IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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MODERN DAY CONSTRUCTION, INC., Plaintiff, v. **MOSES CARTY**, Defendant.	**CIVIL NO. ST-09-CV-608** **ACTION TO RECOVER PROPERTY**
MOSES CARTY, Counterclaimant, v. **MODERN DAY CONSTRUCTION, INC., MAXWELL D. CARTY, and AMOS CARTY**, Counterclaim Defendants.	

MEMORANDUM OPINION

THIS MATTER came before the Court on May 10, 2013 for a hearing on Plaintiff and Counterclaim Defendants Modern Day Construction, Inc., Maxwell Carty, and Amos Carty's First Amended Motion for Summary Judgment, filed on January 30, 2013, and Defendant and Counterclaimant Moses Carty's Cross-Motion for Summary Judgment, filed on March 14, 2013.[1] In the First Amended Motion for Summary Judgment, Modern Day, Maxwell, and Amos argue that the parties did not enter into a valid contract for the sale of land. There was no agreement, and even if there were, it was oral and in violation of the statute of frauds. Moses argues that the defense of part performance brings the oral contract out of the statute of frauds, and Modern Day's failure to transfer title to the subject property is a breach of the contract. Having considered the parties' arguments, the Court will grant Modern Day, Maxwell, and Amos's Motion for Summary Judgment regarding the Counterclaim of Moses, and deny Moses's Cross-Motion for Summary Judgment.

[1] Namosha Boykin, Esq., of the Law Offices of Pedro K. Williams, represents Plaintiff Modern Day Construction, Inc., and Counterclaim Defendants Maxwell D. Carty and Amos Carty. Alex M. Moskowitz, Esq., of Dudley Topper & Feuerzeig, LLP, represents Defendant Moses Carty.

FACTS

In March of 2006, Defendant Moses Carty traveled to Anguilla to speak to Counterclaim Defendant Maxwell Carty about purchasing property located at Parcel 380 Estate Wintberg, St. Thomas, U.S. Virgin Islands. The property is owned by Plaintiff and Counterclaim Defendant Modern Day Construction, Inc., of which Maxwell Carty is the president. During their discussion, Maxwell agreed to sell Parcel 380 to Moses for the price of $250,000.00. Maxwell purportedly also agreed to give Parcel 381 Estate Wintberg, St. Thomas, U.S. Virgin Islands, also owned by Modern Day, to Moses as a "bonus" for purchasing Parcel 380. Moses instead paid Maxwell $6,000.00 for the bonus property because he did not want anything for free. Maxwell then gave Moses the keys to the house located on Parcel 381 and told Moses to speak with Counterclaim Defendant Amos Carty so that Amos could "draft up all the papers" for the sale.

Throughout April and May of 2006, Moses spoke to Amos about obtaining the documents required to draft the documents required for the sale and transfer of title to the properties. Amos would not draft the documents, stating that he was too busy. In June or July of 2006, Moses moved onto Parcel 381, began remodeling and improving the house on the property, and landscaped the land. The extensive improvements were conducted from July to November of 2006, and cost about $80,000.00, though Moses does not have any receipts for the work completed.

In 2007, Attorney Stylish Willis prepared a quitclaim deed for transfer of Parcels 380 and 381 from Modern Day to Moses for the sum of $250,000.00. Moses then presented the quitclaim deed to Maxwell for him to sign on behalf of Modern Day and to convey the land to Moses. Maxwell then told Moses to bring the quitclaim deed to Amos to sign. When Moses informed Amos of the deed, Amos refused to sign it, stating that Maxwell did not want the conveyance to be completed by simply signing the deed. Moses stated to Amos that he needed the deed signed so that he could use it as collateral in order to get a loan to purchase Parcel 380 for $250,000.00.

Near the end of 2008, Cheryl S. Plaskett, an agent of Modern Day, presented Moses with a lease requiring a monthly rental payment of $1,200.00 for Parcel 381. Moses told Plaskett that he paid for the land and refused to pay rent. In the beginning of 2009, another agent of Modern Day, Joan Ray, attempted to present Moses with a lease agreement for Parcel 381. When Moses refused to sign it, Ray told Moses that he needed to move. Moses stated that if he were compensated for the $80,000.00 he spent improving the property, he would leave.

On February 11, 2009, Moses was presented with a Notice to Quit for failure to pay rent, advising him to vacate the premises by March 15, 2009. Moses did not vacate the property. Again, on September 24, 2009, Plaskett presented Moses with a Notice to Quit advising Moses to vacate the premises by October 31, 2009. Moses refused to vacate the property. On December 28, 2009, Modern Day filed this action against Moses for forcible entry and detainer to recover the property. After filing unsuccessful Motions to Dismiss, Moses filed an Answer on August 2, 2011, containing counter and cross claims against Modern Day, Maxwell, and Amos, which asserted claims of specific performance, unjust enrichment and imposition of constructive trust, promissory fraud, and tortious interference with contractual relations. Modern Day, Maxwell, and Amos filed an Answer to the Counterclaims on August 23, 2011.

DISCUSSION

I. STANDARD OF REVIEW

Summary judgment is a "drastic remedy."[2] It is only appropriate if the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[3] "Once the moving party points to evidence demonstrating no issue of material fact exists, the non-moving party has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable fact finder could rule in its favor."[4] All inferences must be drawn in favor of the non-moving party and the non-moving party's conflicting allegations must be taken as true if "supported by proper proofs."[5] In order to survive summary judgment, the non-moving party must present evidence that amounts to "more than a scintilla, but may amount to less than a preponderance."[6] Summary judgment cannot be entered "unless the movant has established its right[ ] to a judgment with such clarity as to leave no room for controversy, and [that] the other party is not entitled to recover under any discernible circumstances."[7]

II. MOSES CARTY FAILS TO DEMONSTRATE THAT HE ENTERED INTO AN ORAL CONTRACT WITH MODERN DAY CONSTRUCTION FOR THE TRANSFER OF LAND.

Modern Day Construction asserts that Moses's alleged oral contract for the sale of Parcels 380 and 381 is unenforceable because it violates the statute of frauds. Under Virgin Islands law, any interest in property orally created, transferred, or assigned for a period greater than one year is void and unenforceable.[8] Specifically, the statute of frauds requires "contracts for sale of land or an interest in land to be in writing or evidenced by a note or memorandum. The law also requires the contract, note, or memorandum to be signed by the party to be charged or by his lawful agent under written authority."[9] The statute of frauds, therefore, would bar this Court from enforcing the alleged oral contract. Moses responds, however, that a writing is not necessary because of the doctrine of part performance.

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[2] *Williams v. United Corp.*, 50 V.I. 191, 194-95 (2008).
[3] Fed. R. Civ. P. 56(c)(2); The Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of the District Court of the Virgin Islands apply to matters before this Court whenever they are not inconsistent with the Rules of the Superior Court. Super. Ct. R. 7.
[4] *Wheatley v. Magras*, No. ST-05-CV-548, 2012 WL 203480, at *2 (V.I. Super. Ct. Jan. 11, 2012).
[5] *Simpson v. Golden Resorts, LLLP*, Civ. No. 2011-0069, 2012 WL 1673892, at *3 (V.I. Apr. 13, 2012) (quoting *Seales v. Devine*, S.Ct. Civ. No. 2007-040, 2008 WL 901528, at *1 (V.I. Mar. 3, 2008) (unpublished)).
[6] *Id.*
[7] *Wheatley*, 2012 WL 203480, at *2.
[8] V.I. Code Ann. tit. 28, §§ 241, 242 (1996).
[9] *Downing v. Fortuna Bay Estates, Inc.*, 17 V.I. 20, 25 (Terr. Ct. 1980) (citing tit. 28, § 242).

As Moses notes, the doctrine of part performance is applicable as a defense to the statute of frauds in this jurisdiction.[10] In order to assert part performance, a defendant must show that his or her reliance on the oral agreement and subsequent actions were induced or acquiesced to for the plaintiff's benefit and to the defendant's detriment.[11] Specifically, the Restatement (Second) of Contracts states

> Where specific enforcement is rested on a transfer of possession plus either part payment of the price or the making of improvements, it is commonly said that the action taken by the purchaser must be unequivocally referable to the oral agreement. But this requirement is not insisted on if the making of the promise is admitted or is clearly proved.[12]

Plaintiff and Counterclaim Defendants admit that Maxwell, as an agent of Modern Day, agreed to sell Parcels 380 and 381 to Moses. Moses states that he relied on his oral agreement with Maxwell that Modern Day would transfer title to Parcels 380 and 381 when Moses began improving the land and house on Parcel 381, investing about $80,000.00. Moses also points to his payment of $6,000.00 for Parcel 381. However, Moses states that during the conversation with Maxwell, Maxwell agreed to sell Parcel 380 to Moses for $250,000.00 and would also transfer Parcel 381 to Moses as a bonus for purchasing Parcel 380. Since Moses did not wish to get title to Parcel 381 for free, he paid Maxwell $6,000.00 for the property. Despite the $6,000.00 payment, Maxwell still required Moses to purchase Parcel 380 in order to obtain title to both parcels. Though Maxwell was aware of this explicit term, Moses mistakenly believed that his payment was enough to obtain title to Parcel 381. This leads the Court to the conclusion that the parties failed to agree, and, therefore, an oral contract was not established.

The doctrine of part performance requires a showing of an oral agreement. No oral contract can be shown based on the undisputed facts of this case. Accordingly, Moses's claim for specific performance must be dismissed due to his failure to demonstrate an oral agreement with Modern Day. Similarly, Moses's claim against Amos for tortious interference with contractual relations must be dismissed because Moses failed to establish the existence of a contractual relationship with Modern Day.

Further, Moses's claims against Modern Day and Maxwell for promissory fraud will be dismissed, partially because most jurisdictions do not recognize such a claim.[13] Nevertheless, the Court will interpret the promissory fraud claim as one for fraudulent misrepresentation. According to the Restatement (First) of Torts, "[o]ne who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or refrain from action in reliance thereon in a business transaction is liable to the other for the harm

[10] *Fountain Valley Corp. v. Wells*, 98 F.R.D. 679, 683 (D.V.I. 1983).
[11] *Id.* at 684.
[12] Restatement (Second) of Contracts § 129, cmt. d (1989).
[13] *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 570 (7th Cir. 2012).

caused to him by his justifiable reliance upon the misrepresentation."[14] This Court does not find that Modern Day fraudulently made a misrepresentation of its intention to transfer title of Parcels 380 and 381 to Moses for the purpose of inducing Moses to act in reliance thereon. Instead, the Court finds that the parties failed to agree and Moses acted based on his misunderstanding of Modern Day's terms for transferring the land.

With regard to Moses's unjust enrichment counterclaim, Modern Day, Maxwell, and Amos only address the claim in their brief in passing, with no discussion of any legal principles. Notably, Moses does not mention the claim in his Cross-Motion for Summary Judgment. Nevertheless, the Court finds that there is a genuine issue of material fact concerning whether Modern Day has been unjustly enriched by Moses's improvements to Parcel 381. The parties disagree about the condition of Parcel 381 when Moses began to occupy it and the value of the improvements, if any, made to it. Therefore, the unjust enrichment counterclaim will not be dismissed.

CONCLUSION

The Court will grant Plaintiff and Counterclaim Defendants Modern Day Construction, Inc., Maxwell D. Carty, and Amos Carty's First Amended Motion for Summary Judgment with regard to Defendant Moses Carty's counterclaims of specific performance, promissory fraud, and tortious interference with contractual relations. Maxwell Carty, on behalf of Modern Day Construction, and Moses did not enter into an unequivocal oral contract for the sale of Parcels 380 and 381. Therefore, Modern Day Construction, Inc., Maxwell D. Carty, and Amos Carty's Motion will be granted, Moses Carty's Cross-Motion will be denied, and the specific performance, promissory fraud, and tortious interference with contractual relations counterclaims will be dismissed.

DATED: June 13, 2013

JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:
LORI BOYNES-TYSON
Court Clerk Supervisor 6/13/13

[14] Restatement (First) of Torts § 525 (1938).