

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

LAWRENCE HODGE and MARIA HODGE,	)	
	)	
Plaintiffs,	)	
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	CASE NO. ST-97-CV-925
	)	
Intervenor,	)	
	)	
vs.	)	
	)	
BLUEBEARD'S CASTLE, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's motion for attorneys' fees and costs.¹ For the following reasons, Defendant's motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

The factual and procedural history of this case is well documented in previous opinions issued by this Court.² Defendant filed its motion following a Judgment and Order dismissing the case.

ANALYSIS

¹ Defendant filed its motion on April 30, 2012; Plaintiffs filed an opposition on May 31, 2012; the Government of the Virgin Islands filed an opposition to Defendant's motion on June 8, 2012; and Defendant filed a reply to Plaintiffs' opposition on June 18, 2012, and a reply to the Government's opposition on July 5, 2012.

² See, e.g., *Hodge v. Bluebeard's Castle, Inc.*, Case No. ST-97-CV-925, 2012 WL 1398747 (V.I. Super. 2012).

Pursuant to 5 V.I.C. § 541(b), “there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney’s fees in maintaining the action or defenses thereto.” The purpose of the statute is “to indemnify the prevailing party” for legal expenses incurred in connection with the prevailing party’s efforts to establish that it was “not at fault or [was] the victim of another's fault.”³ However, when neither party is at fault in a litigation, it may be appropriate to award no attorneys’ fees.⁴

Courts in this territory have an important role to play in determining the outcome of land disputes.⁵ In the Virgin Islands, “poor recording practices[,] a perplexing mixture of unsurveyed land, conflicting surveys, uncertain genealogies and unprobated estates complicate ... title and boundary issues presented” to the courts.”⁶

An action brought to establish the existence of a public road is not altogether different from an action to quiet title. Both actions are “necessary and [are generally] not [the] result of bad faith or malicious behavior” on the part of either party to the litigation.⁷ In addition, up until the date of the Court’s April 18, 2012, Judgment in this case, there was no law in the Virgin Islands that governed the establishment of a public

³ *Bedford v. Pueblo Supermarkets of St. Thomas, Inc.*, 18 V.I. 275, 278 (D.V.I. 1981).

⁴ *Newfound Management Corp., General Partner of Newfound Ltd. Partnership v. Sewer*, 34 F.Supp.2d 305, 318 (D.V.I.1999); see also *Laltoo v. Bank of Nova Scotia*, 18 V.I. 479 (D.V.I. 1981); *Figueroa v. Trans-Oceanic Ins. Co.*, 12 V.I. 140 (D.V.I.1975); *Daly v. Kier*, 2 V.I. 227, 228 (D.V.I.1952); *Stoner v. Bellows*, 2 V.I. 172, 187 (D.V.I. 1951); and *Chase v. A.M.E. Church*, 108 F.2d 977, 2 V.I. 411 (3d Cir. 1940).

⁵ *Newfound Management Corp.*, F. Supp. 2d at 318; see also 28 V.I.C. § 372.

⁶ *Newfound Management Corp.*, F. Supp. 2d at 318.

⁷ *Id.*

road.⁸ Previously, the prevailing view in the Virgin Islands was that if the community at large believed a road was public, it was a public road, which the Appellate Division of the District Court determined to be an inadequate standard for establishing a public road.⁹ Given that (1) there were no standards for establishing a public road in the territory previous to this litigation and (2) it was unclear to the parties whether the entrance road to Bluebeard's Castle was a public road or a private way as the origin of the road was unknown, no party can be considered to be at fault in this litigation. Moreover, all parties, including the general public, benefitted from the Court's resolution of this matter.

In addition, Plaintiffs have been partially successful in this case. The jury that served in an advisory capacity to the original trial court found in favor of Plaintiffs on both their claims and on Defendant's trespass counterclaim,¹⁰ and the trial court essentially adopted the jury's findings in total. Although the trial court's conclusions of law were overturned by the Appellate Division of the District Court concerning whether the disputed roadway was public, the District Court did not make mention of any counterclaims. Defendant thereafter failed to request relief on any of its counterclaims in its May 19, 2009, and December 03, 2010, proposed findings of fact and conclusions of law, and therefore waived any counterclaims.

Given the complexity of the circumstances surrounding the litigation, the need to classify the disputed roadway, and the successful outcome for all parties, this Court will

⁸ See *Bluebeard's Castle, Inc. v. Hodge*, D.C. Civ. App. No. 2002-154, 2009 WL 891896, at *10 (D.V.I. 2009).

⁹ *Id.*

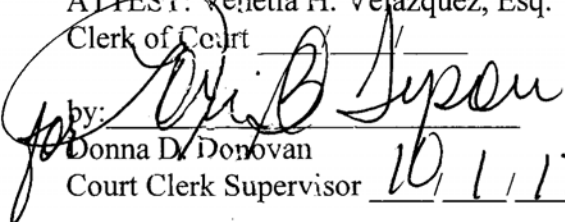
¹⁰ Memorandum Opinion, Findings of Fact and Conclusions of Law, at 2 in *Hodge v. Bluebeard's Castle*, ST-97-CV-925 (Terr. Ct. 2002).

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deny Defendant's request for attorneys' fees and costs. An Order consistent with this Opinion shall follow.

Dated: September 28, 2012

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

by: 
Donna D. Donovan
Court Clerk Supervisor 10/1/12


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

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Defendant.

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ORDER

The Court having issued a Memorandum Opinion on this date, it is

ORDERED that Defendant's motion for attorneys' fees and costs is DENIED;

and it is

ORDERED that a copy of this Order and the accompanying Memorandum

Opinion shall be directed to counsel of record.

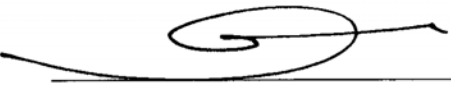
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HON. MICHAEL C. DUNSTON
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10/1/2012