

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

**ROSALIE WHEATLEY, DOLORES
HODGE, SHIRLEY BROWN, JEAN
MAGRAS, THE HEIRS OF GLORIA
SCOTT, and THE HEIRS OF PIERRE
MAGRAS,**

Plaintiffs,

v.

**LEWIS MAGRAS, LAKISHA MAGRAS,
and THE ESTATE OF TITANIA MAGRAS,**

Defendants,

and

STUART OLSON and LINDA OLSON,

Intervenors.

CASE NO. ST-05-CV-548

MEMORANDUM OPINION

The Plaintiffs filed a Complaint on October 6, 2005, against two of their siblings, Lewis Magras and Lakisha Magras, and their mother Titania Magras's estate, alleging breach of contract. Intervenors, Stuart and Linda Olson, were granted leave to join the suit on September 21, 2007. Plaintiffs filed a Notice of Demand for Security for Costs from the Olsons on November 9, 2007, who responded with a Motion to Strike on November 14, 2007.

The parties were first referred to mediation on August 10, 2006. On September 29, 2008, the Court ordered mediation to be completed by December 31, 2008, but on January 16, 2009, Defendants filed a Motion for Extension of Time to mediate. No mediation report appears in the Court's file.

The Olsons filed a Motion for Summary Judgment on October 20, 2008. In an Order dated October 27, 2008, the Court reserved its ruling on the motion for summary judgment until

the completion of mediation. On January 30, 2009, Intervenors filed a Motion to Dismiss Plaintiffs' Complaint in Part, which Plaintiffs opposed on February 11, 2009. On February 27, 2009, Intervenors responded to Plaintiffs' opposition.

Plaintiffs served their first set of interrogatories and requests for production of documents on Intervenors and Defendants on September 18, 2008. On October 17, 2008, the Court granted the Defendants' October 1, 2008, motion to enlarge the time for written discovery to October 29, 2008. Intervenors responded to Plaintiffs' first set of interrogatories and requests for production of documents on December 4, 2008.

Intervenors sought a default judgment against Plaintiff/Counterclaim Defendants on October 23, 2007. Plaintiffs filed a Motion and Incorporated Memorandum of Law in support of default judgment against Defendants on January 15, 2010.

On February 16, 2011 Intervenors filed a Motion for Oral Argument to address the outstanding dispositive motions. The case was assigned to the undersigned following the recusal of the Hon. Adam G. Christian on September 29, 2011.

FACTS

Titania ("Titania") and Pierre Leopold ("Leopold") Magras signed contemporaneous and reciprocal wills on July 6, 1996, by which they pledged to "dispose of all worldly possessions as mutually agreed." Titania and Leopold each bequeathed to the surviving spouse "a life estate in any and all real and personal property, not specifically devised or bequeathed, which I may own or in which I have an interest in at the time of my death." Each will named Plaintiff Rosalie Wheatley as Executrix. Both Titania and Leopold granted a life estate in Anna's Fancy #91 Apt. #2 to Defendant Lakisha Magras and a life estate in Anna's Fancy #91 Apt. #1 to Defendant Lewis Magras, and, upon the deaths of all of Titania and Leopold's children, the Anna's Fancy

property was to pass to any living grandchildren. No other real properties were specifically addressed in the wills. “All of the rest and residue” of the estate was to be divided amongst their eight children.

Leopold passed away on May 23, 1999. At the time of her husband’s death, Titania Magras possessed a Deed of Gift for 56B Kronprindsens Gade on St. Thomas, a quitclaim deed to Parcel #91 Estate Anna’s Fancy, and a one-twelfth (1/12) interest in 6-I Ben Runnels Gut on St. John.¹ On August 4, 2005, Titania was bequeathed a one-thirty-sixth (1/36) interest in the Ben Runnels Gut property by her cousin, Rubio Arlo Dennis, increasing her share in the Ben Runnels Gut property at the time of her death to a one-ninth (1/9) interest.

Titania signed a second will on February 8, 2005, whereby she revoked “any and all other Wills and Codicils heretofore made by me”. In this second will, Titania bequeathed her share in the Ben Runnel Gut property, her legal interest in funds in any bank account, and the “rest and remainder” of her estate to Lakisha. She also appointed Lakisha as the second will’s Executrix.

Titania entered into a contract to sell her share in the Ben Runnels Gut property to Stuart and Linda Olson on September 12, 2003.² On June 14, 2004, Titania transferred her interest in the Kronprindsens Gade property by quitclaim deed to Defendants Lakisha and Lewis Magras, and on May 26, 2005, Titania transferred her interest in the Ben Runnels Gut Property to Lakisha and Lewis. Titania passed away on August 9, 2005.

Plaintiffs seek to nullify the June 14, 2004, and May 26, 2005, deeds, alleging breach of contract and civil conspiracy and demanding damages and specific performance or the creation

¹ Joyce Jepps had granted Titania a one-third (1/3) interest in her one-fourth (1/4) interest in the Ben Runnels Gut property on October 31, 1983.

² The Ben Runnels Gut and Kronsprindsens Gade properties were placed on the market for sale before Titania’s death. Defendants’ Answer and Counterclaim, p. 7.

of a constructive trust. Defendants counterclaimed for slander of title, defamation, and tortious interference with a contract on November 16, 2005. Plaintiffs responded on December 15, 2005, that the Defendants failed to state a claim upon which relief can be granted and that the Defendants' counterclaims were barred by the doctrine of unclean hands, laches, estoppel, "or like defenses."

Intervenors counterclaimed against Plaintiffs for slander of title and tortious interference. The Olsons request that the Court grant summary judgment in their favor against the Plaintiffs; order the removal of the *lis pendens* on Parcel 6-I, Estate Ben Runnels Gut; restrain the Plaintiffs from directly or indirectly interfering with closing on the sale of Parcel 6-I; and compel the immediate sale of Titania Magras's interest in Parcel 6-I to the Olsons, with the portion of the proceeds attributable to Titania Magras to be paid into the registry of the Court.³

STANDARD OF REVIEW – SUMMARY JUDGMENT

Summary judgment is appropriate when the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."⁴ "Once the moving party points to evidence demonstrating no issue of material fact exists, the non-moving party has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable factfinder could rule in its favor."⁵ All inferences are drawn in favor of the non-moving party,⁶ and "summary judgment... cannot be entered unless the movant

³ Intervenors' Memorandum of Fact and Law in Support of Intervenors'/Counterclaim Plaintiffs' Motion for Summary Judgment, p. 8.

⁴ FED.R.CIV.P. 56(c); *Lockhart v. Government of Virgin Islands*, Civ. No. 2005-127, 2009 WL 2407821, at *3 (D.V.I. Aug. 3, 2009).

⁵ *Crossley v. Elliot*, Civ. No. 2007-17, 2011 WL 1107868, at *3 (D.V.I. March 25, 2011) (quoting *Ridgewood Bd. of Educ. v. N.E. ex rel. M.E.*, 172 F.3d 238, 252 (3d Cir. 1999)).

⁶ *Etienne v. United Corp.*, Civ. No. ST-99-CV-205, 2001 WL 1568598, at *2 (Terr. Ct. Oct. 15, 2001) (citing to *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986)).

has established its right[] to a judgment with such clarity as to leave no room for controversy, and [that] the other party is not entitled to recover under any discernable circumstances.”⁷

STANDARD OF REVIEW – MOTION TO DISMISS

The Court must consider two factors when deciding a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure. First, “all well-pleaded allegations of the complaint must be taken as true and interpreted in the light most favorable to the plaintiffs, and all inferences must be drawn in favor of them.”⁸ Although the Court must take all of the factual allegations in the Complaint as true, courts “are not bound to accept as true a legal conclusion couched as a factual allegation.”⁹ Factual and legal elements of a claim should be separated,¹⁰ and, while Rule 8¹¹ does not require “detailed factual allegations,”¹² it does “demand[] more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”¹³ A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do,” nor does a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.”¹⁴

Second, the Court must decide whether the claim is plausible “on its face.”¹⁵ A claim is plausible when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” and a court must “draw on its

⁷ *Etienne*, 2001 WL 1568598 at *2 (quoting *Bottle v. Industrious*, 26 V.I. 83, 85 (Terr. Ct. 1991)).

⁸ *Crawford v. Daly*, Civ. No. ST-08-CV-281, 2010 WL 5677946, at *2 (V.I. Super. Ct. Nov. 29, 2010) (quoting *Schrob v. Catterson*, 948 F.2d 1402, 1408 (3d Cir.1991) (citation omitted)).

⁹ *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

¹⁰ *Bethea v. Merchants Commercial Bank*, Civ. No. 2011–51, 2011 WL 4861873, at *1 (D.V.I. Oct. 13, 2011) (citing *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009); *Iqbal*, 129 S.Ct. at 1950)).

¹¹ “A pleading that states a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief”. FED. R. CIV. P. 8(a).

¹² *Iqbal v. Ashcroft*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlanta Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

¹³ *Iqbal*, 129 S.Ct. at 1949.

¹⁴ *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555 and 557).

¹⁵ *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570).

judicial experience and common sense” in making the plausibility determination.¹⁶ The plausibility standard requires more than “a sheer possibility that a defendant has acted unlawfully.”¹⁷ If the Court determines that “there are well-pleaded factual allegations, [it will] assume their veracity and then determine whether [the allegations] plausibly give rise to an entitlement to relief.”¹⁸ The Court now applies these standards.

DISCUSSION

I. Summary Judgment

On September 12, 2003, the Olsons offered to purchase the Ben Runnels Gut property for \$500,000. Titania accepted their offer on September 18, 2003, and, prior to Titania’s death, all of the other owners of the property had also executed the contract. The Intervenor placed the required earnest money in an escrow account and state that they were, and remain to be, “ready, willing and able to consummate the purchase of the Property”. The Olsons state that the Plaintiffs recorded a *lis pendens* against the property and “caused a cloud on title to the Property, unacceptable to the Olsons’ title insurance company and, therefore, to their lender”. On October 20, 2008, the Olsons filed a Motion for Summary Judgment regarding the Plaintiff’s claim to the 6-I Ben Runnels Gut property, asserting that there was no provision in either will preventing either Leopold or Titania from selling any property during their lifetime.¹⁹ The Plaintiffs counter that Titania’s later distribution of property and revocation by substitution of the reciprocal will constituted a breach of contract because “following the death of Pierre Leopold Magras, the Last

¹⁶ Saja A. Thomas, *The New Summary Judgment Motion: The Motion to Dismiss Under Iqbal and Twombly*, Lewis & Clark L. Rev. 15, 27 (2009) (discussing changes to the requirements for the motion to dismiss as recently established by the Supreme Court in *Twombly* and *Iqbal*) (quoting *Iqbal*, 129 S.Ct. at 1949-50).

¹⁷ *Iqbal*, 129 S.Ct. at 1949.

¹⁸ *Id.* at 1950.

¹⁹ Although the Court filed an Order on October 27, 2008, reserving its ruling on the motion for summary judgment until the completion of mediation, to date, the case has not been resolved.

Will and Testament of Titania Magras became, by operation of law, not changeable and irrevocable.”²⁰

A reciprocal will is created when “testators name each other as beneficiaries under similar testamentary plans”²¹ and may contain bequests to third persons.²² Reciprocal wills “are essentially a species of the more inclusive category of contracts to make testamentary provisions.”²³ “The basic elements of an enforceable contract are three: the parties must reach a mutual understanding, exchange consideration, and delineate the terms of the bargain with sufficient clarity.”²⁴ Unless the testamentary promise is supported by consideration,²⁵ a reciprocal will may be revoked or modified by a subsequent act or writing.²⁶

a. Mutual Understanding

The reciprocal wills express a clear intent to “dispose of our worldly possessions as mutually agreed” and to leave the “rest and residue” of the surviving spouse’s estate to the couple’s eight children to “share and share alike per/stirpes.”

b. Consideration

Before reaching the question of breach, the Court will analyze whether there was sufficient consideration to create a contract²⁷ because “the execution of a reciprocal will [alone]

²⁰ Complaint, p. 3.

²¹ 79 Am. Jur. 2d Wills § 662 (citing *Foulds v. First Nat. Bank*, 103 N.M. 361, 707 P.2d 1171 (1985); *Davis v. KB & T Co.*, 172 W. Va. 546, 309 S.E.2d 45 (1983); *Shook v. Bell*, 599 P.2d 1320 (Wyo. 1979)).

²² 79 Am. Jur. 2d Wills § 662 (citing *Mosloski v. Gamble*, 191 Minn. 170, 253 N.W. 378 (1934); *Foulds*, 707 P.2d 1171; *Doyle v. Fischer*, 183 Wis. 599, 198 N.W. 763, 33 A.L.R. 733 (1924)).

²³ *Matter of Coffed*, 46 N.Y.2d 514, 518 (N.Y. 1979).

²⁴ *In re 400 Walnut Associates, L.P.*, 454 B.R. 60, 70 (Bkrtcy. E.D. Pa. 2011) (citations omitted).

²⁵ *Coffed*, 46 N.Y.2d at 518-519 (citing *Rich v. Mottek*, 11 N.Y.2d 90 (N.Y. 1962)); *Rastetter v. Hoenninger*, 214 N.Y. 66, 66 (N.Y. 1915) (“As a will[,] an instrument is revocable at pleasure, but as a contract, if supported by an adequate consideration, it is enforceable in equity”).

²⁶ 15 V.I.C. § 2-507; *Coffed*, 46 N.Y.2d at 519.

²⁷ *Pruss v. Pruss*, 514 N.W.2d 335, 344 (Neb. 1994).

does not create a presumption of a contract not to revoke a will.”²⁸ Instead, the parties claiming breach must present “clear, cogent, satisfactory, and convincing evidence” to prove a promise not to modify or revoke a will.²⁹ Moreover, “[i]n the absence of language indicating that a will was the result of a contract, or that there was valid consideration for reciprocal testamentary dispositions in the respective wills, a third-party beneficiary may not rely on contract theory to set aside an alienation of property devised in the will.”³⁰ In other words, the intent to create an irrevocable will need not be in writing, but before the Court will entertain a breach of contract claim there must be detrimental reliance or actual consideration in support of the promise not to revoke or modify because “[c]onceptually, the contract to make a testamentary provision is separate and distinct from the will itself.”³¹

As to the three real properties at the heart of this conflict, the rule remains clear: one cannot bestow a property interest that he does not actually have.³² “A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.”³³ Leopold signed quitclaim deeds of gift granting and conveying to his wife, Titania, all of his right title and interest in Lot No. 91 Estate Anna’s Fancy and 56B Kronprindsens Gade on April 15, 1988, and September 27, 1990, respectively. Titania acquired her share in the Ben Runnels Gut property via gift and intestacy, thus excluding the property

²⁸ *In re Estate of Brooks*, No. CA 05-1012, 2006 WL 1413680, at *4 (Ark. Ct. App. 2006).

²⁹ *Id.*

³⁰ 79 Am. Jur. 2d Wills § 323 (citing *Caudell v. Caudell*, 260 Ga. 802, 401 S.E. 2d 2 (1991)).

³¹ *Coffed*, 46 N.Y.2d at 519.

³² *Baker v. C.I.R.*, 338 F.3d 789, 793 (7d Cir. 2003) (“Fundamentally, in order to have the ability to sell something, one must own it”); *Texas Bank & Trust Co. of Dallas v. Custom Leasing, Inc.*, 402 S.W.2d 926 (Tex. Civ. App. 1966) (held that “rights of ownership include the right to sell”).

³³ 15 V.I.C. § 2-602.

from the marital estate.³⁴ Leopold did not have an interest in the real property when he created the will or at the time of his death.

“[A] life estate is created by a deed or will where the language of the instrument manifests an intention on the part of the grantor or testator to pass to a grantee or devisee a right to possess, use, or enjoy property during the period of the grantee's life.”³⁵ Testator Pierre Leopold Magras made a general bequest of “a life estate in any and all real... property, not specifically devised or bequeathed,” to his wife, Titania Magras. However, because Leopold did not own any of the contested real property at the time of his passing, Leopold did not have any interest in which to create a life estate. Therefore, there was no consideration for a life estate or a complete conveyance to support the creation of a valid and enforceable contract not to revoke.

c. Detrimental Reliance

In the absence of consideration, a Court can enforce an express promise³⁶ between parties through a showing of detrimental reliance.³⁷ Detrimental reliance requires a showing of actual “action or forbearance on the part of the promise”.³⁸ Leopold did not perform in reliance on a shared promise to “dispose of all our worldly possessions as mutually agreed” because, at the time of his death, Leopold was not seized of, and did not possess or hold a power of appointment

³⁴ 16 V.I.C. § 68; *Allen v. Allen*, 118 F.Supp.2d 653, 658 (D.V.I. 2000).

³⁵ *Financial Freedom Sr. Funding Corp. v. Horrocks*, 294 S.W.3d 749, 755 (Tex. App. 2009) (citing *Eversole v. Williams*, 943 S.W.2d 141, 143 (Tex. App. 1997) (no writ)).

³⁶ *Trianco, LLC v. International Business Machines Corp.*, 271 Fed. Appx. 198, 205 (3d Cir. 2008) (citation omitted).

³⁷ “In cases in which there is an absence of consideration between the parties so that there is no valid contract, detrimental reliance ‘constitutes a substitute for consideration, or a sufficient reason for enforcement of the promise without consideration.’” *Asbury v. Sherman, LLC*, No. W2001-01821-COA-R3-CV, 2002 WL 31306691, at *5 (Tenn. Ct. App. October 15, 2002) (quoting *Alden v. Presley*, 637 S.W.2d 862, 864 (Tenn.1982) (in turn quoting LAW OF CONTRACTS § 61 (2d ed.1965))).

³⁸ “A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.” RESTATEMENT (SECOND) OF CONTRACTS § 90(1).

over, any of the referenced real properties.³⁹ There is no written promise not to revoke and no detrimental reliance supported by consideration for such a promise. In the absence of valuable consideration, either spouse may revoke a reciprocal will “where it does not appear that the [decedent] owned any property either at the time of the execution of the will or at the time of [his] death”.⁴⁰ “Consideration is sufficient to support a contract if there is any detriment to the promisee or any benefit to the promisor.”⁴¹ Here, only Titania held any real interest in the disputed properties, and Titania and Leopold Magras made distinct provisions for distributing their separate personal effects.⁴² Therefore, in the absence of valuable consideration or detrimental reliance, the Plaintiffs have failed to establish that Titania’s conveyances or revocation of her July 6, 1996, reciprocal will amounted to a breach of contract.

d. Terms of the Contract

Considering, *arguendo*, that there was a valid contract, Titania was not prohibited under the terms of the will from altering or revoking the reciprocal will. When determining the

³⁹ As to the disposition of Titania and Leopold Magras’s personal property, those portions of the wills are properly settled via the probate court.

⁴⁰ 169 A.L.R. 9(IV)(a)(5) (*citing Buchanan v. Anderson*, 50 S.E. 12 (S.C. 1905)). *See also Smith v. Thompson*, 230 N.W. 156 (Mich. 1930) (stating that “[w]here an agreement is entered into by two persons, and especially by husband and wife, to make mutual and reciprocal wills disposing of their separate estates pursuant to their mutual agreement, and where mutual and reciprocal wills are made in accordance with that agreement, and where, after the death of one of the agreeing parties, the other takes under the will and accepts the benefits of said agreement, equity will enforce specific performance of said... agreement”) (*quoting Doyle*, 198 N.W. 763, 765); *Pruss*, 514 N.W.2d 335 (valid consideration when spouses agreed to “transfer from one to the other an undivided one-half interest in certain farm real estate”); *Wright v. Wright*, 285 S.W. 188 (Ky. Ct. App. 1926) (held that “[w]here a husband and wife agree that the survivor shall have all the property left at the death of the predecedent, each having substantially the same amount of property, and, to effect the agreement, executed mutual wills with appropriate provisions, a binding contract subsists”); *Mack v. Swanson*, 299 N.W. 543 (Neb. 1941) (held that “mutual promises of the parties amount to sufficient consideration[]” when husband and wife, who owned separate estates, each “bequeath[ed] to the other all the property of the owner for life.”); *Brown v. Webster*, 134 N.W. 185 (Neb. 1912) (held that “contract of each is a sufficient consideration for the contract of the other” when “husband and wife, possessed of separate estates, orally agree that upon the predecease of either[,] the survivor shall thereupon become the owner of all of the estate”).

⁴¹ *Pruss*, 514 N.W.2d at 345.

⁴² “I give and bequeath all my personal effects”, Paragraph Third. *See Geiger v. Geiger*, 178 N.W.2d 575, (Neb. 1970) (enforceable contract found with promise to dispose of all property, “both real and personal, whether owned jointly or severally” as set forth in a joint will).

meaning of a written contract, “the initial resort should be to the four corners of the agreement itself,”⁴³ and terms that are unambiguous are treated as a question of law to be decided by the Court.⁴⁴ Nothing in the reciprocal wills before the Court prevented either spouse from conveying or contracting away property during the spouse’s lifetime. Neither will states that it is irrevocable, and none of the parties have presented evidence supporting a conclusion that Titania’s will was unalterable. Titania executed a second will on February 8, 2005, revoking her July 6, 1996, reciprocal will, consistent with the requirements of Title 15 Section 2-507(1) for the revocation of a will.⁴⁵

A court may grant summary judgment sua sponte on an issue where warranted.⁴⁶ “[A] sua sponte grant of summary judgment is proper only upon fair notice to the nonmovant and an opportunity to respond [by the nonmovant] to the issues the court intends to resolve.”⁴⁷ But, the fact that a party has not been given actual notice becomes irrelevant if that party has already had the opportunity to present all the evidence that would be used to oppose a motion for summary judgment.⁴⁸

The crux of the Plaintiffs’ claims is that Titania Magras “breached the contract created by the mutual and reciprocal wills”. Although there appeared to be mutual understanding at the time the reciprocal wills were signed, the wills lacked the actual consideration or detrimental reliance and specific terms required to create an enforceable promise not to revoke Titania’s July

⁴³ *American Flint Glass Workers Union v. Beaumont Glass Co.*, 62 F.3d 574, 581 (3d Cir. 1995).

⁴⁴ *Prudential Ins. Co. of America v. Bentley*, Civ. No. 2010-87, 2011 WL 4758708, at *8 (D.V.I. Oct. 07, 2011) (citing *United Corp. v. Tutu Park Ltd.*, S.Ct. Civ. No. 2010-0083, 2011 WL 4017711 (V.I. Sept. 7, 2011)).

⁴⁵ “A will... is revoked by executing a subsequent will that revokes the previous will... expressly”. 15 V.I.C. § 2-507(a)(1).

⁴⁶ *Chiverton v. Johnston*, Civ. No. 1996-115, 2004 WL 2326365, at *4 (D.V.I. October 6, 2004) (citing *Gibson v. May and Wilmington*, 355 F.3d 215, 224 (3d Cir. 2004) and *Otis Elevator Co. v. George Washington Hotel Corp.*, 27 F.3d 903, 910 (3d Cir.1994)).

⁴⁷ *Chiverton*, 2004 WL 2326365 at *4.

⁴⁸ *Gibson*, 355 F.3d at 224.

6, 1996, will. Six years after the Complaint was filed, the record remains devoid of any evidence in support of an enforceable contract between Titania and Leopold Magras. After a thorough review of the record, the Court finds that summary judgment is appropriate as to the Plaintiffs' claims for breach of contract and civil conspiracy.

II. Motion to Dismiss

Because the Court is summarily dismissing Plaintiffs' complaint, Intervenor's February 11, 2009, Motion to Dismiss Plaintiffs' Complaint in Part is denied as moot.

III. Default Judgment

Plaintiffs filed an Application for Entry of Default Judgment on January 15, 2010, asserting that the Defendants have not appeared before the Court since January 16, 2009, and have not responded to written discovery. Because summary judgment is appropriate in this matter, Plaintiffs' motion is denied as moot.

Intervenor's October 23, 2007, Motion for Default Judgment against Plaintiffs for their failure "to plead, answer, respond, or otherwise defend the Counterclaims" is denied as moot, as the Plaintiffs have, since that time, submitted to discovery.

IV. Security for Costs

On November 9, 2007, Plaintiffs filed a Notice of Demand seeking security for costs pursuant to 5 V.I.C. §§ 547(c)(1) and 547(e). Section 547 states that "if the plaintiff resides out of the Virgin Islands... the defendant may serve a notice requiring security for the costs... not exceeding the sum of \$1000" and "[w]hen more than one defendant is named, the undertaking shall be increased not to exceed \$500 for each additional defendant in whose favor such undertaking is ordered, not to exceed a total of \$3,000." Intervenor filed a Motion to

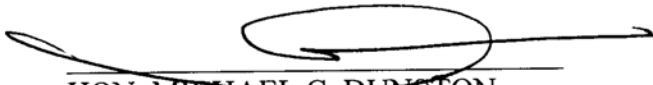
Strike the Plaintiff's demand for security, arguing that "the text of the statute repeatedly states its terms are applicable only to a demand against a plaintiff."

Although the Court finds that Intervenor's are subject to Section 547 because they are "plaintiffs" for purposes of their counterclaim,⁴⁹ security for costs after the granting of summary judgment in favor of the Plaintiffs at this stage is fruitless.⁵⁰ Plaintiffs' motion is therefore denied as moot.

CONCLUSION

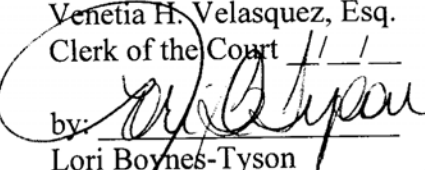
For the foregoing reasons, Intervenor's Motion for Summary Judgment is granted and Plaintiffs' claims are dismissed. Plaintiffs' Motion for Default Judgment against Defendants, Intervenor's Motion for Default Judgment against Plaintiffs, and Plaintiffs' demand for security for costs from Intervenor's are denied as moot. As a result, the Court orders that the *lis pendens* must be released as to the Ben Runnels Gut property. An appropriate Order is issued simultaneously herewith.

~~Dated: December 11, 2011~~
JANUARY 11, 2012


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

Attest:

Venetia H. Velasquez, Esq.
Clerk of the Court

by: 

Lori Boynes-Tyson
Court Clerk Supervisor 1/19/2012

⁴⁹ *Davis v. Allied Mortg. Capital Corp.*, S. Ct. Civ. No. 2009-0031, 2010 WL 1576452, *3 (V.I. April 07, 2010).

⁵⁰ Security for costs is "given to a court by a plaintiff... to secure the payment of court costs if that party loses." BLACK'S LAW DICTIONARY (9th ed. 2009).

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

**ROSALIE WHEATLEY, DOLORES
HODGE, SHIRLEY BROWN, JEAN
MAGRAS, THE HEIRS OF GLORIA
SCOTT, and THE HEIRS OF PIERRE
MAGRAS,**

Plaintiffs,

v.

**LEWIS MAGRAS, LAKISHA MAGRAS,
And THE ESTATE OF TITANIA MAGRAS,**

Defendants,

and

STUART OLSON and LINDA OLSON,

Intervenors.

CASE NO. ST-05-CV-548

ORDER

The Court having issued a Memorandum Opinion addressing Intervenors' Motion for Summary Judgment against Plaintiffs; Intervenors' Motion to Dismiss in Part; Plaintiffs' Motion for Default Judgment against Defendants; and Plaintiffs' demand for security for costs from Intervenors, it is

ORDERED that Intervenors' October 20, 2008, Motion for Summary Judgment against Plaintiffs is GRANTED; and it is

ORDERED that Plaintiffs' Complaint is DISMISSED WITH PREJUDICE; and it is

ORDERED that the Plaintiffs have twenty-one (21) days from the date of this Order to remove the *lis pendens* on the 6-I Ben Runnels Gut property; and it is

ORDERED that Plaintiffs' January 15, 2010, Motion for Default Judgment against Defendants is DENIED AS MOOT; and it is

ORDERED that Intervenor's October 23, 2007, Motion for Default Judgment against Plaintiffs is DENIED AS MOOT; and it is

ORDERED that Plaintiffs' November 9, 2007, demand for security for costs from Intervenor is DENIED AS MOOT; and it is

ORDERED that copies of this Order shall be directed to counsel of record.

Dated: January 11, 2012



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

Attest:
Venetia H. Velasquez, Esq.
Clerk of the Court

by:

Lori Boynes-Tyson

Court Clerk Supervisor

1/11/2012