

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

DR. OSWALDENE WALKER, D.D.S.; MARK	)	
WALKER, ESQ.,	)	CASE NO. ST-13-CV-489
	)	
Plaintiffs,	)	CIVIL RIGHTS
vs.	)	VIOLATION,
	)	PERSONAL INJURY,
WATERGATE VILLAS WEST d/b/a SEA CLIFF	)	BREACH OF
VILLAS; MANAGER LESLIE LIVACZ (IN HER	)	FIDUCIARY DUTY
CORPORATE CAPACITY; and the BOARD OF	)	
DIRECTORS OF SEA CLIFF VILLAS,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on two motions. First, Defendants Watergate Villas West d/b/a Sea Cliff Villas, Manager Leslie Livacz (in her corporate capacity), and the Board of Directors of Sea Cliff Villas (“Defendants”) filed a Motion to Dismiss¹ through their counsel Charles E. Engeman, Esq. and Bailey A. Calhoun, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, LLC). In response, Plaintiff Dr. Oswaldene Walker filed Motion for Leave to Amend the Complaint² through her counsel Dolace McLean, Ph.D., Esq.

Because the Court’s ruling on the Plaintiffs Motion to Amend will inform the outcome of Defendants’ Motion to Dismiss, the Motion to Amend is addressed first.

¹ Filed on January 13, 2014.

² Filed on January 23, 2014.

I. Background

Plaintiff Dr. Oswaldene Walker and her son Mark Walker, Esq. jointly own Unit 32, a condominium in the development managed by Defendant Watergate Villas West d/b/a Sea Cliff Villas in St. Thomas, Virgin Islands. Plaintiff has lived in her unit for over twenty years.

She alleges that in Fall 2012, her downstairs neighbor informed Plaintiff that debris was falling from her balcony, and that the balcony became unsafe to enter. Defendants hired a contractor to repair the balcony, but billed the full cost of repairs, \$68,497.18, to Plaintiff instead of billing all unit owners or absorbing the cost. Furthermore, Plaintiff claims Defendants damaged her personal property, entered her condominium without her permission, and made it uninhabitable, forcing her to find other accommodations. Plaintiff alleges Defendants shut off the electricity to her apartment, preventing Plaintiff from operating her air conditioner. Plaintiff alleges this is especially problematic for her because she suffers from pulmonary problems and consequently requires an air conditioned environment. Plaintiff also alleges, among other things, that Defendants discriminated against her based on her race.

I. Motion for Leave to Amend Complaint

Plaintiff moves to amend her complaint to join her son Mark Walker, Esq. as a plaintiff. This proposed amendment is in response to Defendants' assertion that Mark Walker is an indispensable party. The proposed Second Amended Complaint

also adds some new factual allegations, a new claim (violation of 28 V.I.C. § 781 prohibiting self-help), and sixteen exhibits.

Rule 8 of the Superior Court Rules permits the Court to “amend any process or pleading for any omission or defect therein.” Because Rule 8 “merely states the general rule that a court can correct errors or defects in pleadings,” the Court looks to the standard set out in Rule 15 of the Federal Rules of Civil Procedure for guidance. *Brooks v. Gov’t of the Virgin Islands, Department of Ed.*, 58 V.I. 417, 427 n. 11 (V.I. 2013).

Pursuant to Fed. R. Civ. P. 15(a)(2), “[t]he court should freely give leave [to amend a pleading] when justice so requires.” A motion to amend may be denied for “reasons such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.” *Mountaintop Ltd. P’ship v. Colombian Emeralds Int’l, Inc.*, 43 V.I. 193, 204 (Terr. Ct. 2001) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). “[U]ndue prejudice is the touchstone for the denial of leave to amend.” *Josephat v. St. Croix Alumina, LLC*, No. 1999-0036, 2000 WL 1679502, at *15 (D.V.I. Aug. 7, 2000) (internal quotation marks omitted).³

³ Rule 15.1 of the Local Rules of Civil Procedure, applicable to Superior Court proceedings through Rule 7 of the Superior Court Rules, governs the form of motions to amend. It requires a party moving to amend its complaint to “reproduce the entire pleading as amended specifically delineating the changes or additions.” This is sometimes referred to as a “red-lined” copy of the pleading to be amended. Plaintiff did not file a red-lined copy of the Second Amended Complaint with her Motion to Amend, but Defendants have not opposed the Motion. The Court will evaluate Plaintiff’s Motion despite her lack of full compliance with LRCI 15.1. Plaintiff’s counsel, however, is advised to follow

Defendants have not filed any opposition to Plaintiff's Motion. The Court, having considered Plaintiff's Motion and the proposed Second Amended Complaint, discerns no prejudice to Defendants nor any other reason to deny Plaintiff leave to amend the First Amended Complaint. Accordingly, the Motion for Leave to Amend Complaint will be granted.

II. Motion to Dismiss

Defendants move to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(7) for failure to join an indispensable party under Fed. R. Civ. P. 19. They allege that Mark Walker, Esq., Plaintiff's son, is an indispensable party to this action because he and his mother co-own Unit 32. As indicated above, the Second Amended Complaint names Mark Walker, Esq. as a plaintiff. Therefore, Defendants' Motion to Dismiss will be denied as moot.

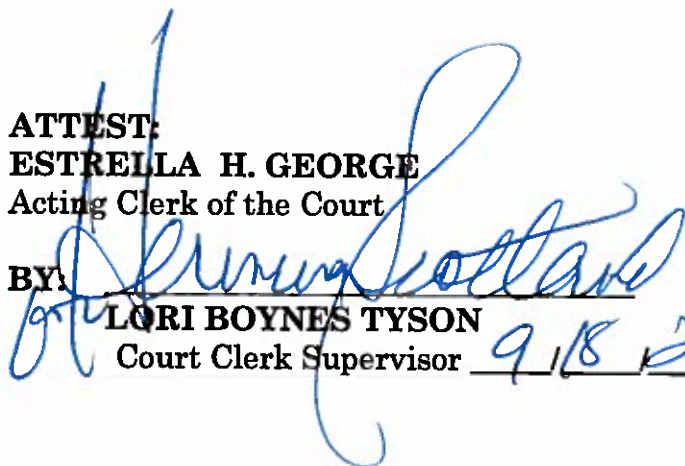
The Court will enter an Order consistent with this Opinion.

DATED: September 18, 2014



Kathleen Mackay
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 9/18/2014

Rule 15.1's directive in the future by filing a red-lined copy of the pleading being amended along with the amended pleading itself.