of a kind that might reasonably be expected to result from reliance upon the misrepresentation."[48] The RESTATEMENT (SECOND) OF TORTS 549 refers to these as "out of pocket" expenses.

B. Alternative Damages

Additionally, "[o]ne who is misled by the fraudulent representations of another may rescind the transaction induced by it."[49] Rescission involves a judicial termination of a party's

[46] As discussed, the Third Circuit defined the elements of fraudulent misrepresentation in reference to RESTATEMENTS (SECOND) OF TORTS 525 and 526. The measure of damages for these Restatements is provided by RESTATEMENT (SECOND) OF TORTS 549. Therefore a *Banks* analysis is not required to clarify this Court's dependence on the common law provided by RESTATEMENT (SECOND) OF TORTS 549.
[47] RESTATEMENT (SECOND) OF TORTS 549, cmt. b.
[48] RESTATEMENT (SECOND) OF TORTS 549, cmt. d.
[49] RESTATEMENT (SECOND) OF TORTS 549, cmt. e.

contractual obligations – "it is a court-ordered 'unwinding' of a contract, with the goal of returning the parties to their positions prior to contracting. [However, t]his remedy is possible only if such a status quo ante can be re-established."[50]

C. Damages under Clause (2)

Damages under Clause (2) allow for "benefit of the bargain" damages, which must be proved with reasonable certainty. Damages of this type are measured by the difference in value between what was promised and what was received.[51]

It is important to note that this Court will not automatically apply the "benefit of the bargain" as a measure of damages in deceit matters.[52] "One reason is that in occasional cases the out-of-pocket measure of damages will actually be more profitable and satisfactory from the point of view of the plaintiff than the benefit-of-the-bargain rule." This is the soundest application of the measurement of damages for fraudulent inducement that sounds in tort and is in accordance with RESTATEMENT (SECOND) OF TORTS 549,[53] which "follows a compromise position adopted by some jurisdictions, giving the plaintiff the option of either the out-of-pocket or the benefit-of-the-bargain rule in any case in which the latter measure can be established by proof in accordance with the usual rules of certainty in damages."[54]

Because rescission puts the party in the position it was in at the time of contracting; out-of-pocket expenses would not, of course, contemplate rents paid by the Plaintiff; and the benefit

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[50] *Jones v. InfoCure Corp.*, 310 F.3d 529, 535 (7th Cir. 2002).
[51] *Coghlan v. Wellcraft Marine Corp.*, 240 F.3d 449, 452 (5th Cir. 2001).
[52] RESTATEMENT (SECOND) OF TORTS 549, cmt. g. ("One reason is that in occasional cases the out-of-pocket measure of damages will actually be more profitable and satisfactory from the point of view of the plaintiff than the benefit-of-the-bargain rule").
[53] As discussed, this Restatement is applicable to this Court pursuant to the Third Circuit's binding holding in *Island Insteel Systems, Inc. v. Waters*, 296 F. 3d 200 (3rd 2002).
[54] The rule appears to give *both* out of pocket expenses and benefit of the bargain ("The recipient of a fraudulent misrepresentation in a business transaction is *also* entitled to recover…"). However, comment h states that the movant has the option of either measurement.

of the bargain in this matter never contemplated actual rents, testimony as to loss of rents is irrelevant here[55] and thus excluded. Because the testimony is not relevant, the Court need not also address whether the expert testimony is reliable.

CONCLUSION

The sounder rule in the Virgin Islands is to allow for a tort claim that addresses fraudulent inducement as an exception to the gist of the action doctrine, therefore Plaintiff's claim for fraudulent misrepresentation not precluded under this doctrine. Additionally, damages for a fraudulent misrepresentation that sounds in tort are measured in out of pocket expenses, rescission or recovery of benefit of the bargain, none of which contemplate lost rents. Thus the testimony of Plaintiff's expert Steven Jamron is both irrelevant and excluded. An appropriate Order is issued simultaneously herewith.

Dated: February 28, 2014

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest: Estrella H. George
Acting Clerk of the Court
by:
Lori Boynes-Tyson
Court Clerk Supervisor 3 13 2014

[55] RESTATEMENT (SECOND) OF TORTS 549(2).