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

VIRGIN ISLANDS TAXI ASSOCIATION, Plaintiff, vs. **VIRGIN ISLANDS PORT AUTHORITY, FREDDY LETTSOME, EAST END TAXI SERVICES, INC., THE RITZ-CARLTON VIRGIN ISLANDS, INC., and CANEEL BAY RESORT,** Defendants. **THE ST. THOMAS-ST. JOHN HOTEL ASSOCIATION, INC.,** Intervenor.	)	**CASE NO. ST-97-CV-117**

MEMORANDUM OPINION

Before the Court are Plaintiff Virgin Islands Taxi Associations' ("VITA") October 18, 2006, motion seeking sanctions against Charles Engeman, Esq. and Caneel Bay Resort[1] and VITA's September 24, 2013, motion for sanctions against Defendant East End Taxi Services, Inc. ("East End").[2]

During a hearing on October 6, 2014, the Court ordered the parties to submit briefs concerning the status of the case, the remaining matters that require the Court's attention, and whether the case should be dismissed or a hearing conducted on the issue of damages.[3] For the following reasons, Plaintiff's motions will be denied.

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[1] Attorney Engeman and Caneel Bay Resorts filed an opposition on November 3, 2006. VITA replied on December 11, 2006.
[2] East End Taxi Services filed an opposition on October 3, 2013.
[3] The order was reduced to writing in an October 31, 2014, Order.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Plaintiff commenced this action on February 12, 1997, claiming that, in violation of Plaintiff's exclusive franchise agreement with VIPA and to the detriment of VITA, VIPA permitted non-VITA operators to pick up passengers without pre-paid vouchers and that the other Defendants solicited or contracted with independent drivers to pick up passengers directly from the airport.[4]

Plaintiff filed a motion for partial summary judgment on September 11, 2012, and amended it on September 17, 2012, stating that "[VITA] is entitled to judgment as a matter of law on the issue of its renewal of its exclusive taxi franchise."[5] Defendants objected in a November 5, 2012, opposition claiming that there was no evidence of a valid renewal by VITA. On August 1, 2013, this Court ruled in favor of VITA, and found appropriate renewal of the franchise agreement under Act No. 5231 for an additional ten years.

Defendants sought reconsideration of the Court's August 1, 2013, Order,[6] arguing that the Court failed to address its argument that Plaintiff's acceptance of the airport taxi contract with Defendant Virgin Islands Port Authority "was statutorily insufficient to initiate the [franchise]" under Act No. 5231 by the statutory deadline, which made it impossible for VITA to have validly renewed the franchise.[7] On September 24, 2013, VITA replied with a motion for sanctions against East End Taxi Association, claiming that the motivation of East End's motion was for the improper

[4] On December 29, 1986, the Virgin Islands Legislature enacted Act No. 5231, which granted Plaintiff, with limited exceptions, with pre-paid transportation with tour operators, and the "exclusive right to provide public taxicab services from the terminal facility" at Cyril E. King Airport on St. Thomas (the "Airport") for a period of ten years, with potential renewal by the franchisee for a subsequent ten years term. Pursuant to the Act, if "the franchisee remains in possession of the premises after the expiration of [the] franchise… it shall be deemed to be occupying the premises as a tenant month to month".

[5] Plaintiff's September 11, 2012, Motion for Partial Summary Judgment, p. 20.

[6] The August 1, 2013, Opinion and Order were issued by the Hon. James S. Carroll, III.

[7] Defendants East End Taxi Services, Inc. and Freddy Lettsome's August 16, 2013, Motion for Reconsideration of the Court's Order Granting Plaintiff Partial Summary Judgment Regarding Franchise Renewal, p. 6.

purpose of delay. On August 7, 2014, the Court denied Defendants' request, finding that the motion for reconsideration was untimely, that the Defendants did not establish the existence of clear error or manifest injustice, and that the request was not supported by new evidence or law.

On October 6, 2014, a hearing was held on Plaintiff's pending motions for sanctions against East End Taxi Services, Inc., Attorney Charles Engeman and Attorney Engeman's client, CBI Acquisitions. At the conclusion of the hearing, the Court took the motions for sanctions under advisement and ordered the parties to submit written briefs by November 14, 2014.[8] Defendant Plantation Bay, Inc., f/k/a Caneel Bay Resorts' filed a brief on behalf of Defendants on November 14, 2014.[9] Plaintiff did not respond by the Court's deadline. Instead, on November 20, 2014, Plaintiff filed a motion for extension of time to respond. On December 3, 2014, Defendants filed an opposition to Plaintiff's motion for extension of time. Given that Plaintiff's untimely motion for extension of time to respond was not accompanied by a proposed response, and that Plaintiff has not filed a proposed response as of the date of this opinion, Defendants' brief will be considered without input from the Plaintiff.

STANDARDS

Motions for sanctions are premised on Fed. R. Civ. P. 11.[10] Specifically Fed. R. Civ. P. 11(b) states,

> by presenting to the court... a... written motion... an attorney... certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
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> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

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[8] The order was reduced to writing in an October 31, 2014, Order.

[9] Defendants Freddy Lettsome and East End Taxi Services, Inc. filed a notice of joinder on November 14, 2014. On the same date Defendant Ritz-Carlton also filed a notice of joinder with supplemental notes. On November 17, 2014, Intervenor, The St. Thomas-St. John Hotel Association, Inc., also filed a notice of joinder.

[10] Made applicable to the Superior Court through Super. Ct. R. 7.

> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.[11]

Further Fed. R. Civ. P. 11 "requires only a showing of objectively unreasonable conduct under the circumstances" to justify sanctions.[12] "A [presentation] of bad faith conduct... is not required under Rule 11."[13]

The Court may also sanction pursuant to its incidental powers as codified in 4 V.I.C. § 243. "In its discretion, the court may impose a wide range of sanctions... depending upon the severity of the circumstances,"[14] limited by the Supreme Court's exclusive jurisdiction to disbar an attorney.[15] "The... most common use of the [Court's] inherent powers encompasses those powers necessary... to adjudicate cases in an orderly and efficacious manner."[16]

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[11] *Id.*
[12] *Adm'r-Benefits for ExxonMobil Sav. Plan v. Williams*, 75 Fed. R. Serv. 3d 775 (D.V.I. 2009).
[13] *In re Tutu Wells Contamination Litig.*, 120 F.3d 368, 380 (3d Cir. 1997) (overruled on other grounds by *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 119 S.Ct. 1915, 144 L.Ed.2d 184 (1999)).
[14] *Remy v. Ford Motor Co.*, 48 V.I. 141, at *4 (V.I. 2006) (citing *Bowman v. American Med. Sys., Inc.*, 1998 WL 721079, at 5 (E.D.Pa. Oct. 9, 1998)) ("The decision to impose sanctions, as well as the appropriate sanction to be fashioned, lie within the sound discretion of the trial court").
[15] "The Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the practice of law." 4 V.I.C. 32(e).
[16] *Santiage v. People of the Virgin Islands*, 51 V.I. 283, at n. 5 (V.I. 2009) (quoting *United States v. Dunegan*, 251 F.3d 477, 478 (3d Cir.2001)).

DISCUSSION

I. Sanctions Against Attorney Charles Engeman, Esq. and Caneel Bay Resort

VITA seeks sanctions against both Attorney Engeman and CBI Acquisitions, LLC d/b/a Caneel Bay Resorts, alleging that Attorney Engeman misrepresented to the Court which party he represented after the sale of Caneel Bay Resort and the role of CBI in the case.[17] When the Complaint was initially filed in 1997, Attorney Engeman filed an appearance on behalf of Caneel Bay Resorts. On May 10, 2004, Caneel Bay, Inc., sold all interest in the hotel Caneel Bay Resorts to CBI Acquisitions, Inc., including the trade names Caneel Bay and Caneel Bay Resorts. As a result of the sale, Caneel Bay, Inc., changed its name to Plantation Bay, Inc., thus eliminating the business name Caneel Bay, Inc.

Plaintiff relies on numerous appearances made by Attorney Engeman after the sale. Plaintiff claims that on June 24, 2005, Attorney Engeman appeared before the Court for "Caneel Bay Resorts,"[18] whereas, at the March 1, 2006, hearing Attorney Engeman introduced himself to the Court on behalf of "Caneel Bay, Inc." [19] Plaintiff argues that Attorney Engeman intentionally misrepresented that he was representing Caneel Bay Resorts, Inc., even after the business name ceased to exist, in order to be able to represent CBI as a party to the litigation. Alternatively, Plaintiff also argues that CBI Acquisitions d/b/a Caneel Bay is the successor in interest to Caneel Bay, Inc., and subject to the personal jurisdiction of the court, claiming that CBI intentionally misrepresented itself as a non-party.[20]

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[17] VITA's October 18, 2006, Motion to have Charles Engeman and his client CBI Acquisitions, Inc., Sanctioned for Repeated Misrepresentations Before This Court.
[18] *Id.* at Exhibit 2.
[19] *Id.* at Exhibit 4, *see* Exhibit 9.
[20] *Id.*

Attorney Engeman maintains that he informed the Court that CBI was not a party to the lawsuit and was a new, independent entity that purchased the assets of "Caneel Bay Resort."[21] Attorney Engeman notes that on February 28, 2006, he provided notice to the Court prior to the March 1, 2006, hearing, in the motion to file an out of time response of Defendants the Ritz-Carlton and Caneel Bay Resorts to VITA's Estimate of Cost and Damages.[22] Undisputed is the fact that Attorney Engeman filed a formal notice with the Court regarding the sale of Caneel Bay Resorts to CBI Acquisitions, LLC, a "non-party," on March 2, 2006.

VITA claims that through his intentional misrepresentations to the Court, Attorney Engeman violated Model Rules of Professional Conduct 3.3(a)(1), which states "a lawyer shall not knowingly make a false statement of fact or law to a tribunal...."[23] Comment 3 to Rule 3.3 explains that "an assertion purporting to be on the lawyer's own knowledge, as in... a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry." When an attorney violates the Model Rules of Professional Conduct, the Rules of Lawyer Disciplinary Enforcement also apply. Additionally, VITA claims injury from the misrepresentation for the time and effort to expose the misrepresentations.

Attorney Engeman denies intentionally making misrepresentations to the Court. In his opposition he argues "[f]undamental to sanctions under [Rule 3.3 of the Model Rules of Professional Conduct] is that the party *knowingly* meant to mislead or make false representations

[21] CBI Acquisitions, LLC's November 03, 2006, Opposition to Motion to Have Charles Engeman and His Client CBI Acquisitions, Inc. Sanctioned for Misrepresentations Before This Court.
[22] *Id.*at 2. ("[T]he actual Defendant in this matter was Caneel Bay, Inc., which sold its assets to CBI Acquisitions and ceased operations in the Territory.").
[23] Made applicable to the Superior Court through Super. Ct. R. 303(a).

to the Court."[24] Attorney Engeman explains that since he was not involved in the sale of Caneel Bay Resort he did not learn that Caneel Bay, Inc., had changed its name to Plantation Bay, Inc., until after all of the alleged misstatements were made, maintaining that any failure to refer to Caneel Bay, Inc., by its new name was an unknowing mistake and was not intentional.[25] Admitting that "each of the references to defendant Caneel Bay, Inc., in 2006 should have stated that entity had now changed its name to Plantation Bay, Inc.,"[26] in his opposition, Attorney Engeman further highlights that he made several attempts to clarify the status of CBI d/b/a Caneel Bay Resort and Plantation Bay f/k/a Caneel Bay, Inc. both in motions and proceedings before the Court.[27] Currently, Attorney Engeman continues to represent the interests of CBI Acquisitions d/b/a Caneel Bay Resorts in court proceedings.[28]

After reviewing the record of Court proceedings, including the disclosures made by Attorney Engeman in motions and during hearings, and considering the circumstances surrounding the misrepresentations, specifically the fact that Attorney Engeman was not involved in the sale of assets between Caneel Bay Inc., and CBI,[29] the Court finds that Attorney Engeman made the misrepresentations unintentionally and therefore his actions do not amount to sanctionable conduct.

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[24] CBI Acquisitions, LLC's November 03, 2006, Opposition to Motion to Have Charles Engeman and His Client CBI Acquisitions, Inc. Sanctioned for Misrepresentations Before This Court, p. 4.
[25] *Id.* at p. 3 n. 2 ("Attorney Engeman was not involved in the sale of the assets and did not learn that Caneel Bay, Inc. had officially changed its name to Plantation Bay, Inc. until after all of the alleged misstatements in this matter were made. Therefore, to the extent that Plaintiff seeks to find fault with the failure to refer to Caneel Bay, Inc. by its new name, Plantation Bay, Inc., that was an unknowing mistake, it was NOT an intentional misrepresentation.").
[26] *Id.* at n. 2 and 5.
[27] *Id.* at pp. 4, 6, 7 ("Your Honor, may I address the issue… for just a moment on behalf of CBI Acquisitions LLC, a non party to this matter?"), 8 and 10.
[28] For example, he is counsel of record for: *Sprauve v. CBI Acquisitions, LLC*, 2012 U.S. Dist. LEXIS 182745, 2012 WL 6755467 (D.V.I. Dec. 21, 2012); *East End Taxi Services, Inc. v. Virgin Islands Taxi Association, Inc.*, 49 V.I. 658 (D.V.I. 2008); *E. End Taxi Servs., Inc. v. V.I. Taxi Ass'n, Inc.*, 411 Fed. Appx. 495, 496 (3d Cir. V.I. 2011).
[29] CBI Acquisitions, LLC's November 03, 2006, Opposition to Motion to Have Charles Engeman and His Client CBI Acquisitions, Inc. Sanctioned for Misrepresentations Before This Court.

II. Sanctions Against Defendant East End Taxi Services, Inc.

VITA seeks sanctions against Defendant East End pursuant to Fed. R. Civ. P. 11(b)[30] for its August 16, 2013, motion for reconsideration of the Court's August 2, 2013, Order. The August 2, 2013, Order granted partial summary judgment to VITA, finding appropriate renewal of the exclusive franchise agreement by VITA.[31] Fed. R. Civ. P. 11(b), states that,

> [b]y presenting to the court ... a... written motion... an attorney... certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
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> (1) it is not being presented for any improper purpose...
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> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument...
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> (3) the factual contentions have evidentiary support....

Further, Fed. R. Civ. P. 11 "requires only a showing of objectively unreasonable conduct under the circumstances" to justify sanctions.[32] The Court may also sanction pursuant to its incidental powers as codified in 4 V.I.C. § 243. Sanctions against an attorney could include, but are not limited to:[33] criminal and/or civil contempt;[34] summary contempt sanctions;[35] and the striking of pleadings.[36]

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[30] Made applicable to the Superior Court through Super. Ct. R. 7.

[31] VITA filed its motion for sanctions on September 24, 2013. East End replied on October 3, 2013.

[32] *Adm'r-Benefits for ExxonMobil Sav. Plan v. Williams*, 75 Fed. R. Serv. 3d 775 (D.V.I. 2009).

[33] *See* 4 V.I.C. § 243(2), Incidental Powers of Courts ("Every court shall have power to enforce order in the proceedings before it") and LRCi 83.2(d)(1) and (2) ("Misconduct of any attorney in the presence of a judge or in any manner with respect to any matter pending before the Court may be dealt with directly by the judge in charge of the matter" and "[n]othing in this rule shall limit the Court's power to punish contempt or to sanction counsel in accordance with the federal rules of procedure or the Court's inherent authority to enforce its rules and orders").

[34] *In re Rogers*, 56 V.I. 325, at *5 (V.I. 2012) ("It is clear that the Superior Court has both statutory and inherent power to compel obedience to its orders by way of contempt") (citing V.I. CODE ANN. tit. 4, §§ 243(4) and 281 and *In re Kendall*, S.Ct. Misc. No.2009-0025, 2011 WL 4852282, at *3 (V.I. Oct. 12, 2011)); *Walters v. Walters*, 56 V.I. 471, at *4 (V.I. 2012) ("[A] fine, a period of incarceration, or some combination of both, represent permissible sanctions for civil contempt"); *S.T. v. People of Virgin Islands*, 51 V.I. 420, at *12 (V.I. 2009) (criminal sanctions include a fine or incarceration).

[35] "There is another species of contempt, though, that may be either civil or criminal: summary contempt. The statutory authority for summary contempt is found in section 581 of title 14 of the Virgin Islands Code." *In re Rogers*, 56 V.I. 325, at *5.

[36] *Greene v. V.I. Water & Power Auth.*, 557 Fed. Appx. 189, 200 (3d Cir. V.I. 2014) ("Because the... Affidavit [was submitted in violation of LRCi 7.1(a), it] was never properly introduced as part of the summary judgment record, [and]

VITA argues East End's motion was filed for an improper purpose, without factual or legal support, and to improperly delay a trial on the merits.[37] VITA alleges that "without Rule 11 sanctions, the Defendant and their lawyers will not be deterred."[38] East End defends its motion as timely filed within the fourteen (14) day deadline of Local Rule 7.3 and counters that Plaintiff's motion for sanctions is simply an untimely attempt to respond to East End's motion for reconsideration.[39]

Additionally, East End argues that it cannot be sanctioned for filing a motion simply because the Court denied it.[40] In its motion for partial summary judgment, East End raised the issue that there was no evidence that VITA had accepted the franchise under Act No. 5231 by the statutory deadline, which made it impossible for VITA to have validly renewed the franchise under Act No. 5231. On August 2, 2013, the Court ruled in favor of VITA and found appropriate franchise renewal under Act No. 5231. In East End's motion for reconsideration, East End argued that the Court failed to address this argument in its opinion, raising concerns about the Court treating VITA's alleged exclusive franchise as a contractual arrangement and applying common law concepts related to contract instead of statutory compliance, therefore eliminating VITA's duty to provide affirmative evidence.[41] Although East End was unable to meet the burden for

the District Court was under no obligation to recognize or analyze it"; see also *Tierney v. Abercrombie*, 1:11-CV-000246 LEK, 2012 WL 4502454, at *1 (D. Haw. Sept. 28, 2012) ("[T]he court has the inherent power to control its docket and the responsibility to manage its cases to further the ends of justice. That power includes, inter alia, the right [to] strike items from the docket... as sanctions for litigation conduct") (citations omitted).

[37] VITA's September 24, 2013, Motion for Sanctions against Defendant East End Taxi Association, Inc., pp. 5-7.

[38] *Id.* at 7.

[39] East End Taxi Services, Inc.'s, October 3, 2013, Opposition, p. 10. East End states that "[o]n August 26, 2013, the Court granted VITA's motion for extension of time to respond to Defendants' Motion for Reconsideration, setting a deadline of September 18, 2013, which passed weeks ago." East End's, October 03, 2013, Opposition, n. 3. However, VITA's response to East End's motion for reconsideration is date stamped September 18, 2013.

[40] Defendant East End Taxi Services, Inc.'s, October 6, 2014, Memorandum Regarding October 6, 3014, Show Cause Hearing.

[41] *Id.* at 17.

reconsideration, the Court finds that East End raised a good faith argument to preserve it for appeal. East End recognized that "[t]hough the Court initially acknowledged [East End's] motion sought reconsideration of the August 2, 2013, Order on franchise renewal," the Court's August 7, 2014, opinion "characterized [East End]'s filing as a motion for reconsideration of Judge Diase's 1997 preliminary injunction".[42] Further, the motion was filed within the fourteen (14) day deadline of Local Rule 7.3, and the procedural history in this case does not support a finding of delay on the part of East End.

After reviewing the motion and the procedural history of the case, the Court finds that sanctions against East End pursuant to Fed. R. Civ. P. 11 are not appropriate. There has also not been a showing of bad faith to warrant sanctions pursuant to the Court's inherent power.

III. Standing

In Defendants response to the Court's October 31, 2014, Order, Defendants claim that VITA lacks associational standing to bring an action for damages on behalf of its members. In the Virgin Islands, "the concept of standing has been repeatedly incorporated into Virgin Islands jurisprudence as a judicially-imposed restraint and does not determine whether a Virgin Islands court holds jurisdiction because the Virgin Islands courts are not Article III courts."[43] Instead, standing functions "simply as a claims processing rule" that is subject to waiver should the party asserting the issue fail to raise it in a timely manner[44]" "[B]ecause claims-processing rules are equivalent to the statute of limitations and other affirmative defenses, litigants who seek to invoke a claims-processing rule...must do so at the first opportunity."[45] The Supreme Court of the Virgin

[42] *Id.* at 8.
[43] *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 560 (VI. 2012).
[44] *Id.*
[45] *In re Guardianship of Smith*, 54 V.I. 517, 520 (VI. 2010).

Islands has given this Court no reason to believe that an exception exists for associational standing. As such, the Court will treat associational standing as a claims processing rule.

Defendants maintain that the issue of associational standing has been raised since Defendants' February 28, 2006, Response to VITA's Estimate of Costs and Damages. [46] Nevertheless, Defendants waited nearly a decade to raise the issue of associational standing in 2006, even though numerous motions were briefed and decided during that period. As a result, the Court finds that Defendants failed to raise the issue of associational standing in a timely manner and that the issue has, therefore, been waived.

IV. Failure to Seek Enforcement of the Preliminary Injunction

Defendants argue that the preliminary injunction should be vacated because the Plaintiff allegedly had taken "no action to further the case following the September 23, 1997, Appellate Division ruling upholding the preliminary injunction."[47] Defendants further maintain that "the preliminary injunction in this case should be dissolved on the basis of changed circumstances," and that "[t]he critical changed circumstance is the fact that the Act which formed the basis of the 1997 injunction expired by its terms in 2007."[48] Although the Court recognizes that the Act which formed the basis of the 1997 injunction expired and was replaced by a new Act, the Court is unwilling to recognize expiration as a defense for violations of a Court Order that occurred while the Act was in full effect.

The Appellate Division of the Virgin Islands District Court and the Third Circuit have affirmed the Court's finding of an exclusive franchise agreement between VITA and VIPA in

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[46] Defendants' November 14, 2014, Brief in Response to the Order of October 31, 2014, p. 8.
[47] Defendant East End Taxi Services, Inc.'s, October 6, 2014, Memorandum Regarding October 6, 3014, Show Cause Hearing, p. 3.
[48] Defendant Ritz-Carlton Virgin Islands, Inc.'s, November 14, 2014, Joinder in Plantation Bay's Brief in Response to the Order of October 31, 2014.

relation to this[49] and other proceedings.[50] Defendants admit throughout their pre-September 11, 2012,[51] pleadings that there was a valid "franchise granted by the Legislature"[52] and that in 1997 "the trial court and appellate court... upheld the franchise agreement embodied in Act No. 5231".[53] The Court also takes judicial notice[54] of the April 11, 1991, Decree, entered in the District Court of the Virgin Islands, whereby VITA and VIPA addressed Plaintiff's "exercise of [Plaintiff's] exclusive franchise."[55,56] In short, this Court has already spoken to the validity of the initial franchise; the appropriate appellate courts have upheld this Court's finding; and each named Defendant has acknowledged the validity of the original franchise agreement.

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[49] *VIPA v. VITA*, 979 F. Supp. 344 (D.V.I., App. Div. 1997); *East End Taxi Services, Inc. v. VITA, Inc.*, 411 Fed. Appx. 495, 496 (3d. Cir. 2011).

[50] *Virgin Islands Auto. Rental Ass'n v. VIPA*, 47 V.I. 728, at *1 (D.V.I. 2006) ("Legislative Act No. 5231 ... grants the Virgin Islands Taxi Association an exclusive franchise to operate all public taxicab service from the terminal at King Airport") (citation omitted).

[51] The date of Plaintiff's motion for partial summary judgment.

[52] VIPA's February 20, 1997, Motion to Dissolve Temporary Restraining Order, p. 4. *See also* – but in no way limited to – : Ritz Carton's March 7, 1997, Answer, para. 9 (admitted that VITA and VIPA entered into a Taxi Concession Agreement pursuant to Act. No. 5231); Defendants Ritz Carlton, VIPA, Caneel Bay and St. Thomas-St. John Hotel Association's 1997 appeal in *VIPA v. VITA*, 979 F. Supp. 344 (D.V.I., App. Div. 1997) (discussed further in n. 36, below); VIPA's August 9, 2004, Response to Plaintiff's Motion for Ruling to Show Cause and Monetary Fine, para. 4 and September 21, 2005, Affidavit from VIPA General Counsel, para. 3 (both stating that VIPA hired an additional employee to "ensure that the VITA franchise... was in fact adhered to"); Defendants East End, Caneel Bay and Ritz Carlton's appeal of the Superior Court's June 13, 2006, sanctions, whereby these Defendants argued that VITA failed to renew its exclusive franchise, not that the franchise was invalid, in *East End Taxi Services, Inc. v. VITA, Inc.*, 49 V.I. 658 (D.V.I., App. Div. 2008) (discussed further in n. 36, below).

[53] VIPA's September 21, 2006, Response to Plaintiff's Estimate of Costs and Damages, p. 2.

[54] *In the Interest of J.J.J.*, S. Ct. Crim. No. 2013-0022, 2013 WL 3378827, at *5 (V.I. July 05, 2013) ("Rule 201 of the Federal Rules of Evidence—which the Virgin Islands has adopted—permits courts to take judicial notice of certain facts. Judicial notice—an evidentiary mechanism by which the proponent is relieved of its duty to prove an adjudicatory fact through normal evidentiary means—is only appropriate when the fact "is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." (quoting RESTATEMENT (SECOND) OF EVIDENCE § 201(b)(1)-(2)).

[55] April 11, 1997, Decree, para. D, entered in the District Court of the Virgin Islands in Civ. No. 88-274.

[56] *See also* Ritz-Carlton Virgin Islands, Inc. and Marriott International Inc.'s February 3, 2009, Amended Memorandum of Law in Support of Amended Motion to Dismiss or, in the Alternative, for a Stay of Proceedings, regarding *Benjamin v. VIPA*, Civ. No. 1008-112, 2009 WL 7442508 (D.V.I 2008) ("In 1986, an Act of the Virgin Islands legislature granted VITA a ten year exclusive franchise to provide taxi services at the Cyril E. King Airport on St. Thomas").

Further, the Court has continuously recognized a valid renewal of the franchise agreement.[57] The Court recognized the preliminary injunction and re-affirmed its existence on numerous occasions.[58] The Court's August 1, 2013, Order, which held that the franchise agreement was a properly renewed option contract, was made in reliance on 1 V.I.C. § 4 and Section 25 of the Restatement (Second) of Contracts, which recognizes option contracts and limit the promisor's power to revoke an offer. The Court's August 7, 2014, Opinion conducted a *Banks* analysis and found that Section 25 reflects the common law of our Territory and expresses the best rule for the Virgin Islands.

Defendants argue that because the Complaint seeks enforcement of the franchise granted to the VITA by Act No. 5231 when this Act has since been replaced by Act No. 7452, the "Plaintiff no longer has any conceivable legal basis for seeking a permanent injunction in this case."[59] The Court has previously and numerously found that the original franchise agreement is valid and has been properly renewed. That the exclusive franchise agreement was continued under Act No. 7452 does not negate the existence of the agreement under Act. No. 5231. Therefore, the Court finds that this argument is not grounds to dismiss all claims related to the preliminary injunction.

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[57] The Court addressed the issue of the acceptance and expiration of the Virgin Islands Taxi Association's exclusive contract to provide taxi services leaving the Cyril E. King Airport in its February 13, 1997, March 10, 1997, August 1, 2013, and August 7, 2014, Orders, holding that the franchise agreement is valid and has been properly renewed.

[58] *Id.* On June 13, 2006, Judge Kendall imposed sanctions on numerous Defendants, finding them in contempt and willful violations of Court's preliminary injunction orders. Although, on February 6, 2008, the Appellate Division of the District Court reversed and vacated Judge Kendall's decision, finding that the Defendants had made a good faith effort to comply with the exclusive franchise, the preliminary injunction, and the Court's Order of August 3, 2005, it did so on the belief that the franchise was not properly renewed.

[59] Defendant Ritz-Carlton's November 14, 2014, Joinder in Plantation Bay's Brief in Response to Order of October 31, pp. 1-2.

V. Failure to State a Cause of Action for Damages

Finally, Defendants assert that VITA's Complaint failed to include a jury demand and a cause of action for which damages could be awarded.[60] Instead, VITA sought declaratory judgment and injunctive relief and included a prayer for damages, but merely stated that "it is entitled to lost earnings as a result of Defendants' behavior."[61] Additionally, Defendants claim that Act No. 5231 does not provide for private rights of actions. Defendants indicated in their response to the Court's October 31, 2014, Order, that they would be raising multiple issues in motion practice for dismissal of the action.[62] Specifically, since Act No. 5231 expired, Defendants assert that changed circumstances exist to warrant vacating the preliminary injunction and granting relief to the Defendants for VITA's failure to prosecute this action and press for a final resolution on the merits.[63]

Although VITA filed a motion for extension of time on November 20, 2014, to respond to the Court's Order of October, 31, 2014, the Court has not received a response. As a result, it remains unclear to the Court what kind of relief VITA is seeking pursuant to the preliminary injunction. Without a reply from VITA the Court is unable to determine whether dissolution of the preliminary injunction is proper. However, any relief requested will be limited to events related to the franchise agreement and renewal under Act No. 5231, and the amended preliminary injunction from May 27, 1997.[64]

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[60] Defendants' November 14, 2014, Brief in Response to the Order of October 31, 2014, p. 2.
[61] *Id.* at 6.
[62] *Id.* at 6. "[T]he Plaintiff has not properly alleged any action for money damages...VITA lacks standing to allege money damages on behalf of its members...the equitable doctrine of laches bars any recovery...a request for prospective injunctive relief against [PBI] is moot."
[63] *Id.* at 4.
[64] Defendant Ritz-Carlton also emphasized the fact that the preliminary injunction should be dissolved because the Plaintiff no longer has any conceivable legal basis for seeking a permanent injunction in this case because the Act which formed the basis of the injunction expired on its terms in 2007. Defendant Ritz-Carlton's November 14, 2014, Joinder in Plantation Bay's Brief in Response to Order of October 31.

CONCLUSION

As of the date of this opinion, the Court has yet to receive any dispositive motions. However, without a properly filed motion to dismiss and briefing by both parties, the Court is unwilling to dismiss the action at this time. For the foregoing reasons, the Court will deny Plaintiff's October 18, 2006, motions for sanctions and the September 24, 2013, motions for sanctions. The Court also finds that the issue of associational standing has been waived. An Order consistent with this Opinion shall follow.

Dated: June 15, 2015

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

Attest: Estrella H. George
Acting Clerk of the Court __/__/__
by: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor 6/17/15