

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

GOVERNMENT OF THE VIRGIN ISLANDS

Plaintiff,

SX-18-CV-22

v.

**0.435 U.S. ACRES OF LAND CONSISTING OF
PLOT NO. 100-A ESTATE LA GRANGE WEST
END QUARTER, ST. CROIX; ST. CROIX
COUNTRY CLUB; and, UNKNOWN OWNERS
AND ALL OTHERS CLAIMING AN
INTEREST HEREIN,**

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 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 Plot No 100-A Estate La Grange, West End

¹ Compl. ¶1.

² Compl. ¶¶8,11.

Quarter, St. Croix, Virgin Islands, consisting of 0.435 U.S. Acres, as more particularly depicted in survey map OLG File No. 5611, dated January 18, 2005 (hereinafter “Property”).³ St. Croix Country Club (hereinafter “SCCC”) 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 Property.⁴

“Pursuant to Title 28 V.I.C. §421 the Government filed a Declaration of Taking and deposited \$35,500 which was allegedly estimated by appraisers as just compensation for taking the Property.”⁵ The Government moves to serve SCCC, Unknown Owners and All Others who may claim an interest in the Property 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

SCCC 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 Property. 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, the only issues before the Court are (1) whether the Notice was properly served on SCCC—the only named Defendant and (2) whether it is proper to grant

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).

the Government leave to serve the Notice by publication on SCCC and the Unknown Owners and all others claiming an interest in the properties.

I. SCCC was not properly served with a copy of the Notice and it is not proper for SCCC to be served by publication.

Since SCCC was individually named in the Complaint, the court must determine whether it was properly served with the Notice. Rule 4(h) governs service of a corporation, partnership, or association.⁹ According to Rule 71.1(d)(3), SCCC must be properly served with a copy of the Notice in accordance with Rule 4.¹⁰ “Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.”¹¹ Rule 4(1) governs proof of service.¹²

Upon review of the record, it is not clear whether SCCC is organized as a corporation, partnership, or an association. Therefore, the Government will first have to determine the legal status of SCCC in order to effectuate the proper method of service articulated in Rule 4. When serving a corporation, partnership, or association within the Virgin Islands, Rule 4(h) provides that

(h) Serving a Corporation, Partnership, or Association. Unless law of the Virgin Islands provides otherwise or the defendant waives service,

(1) a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, may be served:

(A) in the Virgin Islands:

(i) in the manner prescribed by Rule 4(e) for serving an individual; or

(ii) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent; or

(iii) by delivering a copy of the summons and of the complaint to any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of the summons and complaint to the defendant; or

⁹ V.I. R. CIV. P. 4(h).

¹⁰ V.I. R. CIV. P. 71.1(d)(3).

¹¹ V.I. R. CIV. P. 71.1(d)(4).

¹² V.I. R. CIV. P. 71.1(d)(3) and (5).

- (B) at a place not within the Virgin Islands, in any manner prescribed by Rule 4(f) for serving an individual.
- (2) a domestic or foreign limited liability company, may be served:
 - (A) in the Virgin Islands:
 - (i) in the manner prescribed by Rule 4(e) for serving an individual; or
 - (ii) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of the summons and complaint to the defendant; or
 - (iii) by delivering a copy of the summons and of the complaint to any member of the limited liability company; or
 - (iv) in any other manner authorized by Chapter 15 of Title 13 of the Virgin Islands Code; or
 - (B) at a place not within the Virgin Islands, in any manner prescribed by Rule 4(f) for serving an individual.
- (3) If legal process against a corporation, limited liability company, partnership, or other association cannot by due diligence be served upon any person authorized to receive it, such process, including the complaint, may be served in duplicate upon the Lieutenant Governor pursuant to Title 13 of the Virgin Islands Code, which service shall be effective for all purposes of law.

It appears that the Government wishes to serve SCCC with the Notice by publication pursuant to Virgin Islands Rule of Civil Procedure 4-1 and 5 V.I.C §112.¹³ Although SCCC was not specifically named in the Government's Motion for an Order of Publication of Service, the Court notes that SCCC was named in the proposed order for publication which accompanied the Government's motion.¹⁴

Title 5, Section 112(a)(1) of the Virgin Islands Code, only provides for service by publication “[w]hen the defendant is a foreign corporation, and has property within Virgin Islands or the cause of action arose therein.”¹⁵ With respect to a corporation, partnership, or association, Virgin

¹³ See Proposed Order attached to Mot. at 1.

¹⁴ Mot. at 1.

¹⁵ 5 V.I.C. § 112(a)(1).

Islands Rule of Civil Procedure 4(h)(3) governs service when service cannot be made as prescribed in Rule 4(h). According to Rule 4(h)(3),¹⁶

If legal process against a corporation, limited liability company, partnership, or other association cannot by due diligence be served upon any person authorized to receive it, such process, including the complaint, may be served in duplicate upon the Lieutenant Governor pursuant to Title 13 of the Virgin Islands Code, which service shall be effective for all purposes of law.

“In case where legal process against a corporation cannot by due diligence be served upon any person authorized to receive it, such process, including the complaint, may be served in duplicate upon the Lieutenant Governor.”¹⁷

The Government has not provided proof that it exercised due diligence in attempting to locate SCCC to personally serve it or a legally authorized person with a copy of the Notice in compliance with Rules 4(h), 4(h)(3), 4(1) or 13 V.I.C. § 348. Significantly, there is no record that SCCC waived service, or that the Government attempted to serve a copy of the Notice upon SCCC, a person legally authorized to receive service, or the Lieutenant Governor’s Office.¹⁸ Serving SCCC by publication does not comport with the statutes. The Government must exercise due diligence and properly serve SCCC with a copy of the Notice utilizing the methods of service prescribed by the statute, and submit proof of service to the court pursuant to Rule 4(1).¹⁹

¹⁶ V.I. R. CIV. P. 4-1(a).

¹⁷ In case legal process against a corporation cannot by due diligence be served upon any person authorized to receive it, such process, including the complaint, may be served in duplicate upon the Lieutenant Governor, which service shall be effectual for all purposes of law. Within two days after service upon the Lieutenant Governor, he shall notify the corporation thereof by letter directed to the corporation at its last registered office, in which letter shall be enclosed a copy of the process, the complaint or other papers served. In any action in which the process shall be so served the plaintiff shall pay to the Lieutenant Governor the sum of twenty-five dollars (\$25.00), which sum shall be taxed as a part of the costs in the action if the plaintiff shall prevail therein. The Lieutenant Governor shall enter alphabetically in a process book, kept for that purpose, the name of plaintiff and defendant, the title and number, if any, of the cause in which process has been served upon him, and day and hour when the service was made. 13 V.I.C. § 348. *See also* V.I. R. CIV. P. 4(h)(3).

¹⁸ V.I. R. CIV. P. 4(h)(3).

¹⁹ V.I. R. CIV. P. 4(h) and 4(1).

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 with a copy of the Notice by publication.²⁰ 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 Property “cannot be personally served because after diligent inquiry within the Virgin Islands none have been found upon whom personal service may be made.”²¹

Virgin Islands Rule of Civil Procedure 4-1 and Title 5, Section 112(a) of the Virgin Islands Code governs service when service cannot be made as prescribed in Rule 4. According to Rule 4-1(a),²²

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.

Section 112(a) 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.”²³

In the matter *sub judice*, 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).”²⁴ Consequently,

²⁰ V.I. R. CIV. P. 71.1(c)(3).

²¹ See Certificate at 1.

²² V.I. R. CIV. P. 4-1(a).

²³ 5 V.I.C. § 112(a).

²⁴ V.I. R. CIV. P. 4-1(a).

effectuating service by publication of the Notice on the Unknown Owners and all others claiming an interest in the Properties is proper.²⁵

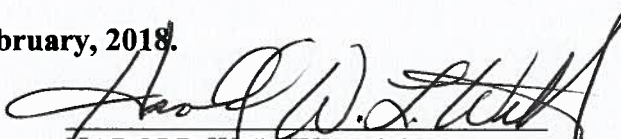
CONCLUSION

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 SCCC by publication shall be denied. The Government must attempt to locate and serve SCCC utilizing the methods of service prescribed by statute and provide proof of service to the court pursuant to Rule 4(l). The Court will issue an Order consistent with this Memorandum Opinion.

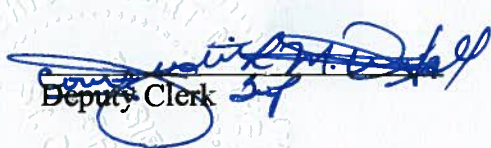
DATED this 12th day of February, 2018.

ATTEST:

Estrella George
Clerk of the Court


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

By:


Deputy Clerk

Dated: 2/14/18

²⁵ 5 V.I.C. § 112(b) and (c).