

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

ONE ST. PETER, LLC,	)	
	)	
Plaintiff,	)	
	)	
TREE LIMIN EXTREME, LLC,	)	CASE NO. ST-12-CV-372
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's motion to dismiss the Complaint or adjourn an August 31, 2012, preliminary injunction hearing. For the following reasons, Defendant's motion will be granted in part.¹

FACTUAL AND PROCEDURAL HISTORY

The Department of Planning and Natural Resources ("DPNR") issued Building Permit No. 025-12 to Defendant to construct a "zip-line" tour park on property Defendant leases on St. Thomas. On July 9, 2012, Plaintiff filed a four count Complaint seeking injunctive relief (Count I), a declaratory judgment pertaining to a zoning use violation (Count II), a declaratory judgment pertaining to a zoning setback violation (Count III), and damages for nuisance (Count IV). On July 7, 2012, Plaintiff also filed a petition for appeal with the Board of Land Use Appeals ("BLUA") challenging the permit on the grounds that it is in violation of the setback and use requirements for a parcel of land situated in a residential (R-1) zone.

ANALYSIS

¹ Defendant filed its motion on August 22, 2012, and Plaintiff filed an opposition on August 27, 2012.

It is a long settled rule of judicial administration “that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy had been exhausted.”² Exhaustion allows the administrative agency with experience and expertise in the subject matter of the dispute to correct its errors, develop a full record for the courts, and proceed without judicial interruption.³ One of the strongest reasons for favoring administrative exhaustion is “the strong possibility that the dispute may become moot if the party ultimately prevails before the agency, thus obviating the occasion for judicial review.”⁴ A party may be excused from administrative exhaustion “when the challenged agency action constitutes a clear and unambiguous violation of statutory or constitutional rights, when reliance on administrative procedures is clearly and demonstrably inadequate to prevent irreparable injury, and when exhaustion is futile.”⁵

The first three counts in the Complaint are nearly identical to the arguments presented in Plaintiff’s petition for appeal before BLUA. Considering that Plaintiff’s claims for injunctive relief and declaratory judgment would be rendered moot if the permit is overturned, administrative exhaustion of these claims is necessary. Notwithstanding, Plaintiff asserts that the Court should adjudicate Plaintiff’s nuisance claim because BLUA is incapable of granting nuisance damages. While the exhaustion of its administrative remedies may in some sense be futile for Plaintiff if BLUA cannot provide the damages Plaintiff seeks, the administrative exhaustion of Plaintiff’s claims

² *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938).

³ *Bethlehem Steel Corp. v. EPA*, 669 F.2d 903, 907 (3d Cir. 1982).

⁴ *LaVallee Northside Civic Ass’n v. Virgin Islands Coastal Zone Management Com’n*, 866 F.2d 616, 620 (3d Cir. 1989).

⁵ *Id.*, at 620-621.

“would still serve the purposes of exhaustion and not be futile in the context of the [permitting] system.”⁶ Considering that BLUA has special competence to determine whether DNPR should have granted Defendant the permit, judicial interference in this matter will be withheld until the administrative process has run its course.

An Order consistent with this Opinion shall follow.

Dated: September 28, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ____/____/____

by: Paula Clayton
Donna D. Donovan
Court Clerk Supervisor 10/02/2012


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

⁶ *Nichole Medical Equipment & Supply, Inc. v. TriCenturion, Inc.*, No. 11-2132, 2012 WL 4017485, at *8 (3d Cir. 2012) (quoting *Kaiser v. Blue Cross of California*, 347 F.3d 1107 (9th Cir. 2003)).