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

ANDREW J. PAPPAS, Plaintiff, v. THE HOTEL ON THE CAY TIME-SHARING ASSOCIATION, INC., FRANK MINA, BENJAMIN SILBER, ROBERT SHAUGHENESSY and DOLORES ASTIL, Defendants.	CIVIL NO SX-99-CV-317 ACTION FOR DECLARATORY JUDGMENT AND DAMAGES

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants' Motion for Summary Judgment and Motion to Dismiss and accompanying Memorandum of Law in Support ("Motion"), filed August 1, 2002; Opposition of Andrew Pappas to Defendants' Motion for Summary Judgment and Cross-Motion of Andrew Pappas for Summary Judgment as to Liability ("Opposition" and "Cross-Motion"), filed June 7, 2002; Defendants' Reply to Opposition and Cross-Motion ("Reply"), filed August 1, 2002;[1] Plaintiff's Reply to the Defendants' Reponse ("Sur-Reply"), filed October 22, 2009; Defendants' Supplemental Brief, filed January 24, 2011; and Plaintiff's Response to Defendants' Supplemental Brief, filed February 8, 2011.[2]

For the reasons set forth herein, Defendants' Motion is granted in part as to Counts One, Two, Four and Five of Plaintiff's Amended Complaint, and denied as to Count Three. Plaintiff's Cross-Motion is granted as to Count Three, but denied as to Counts One, Two, Four, and Five.

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[1] Apparently conforming to then applicable Local Rules of Civil Procedure, it appears that Defendants served their Motion on Plaintiff on May 3, 2002, the date it was signed, but filed the Motion with the Court on August 2, 2002, with their Reply, following receipt of Plaintiff's Opposition and Cross-Motion, which was dated and was served June 3, 2002 and independently filed with the Court June 7, 2002.

[2] This action was stayed pursuant to Notice of Stay filed August 12, 2002, submitting a Receivership Order entered in Civil Case No. 00-035 in the U.S. District Court for the District of Rhode Island in the receivership action known as *United States of America v. Fairway Capital Corporation.* The stay was lifted by order dated August 28, 2009.

BACKGROUND

In 1979, Oliver Plunkett became assignee of a master Lease Agreement with the Government of the Virgin Islands for property known as Protestant Cay in Christiansted Harbor. On August 5, 1980, Plunkett recorded his "Declaration of Partial Leasehold Ownership Plan Establishing Hotel on the Cay, A Time-Sharing Vacation Ownership Plan" ("Declaration"). The Declaration gave rise to Hotel on the Cay Time-Sharing Association, Inc. ("HOTC"), a vacation time-share community and corporation administered by a Board of Directors. The Declaration established "a plan by which units at the Hotel would be sold by the week, with each purchaser having the right to make use of the unit during a designated week of the year." Opposition, at 3.

After the establishment of the time-sharing community, Plunkett filed for bankruptcy. In 1986, bankruptcy Trustee Ralph C. Anzivino transferred Plunkett's interest in the Lease Agreement by Quit Claim Deed to Harborfront Properties, Inc. ("Harborfront"), a Virgin Islands corporation, of which Plaintiff Andrew Pappas was a minority shareholder and vice president. Motion, at 4, and Exhibit C. The parties agree that, as successor lessee, Harborfront did not become successor to Plunkett as declarant. *Id.*, Pappas deposition, pp. 105-06.

In 1990, Plaintiff sold his interest in Harborfront to Benedetto Cerilli, another Harborfront shareholder and, as partial consideration, received a "Use Agreement" that Plaintiff alleges vested him with certain privileges, including the exclusive right to use Dock B.[3] Opposition, at 5-6, and Exhibit 3. The Use Agreement terms give Pappas the "use of the dock facility as shown as Dock

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[3] The Declaration is silent as to any designation of "Dock A" and "Dock B." Plaintiff claims that Dock B was excluded from use easements in favor of all HOTC owners as an area specifically posted as being private property, pursuant to Declaration § 3.F, permitting Plunkett and his successors as lessee to convey rights to exclusive use of Dock B. Opposition, at 8, Exhibit 4, Plunkett Affidavit. Defendants point out that the Declaration refers to "Dock" as the two-fingered pier reflected in Declaration Exhibit D. Motion, at 2.

Area B;" "utilities normally consumed on the dock;" "the right to... sublease all or a portion" of the Use Agreement; and "free passage on any ferry transportation to and from Christiansted," among other privileges.

While various entities succeeded Harborfront as lessee, Plaintiff alleges that he had exclusive quiet enjoyment of Dock B from tender of the Use Agreement to him in 1990 until 1998. HOTC used a wooden dock, referred to as Dock A, to ferry passengers back and forth to Christiansted. According to affidavits and testimony by individuals professing to have personal knowledge, Dock B became known as "Andy's Dock" and Pappas had a "No Trespassing" sign posted. Opposition, at 12. When Hurricane Georges struck in 1998, Dock A was damaged. HOTC representatives allegedly broke down a fence and entered onto Dock B, removing Plaintiff's boat winch and various other equipment. According to Plaintiff, he has been denied access to Dock B since that date.

Plaintiff's Amended Complaint alleges trespass; trespass to chattel and deprivation of use; conversion; punitive damages; and seeks injunctive relief enjoining Defendants from trespassing on Dock B.[4] Amended Complaint, ¶¶10-19.

Defendants argue that Plunkett, in his 1980 Declaration, granted a non-exclusive easement to all time share owners for use of Dock B. Motion, 2-3 (referencing language in the Declaration, § 3.E. i.e. "the right to use and enjoy the recreational facilities located thereon including but not limited to the... boat dock.") As a unit owner, Plaintiff shared those same rights. However, Harborfront, as lessee but not as successor declarant, had no right to amend the Declaration to

[4] The current structural state of Dock A and Dock B and the present use of each is unclear from the record.

remove the use easements in favor of owners and to grant exclusive use rights to Plaintiff. As such, Defendants contend that Pappas gained no exclusive legal interest in Dock B by virtue of the Use Agreement, and that Defendants removing Plaintiff's damaged equipment following Hurricane Georges does not give rise to a legally actionable claim. *Id.* at 4.

Plaintiff contends that the Use Agreement, granted to him in partial consideration for the sale of his Harborfront shares, gives him an exclusive right of possession over Dock B, which is consistent with the Declaration. He argues that Dock B was never a part of the real property submitted to the horizontal property regime and, even if it had been, the Declaration specifically permits non-exclusive easements to be "revoked from time to time as to certain areas specifically posted as being private property." Opposition, at 4, citing Declaration § 3.F.

Defendants reply that Harborfront by receiving the Quit Claim Deed to the bankrupt estate's leasehold interest did not acquire the rights of declarant Plunkett to revoke easements granted by the Declaration. Reply, at 1. Plaintiff, while capable of receiving certain rights from Harborfront, as successor lessee, was not capable of obtaining rights and interests that only the declarant or his successor could convey. Therefore, Defendants posit that Harborfront could not convert the non-exclusive easement granted by the Declaration to all owners into an exclusive private property right solely for Plaintiff's benefit. *Id.* Since the Declaration was never amended pursuant to its terms, Plaintiff could never attain exclusive rights specifically reserved in the Declaration for all owners, including the easement of all owners to use of the boat dock. *Id.* at 3.

Plaintiff's contention that Dock B was never subjected to common ownership is supported by reference to the Declaration's Description of the Land, including the "survey attached hereto." Sur-Reply, at 3, citing Declaration § 1.B. He argues that the terms of the Declaration confirm

Plunkett's intent to submit a portion, but not all, of the land to the horizontal property regime. *Id.* at 4. Yet, the substance of the Declaration in the record includes three drawings designated "Survey" which appear to include rather than exclude Dock B. Further, the attached "Site Plan" clearly depicts the "Dock" as including both Dock A and Dock B. Plaintiff further argues that, whether he had an exclusive or a non-exclusive right to use Dock B, "Defendants had no right to destroy Plaintiff's property." *Id.* at 6.

In subsequent supplemental briefings, Plaintiff and Defendants discuss the significance of two settlement agreements: one between the Government of the Virgin Islands and HOTC, which recognized HOTC as the lessee of the property subject to the Declaration; and one between the Government of the Virgin Islands and Plaintiff, which recognized "Pappas as the lessee of that portion of property described" in the 1990 Use Agreement. Defendants argue that the conflicting settlement agreements are a "wash" and provide no support to either side. Supplemental Brief, at 2. Plaintiff rejects this notion, arguing that Plaintiff was in exclusive possession of Dock B when those settlement agreements were entered into. Defendant HOTC failed to protest or to specifically reference Dock B in its renewed lease with the Government, an omission which Plaintiff claims demonstrates HOTC's forfeiture of any interest in Dock B. Supplemental Response, at 3.

DISCUSSION

Plaintiff and Defendants have confirmed that the issues to be determined in the parties' cross-motions for summary judgment have long been fully briefed. The Court concurs that there is no need for further hearing, briefing or argument and that motions are ripe for determination.

A moving party will prevail on a motion for summary judgment where the record shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), applicable pursuant to Super. Ct. R. 7; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The Court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the Court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no unresolved genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing that there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The non-moving party asserting that a fact is genuinely disputed must support the assertion by "citing to particular parts of materials in the record..." Fed. R. Civ. P. 56(c)(1)(A). *See also Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), citing Rule 56(e) prior to its 2010 amendment. "As to materiality, only those facts that 'might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.'" *Id.* (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248).

I. There are no genuine issues of material fact that preclude the entry of summary judgment in this case.

The Court first examines whether there are any genuine disputes of material fact that would preclude entry of judgment as a matter of law at this stage. In this case, neither Plaintiff nor Defendants claim the existence of disputed issues of material fact. Rather, Defendants encourage the Court to enter summary judgment in their favor and Plaintiff, in his Cross-Motion, argues that judgment should be entered in his favor. While the parties use different facts to support their arguments, they do not disagree as to the lack of any genuine issue of material fact in dispute.

On the basis of the factual record and the arguments of the parties, the Court finds that there are no genuine issues of material fact in dispute that require determination by the fact finder at trial. Accordingly, the Court must analyze whether at this stage either party is entitled to judgment as a matter of law.

II. Pappas never received an exclusive right to use Dock B.

Plaintiff relies on the terms of the 1990 Use Agreement to argue that he has the legal right to exclusive possession of Dock B. The Court's review begins with an examination of the legal significance of that Use Agreement.

Neither Plaintiff nor Defendants addresses the plain language of the 1990 Use Agreement between Harborfront and Plaintiff. By its terms, the Use Agreement granted Plaintiff the "use of the dock facility as shown as Dock Area B," among other privileges. However, conspicuously absent from the Use Agreement are the words "exclusive," "only," "restricted," "private" or any other terms that would confirm that the rights granted to Plaintiff included sole possessory interest to Dock B to the exclusion of all other unit owners and others.

> As a matter of general contract law, the U.S. Supreme Court has instructed that the interpretation of a contract "depends upon the meaning of the terms of the writing in which the parties must be assumed to have embodied and expressed their whole intention, and to have defined all the conditions of the contract. The court is not at liberty, either to disregard words used by the parties, descriptive of the subject matter, or to insert words which the parties have not made use of."
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> *Amerada Hess Corp., v. Zurich Ins. Co.* 41 V.I. 294, 302 (D.V.I. 1999) (*citing Harrison v. Fortlage,* 161 U.S. 57, 63 (1896).

A party to a contract has "the duty on the part of one who signs a written instrument to exercise reasonable care to protect themselves..." *Cotto v. Hess Oil Virgin Islands Corp.*, 21 V.I. 485, 488 (D.V.I. 1985) (*citing Maw v. McAlister,* 166 S.E.2d 203, 205 (S.C.1969)). The Third Circuit has held that "the court will not make a different or better contract than the parties themselves have seen fit to enter into, and all parts of the writing will be given effect if possible." *Matter of Community Medical Center,* 623 F.2d 864, 866 (3d Cir.1980).

In this case, Plaintiff contends that between 1990 and 1998 he enjoyed exclusive possession of Dock B. In fact, Plaintiff contends that Dock B was used as private property even before Plunkett recorded the Declaration in 1980. Opposition, at 8-9. In his affidavit, Plunkett asserts that he granted exclusive use of Dock B to Cay Divers from 1979 to 1982. Yet Plunkett does not state that he granted any rights to Plaintiff or to anyone else following the conclusion of Cay Divers' lease in 1982. Plaintiff further cites to affidavits of various individuals familiar with Dock B and/or Plaintiff's use of Dock B. *See* affidavits of Leonard Farrante, Ronald Cutler, James Randle, Jeffrey Nisbett, and Richard Broad; and deposition testimony of James Randle, Frank Mina, Joseph Odlum, and Richard Broad. Yet, those persons and others testified in deposition that HOTC used Dock B from time to time, both before and after the Declaration was recorded, to accommodate ferry passengers as well as for delivery of heavy equipment and large items. *See* Reply, at 5-6.

Both the language of the Use Agreement and the custom of usage are consistent with Plaintiff's non-exclusive use of Dock B.[5] While Plaintiff subsequent to the Use Agreement erected a fence and posted "No Trespassing" signage and Dock B became known as "Andy's Dock," the

[5] The Use Agreement purportedly granting Plaintiff rights to use Dock B was signed by Plaintiff as vice president of Harborfront. It is unclear how Benedetto Cerilli, as partial consideration for a private agreement to purchase Plaintiff's Harborfront stock, tendered the Use Agreement, transferring rights, whatever their effect, that were those of the corporation whose stock he was purchasing, rather than rights personal to him.

record is devoid of evidence that HOTC and unit owners were excluded from using Dock B in the decade after the filing of the Declaration and prior to the Use Agreement and Plaintiff's erection of barrier fencing.

The Court finds that Plaintiff never obtained an exclusive right to use Dock B, but had a non-exclusive right to its use Dock B, together with HOTC and unit owners, pursuant to the Declaration. Therefore, the Court will deny Plaintiff's Cross-Motion seeking judgment declaring that Plaintiff is entitled to exclusive use of Dock B; and finding that Defendants have trespassed on Dock B, and will grant Defendants' Motion as to Count Five.

III. Since Plaintiff had a non-exclusive right to use Dock B, Defendants did not commit the tort of trespass by accessing and using Dock B.

Plaintiff alleges that Defendants committed the tort of trespass by accessing Dock B without his permission. A trespasser is "a person who enters or remains upon land of another without a privilege to do so." *Machado v. Yacht Haven U.S.V.I., LLC*, 2014 V.I. Supreme LEXIS 51, at *10 (October 16, 2014), citation omitted.

In this case, Defendants did not enter onto "land of another" as Plaintiff did not possess Dock B, but merely had a non-exclusive right to access. Defendant HOTC and the individual Defendants all had themselves a non-exclusive easement to the "boat dock" pursuant to the Declaration, § 3.F. Therefore, Plaintiff cannot sustain an action for trespass against Defendants.

IV. Defendants are not liable for the physical harm they caused to Plaintiff's personal property under a trespass theory.

Plaintiff argues that Defendants' actions (i.e. "disassembling the dock fence, disassembling the boat lift, cutting the boat winch, removing portions of the dock… as well as depriving plaintiff of the use of Dock B…" Amended Complaint, ¶13) make Defendants liable for the destroyed property under a trespass theory.

"A trespass on land subjects the trespasser to liability… to the land or to his things… caused by any act done, activity carried on, or condition created by the trespasser..." RESTATEMENT (SECOND) OF TORTS, § 162 (1965).[6] Defendants must first have been trespassing on Plaintiff's property to permit Plaintiff to prevail on a trespass theory. As noted above, no trespass occurred and, therefore, Defendants are not liable to Plaintiff for harm to Plaintiff's personal property caused by Defendants' alleged trespass.

V. Defendants committed the tort of conversion by unlawfully interfering with Plaintiff's property.

Plaintiff argues that Defendants' actions of "dispossessing plaintiff of the use of Dock B and materially altering Dock B constitute conversion…" Amended Complaint, ¶15.

The Restatement (Second) of Torts defines conversion as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." RESTATEMENT (SECOND) OF TORTS § 222A (1965).[7] The Restatement definition of conversion requires an

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[6] The Court will not conduct a *Banks* analysis to determine whether the noted provision of the RESTATEMENT (SECOND) OF TORTS constitutes the best rule for the Virgin Islands. Having determined that Defendants were not trespassers onto Dock B and, therefore, cannot be deemed liable for damage to Plaintiff's personal property under a trespass theory, there is no need to address this aspect of Virgin Islands common law.

[7] This Restatement section has been cited in several cases in this jurisdiction over many years, including: *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. Super. Ct. 2013); *Olive v. DeJongh* 57 V.I. 24, 48 (V.I. Super. Ct. 2012); *Chase Manhattan Bank, N.A. v. Power Products, Inc.*, 27 V.I. 126, 128–29 (V.I. Terr. Ct.1992); and *Kline v. Khan*, 20 VI. 327, 332 (D.V.I. 1983). The case citations set out in the annotations to RESTATEMENT (SECOND) OF TORTS § 222A suggest that a majority of jurisdictions have adopted a similar rule to the Restatement provision. Finally, considering the longstanding existence of the tort of conversion in the common law, the longstanding application of RESTATEMENT (SECOND) OF TORTS § 222A in this jurisdiction, and the apparent widespread application of this rule in a majority of jurisdictions, the Court finds that the RESTATEMENT (SECOND) OF TORTS § 222A represents the soundest rule for the Virgin Islands, and is in accord with local public policy.

interference "with the right of another to control [a chattel]..." *Id.* "Conversion consists of the wrongful exercise of dominion or control over the property of another in a manner inconsistent with that of the owner's rights." *Chase Manhattan Bank, N.A. v. Power Products, Inc.* 27 V.I. 126, 129 (V.I. Terr. Ct. 1992). *See also*, *Kline v. Khan,* 20 VI. 327, 332 (D.V.I. 1983), *citing Life Ins. Co. of Va. v. Snyder,* 358 A.2d 859, 862 (N.J. 1976).

Here, the chattels at issue are Plaintiff's dock fence, boat lift, and boat winch. Amended Complaint, ¶13. Courts have held that "the tort of conversion constitutes the exercise of wrongful dominion and control over the property to the detriment of the rights of its actual owner." *Chase Manhattan Bank, N.A.*, 27 V.I. at 129. In this case, Plaintiff has submitted sufficient proof that, on or about September 1998, Defendants destroyed or severely damaged items belonging to Plaintiff in a manner inconsistent with Plaintiff's property rights.

Even if Defendants correctly believed that Plaintiff did not have an exclusive right to use Dock B, they were not justified in discarding or destroying Plaintiff's property. Plaintiff correctly states that "this sort of impermissible self-help is condemned in the Virgin Islands." Sur-Reply, at 6. Defendants had a variety of legal alternatives at their disposal before resorting to destructive self-help, such as petitioning a court for emergency injunctive relief (Temporary Restraining Order) or seeking a Declaratory Judgment establishing the proprietary rights over the disputed property. *See SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC.*, 2015 V.I. LEXIS 27, *6-7 (V.I. Super. Ct. Mar. 12, 2015)(*citing* FED. R. CIV. P. 65). Even if the circumstances were such that time did not afford judicial intervention, Defendants maintain responsibility for damages to Plaintiff's personal property as a result of their conduct. Regardless of whether Plaintiff had an exclusive or non-exclusive right to use Dock B, Defendants never assumed a legal position that would afford them the right to dispose of Plaintiff's property in such a manner.

Therefore, the Court grants summary judgment on Plaintiff's Cross-Motion as to Count Three of the Amended Complaint and will provide Plaintiff the opportunity to prove his damages by itemizing and detailing his lost and/or damaged property claim.

VI. Defendants' behavior was not so outrageous or malicious as to warrant punitive damages.

Plaintiff seeks punitive damages from Defendants for destroying his property when he was off-island. The Restatement (Second) of Torts establishes the requirements for an award of punitive damages, as follows:

> Punitive damages are damages… awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future. Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.
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> RESTATEMENT (SECOND) OF TORTS § 908 (1979).[8]

Despite Defendants' claim that the exigent circumstances of the destruction of Dock A by the passing of Hurricane Georges made their action to procure full use of Dock B necessary, it

[8] The Court adopts the reasoning of the *Banks* analysis set forth in *Powell v. Chi-Co's Distrib.*, 2014 V.I. LEXIS 21, *8-9 (V.I. Super. Ct. Apr. 3, 2014), wherein the Superior Court adopted RESTATEMENT (SECOND) OF TORTS § 908 as reflective of the common law of this jurisdiction with regard to imposition of an award of punitive damages. Section 908 has also been cited in other cases in this jurisdiction, including *Davis v. Christian*, 46 V.I. 557 (D.V.I. App. Div. 2005), *Isaac v. Crichlow*, 2015 V.I. LEXIS 15 (V.I. Super. Ct. Feb.10, 2015), *St. Thomas House, Inc. v. Barrows*, 15 V.I. 435 (V.I. Terr. Ct. 1979), *Brandy v. Flamboyant Inv. Co., Ltd.*, 24 V.I. 249 (V.I. Terr. Ct. 1989), and *Thomas v. Rijos*, 780 F. Supp. 2d 376, 380 (D.V.I. 2011). A review of the case annotations accompanying § 908 suggests that a majority of jurisdictions have adopted a similar rule. Considering the longstanding application of the RESTATEMENT (SECOND) OF TORTS § 908 in this jurisdiction and the widespread reliance upon its provisions in a majority of jurisdictions, the Court finds that the RESTATEMENT (SECOND) OF TORTS § 908 represents the soundest rule for the Virgin Islands with respect to the imposition of an award of unitive damages, and is in accord with local public policy.

may be argued that their behavior in damaging or destroying the personal property of Plaintiff was rash and misguided. Nonetheless, that behavior does not rise to the level of being so outrageous as to warrant punitive damages. Therefore, Plaintiff's Cross-Motion regarding Count Four is denied and Defendants' Motion as to Count Four is granted.

In consideration of the foregoing, an Order will enter simultaneously with entry of this Memorandum Opinion granting Defendants' Motion as to Counts One, Two, Three, and Five and granting Plaintiff's Cross-Motion regarding Count Four, and providing Plaintiff the opportunity to establish the extent of damages incurred.

DATED: April 27, 2015.

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: ______________
Court Clerk Supervisor
4/27/15

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ANDREW J. PAPAS, Plaintiff, v. THE HOTEL ON THE CAY TIMESHARING ASSOCIATION, INC., FRANK MINA, BENJAMIN SILBER, ROBERT SHAUGHNESSY and DOLORES ASTIL, Defendants.	CIVIL NO. SX-99-CV-317 ACTION FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, and DAMAGES

ERRATA ORDER

THIS MATTER comes before the Court following December 6, 2016 status conference. The Court, *sua sponte,* enters this Errata Order to correct the following scrivener's errors in the Memorandum Opinion entered April 27, 2015. A Corrected Order is entered herewith incorporating corrections of scrivener's errors contained in the April 27, 2015 Order issued in conjunction with the original Memorandum Opinion. Accordingly, it is hereby

ORDERED that on page 13, line 6, the word "Three" is deleted and replaced with the word "Four" and on page 13, line 7, the word "Four" is deleted and replaced with the word "Three" such that the paragraph comprised of lines 5-8 reads in full:

> In consideration of the foregoing, an Order will enter simultaneously with entry of this Memorandum Opinion granting Defendants' Motion as to Counts One, Two, Four, and Five and granting Plaintiff's Cross-Motion regarding Count Three, and providing Plaintiff the opportunity to establish the extent of damages incurred.

It is further

ORDERED that a copy of this Errata Order be served on all counsel of record. It is further

ORDERED that a copy of this Errata Order be forwarded, along with a copy of the Memorandum Opinion entered April 27, 2015, to the Information Technology department to be uploaded to the Superior Court website.

December 8, 2016
Nunc pro tunc, April 27, 2015

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST: ESTRELLA GEORGE
Acting Clerk of the Court
By: ______________________
Court Clerk Supervisor 12/9/14

CERTIFIED TO BE A TRUE COPY
This 9 day of Dec 20 16
ESTRELLA H. GEORGE
CLERK OF THE COURT
By ______________ Court Clerk

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE:	)	
	)	**MISC NO. DAB 012/2018**
ORDER DESIGNATING CERTAIN	)	
OPINIONS FOR PUBLICATION.	)	

TO: Clerk of the Court
Counsel of Record
Law Library / LexisNexis / Westlaw

ORDER

THE PREMISES considered, it is hereby

ORDERED that the following memorandum opinions issued in the below listed cases are hereby designated FOR PUBLICATION.

Pappas v. Hotel on the Cay Time-Sharing Ass'n, Inc., opinion dated April 27, 2015;
Estate of Burnett v. Kazi Foods of the V.I., SX-12-CV-139; opinion dated May 24, 2016;
FirstBank of Puerto Rico v. Prosser, SX-09-CV-520, opinion dated June 22, 2015;
James v. Guardian Insurance Company, SX-10-CV-435, opinion dated July 14, 2015;
Nurse v. Parris, SX-14-CV-011, opinion dated May 3, 2016;
Charles v. Arcos Dorados USVI, Inc., SX-13-CV-336, opinion dated August 18, 2016;
McGary v. J.S. Carambola, LLP, SX-13-CV-289, opinion dated October 7, 2016;
Whyte v. Bockino, SX-15-CV-083, opinion dated January 26, 2017;
Chiverton v. World Fresh Market, LLC, SX-10-CV-575, opinions dated March 10 & 28, 2017;
People v. Melendez, SX-16-RV-003, opinion dated March 22, 2017;
Edwards v. Hess Oil V.I. Corp., SX-15-CV-382, opinion dated June 28, 2017;
In re: Red Dust Claims, SX-15-CV-620, *et seq.*, opinion dated July 7, 2017;
Hamed v. Yusuf, SX-12-CV-370, *et seq.*, opinions dated July 21, 2017 and March 14, 2018;
Toutouyoute v. St. Croix Trading Co., Inc., SX-16-CV-457, opinion dated May 31, 2018.

Finally, it is ORDERED that a copy of this Order be served on counsel for the parties in the above-captioned cases (or the party if proceeding *pro se*), be filed in each of above-captioned maters, and forwarded to the Law Library for distribution to LexisNexis and Westlaw, FORTHWITH.

Dated: October 1, 2018.

DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By:
Court Clerk Supervisor 10/1/18