

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

**DELIA THOMAS, HILARY ACTIVILLE, PERRY)
COWAN, ANDREA KING, DONALD KING,)
ALVIN PETROSKY, ROSE PETROSKY,)
ANTHONY ROMANO, ELLEN STEWART,)
CAROLYN TYSON, A. JEFFREY WEISS, &)
RUSSELL WHITE,)**

Case No. ST-09-CV-202

Plaintiffs,

vs.

**VIRGIN ISLANDS BOARD OF LAND USE)
APPEALS, ST. MARK'S COPTIC ORTHODOX)
CHURCH, INC., AND ROBERT MATHES,)
COMMISSIONER VIRGIN ISLANDS)
DEPARTMENT OF PLANNING AND NATURAL)
RESOURCES,)**

Defendants.

**ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF,
AND DAMAGES**

MEMORANDUM OPINION

Before the Court is the question of the availability and amount of costs and attorney's fees due to Defendant St. Mark¹ as the prevailing party in both the Superior Court and Supreme Court cases in this matter. After thoroughly reviewing St. Mark's affidavits in support of costs and fees, and the parties' arguments regarding costs and fees, the Court will award \$177,248.66.

¹ St. Mark is referred to as "St. Mark's" in the Complaint and several court documents. Defendants in their filings refer to the church by the name "St. Mark". The Court will use that version of the name, though the two versions are interchangeable throughout this opinion.

BACKGROUND

This conflict arose over a Coastal Zone Management permit issued by the Virgin Islands Board of Land Use Appeals to defendant St. Mark Coptic Orthodox Church to build a church and worship center on a parcel of land neighboring plaintiff-landowners' lands. On November 30, 2012, after more than three years of litigation and abundant motion practice, the Superior Court entered an order granting St. Mark's Motion for Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment. It directed counsel for St. Mark (hereinafter "Counsel") to file within 14 days of judgment any application for attorney's fees. Counsel timely filed an "Attorneys' Affidavit in Support of Award of Attorneys' Fees and Costs" on December 14, 2012.

On December 31, 2012, Plaintiffs filed an appeal with the Virgin Islands Supreme Court. On February 24, 2014, the Supreme Court entered an Opinion and Order affirming the Superior Court's November 30 Order granting summary judgment for St. Mark. On March 10, 2014, St. Mark filed with the Supreme Court a "Motion for Costs and Attorney's Fees" and an accompanying "Attorneys' Affidavit in Support of Itemized and Verified Bill of Costs and Attorneys' Fees." The Supreme Court referred the matter of St. Mark's costs and attorney's fees to the Superior Court on February 26, 2015. Counsel has submitted a supplemental "Affidavit of Counsels"

concerning costs and fees in both matters.² Before the Court now are the matters of attorney's fees and costs in both the Superior and Supreme Court cases.

LEGAL STANDARDS

"In the courts of the Virgin Islands . . . the American Rule against shifting fees to the losing party does not apply." *Prosser v. Prosser*, 40 V.I. 241, 242 (D.V.I. App. 1998). "Rather, '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 defense thereto.'" *Id.* (citing 5 V.I.C. § 541(b)).

Title 5, Section 541 of the Virgin Islands Code provides a list of costs which may be allowed in civil matters, including attorney's fees:³

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence on the trial; and
- (6) Attorney's fees as provided in subsection (b) of this section. § 541(a)

Absent agreement by the parties, it is in a court's discretion to allow to a prevailing party such sums incurred in maintaining an action at trial or defense thereto. § 541(b) ("[T]here shall be allowed to the prevailing party in the judgment such sums as the

² See St. Mark's Reply to Pls.' Resp. in Oppo. to Def.'s Att'ys' Aff. for Atty's Fees and Costs (St. Mark's Reply) Ex. E.

³ The statute includes attorney's fees under costs. For the sake of clarity, the Court will refer to costs separately from attorney's fees.

court in its discretion may fix by way of indemnity for [her or] his attorney's fees in maintaining the action or defenses thereto[.]"). Courts regularly exercise this discretion. "The prevailing party routinely requests, and the Court often grants, an award for attorney's fees and costs, so long as they are provided for within the confines of [§] 541." *Kokinda v. Thelusma*, 2017 V.I. LEXIS 132, *7 (V.I. Super. Ct.) (citing *Kalloo v. Estate of Small*, 62 V.I. 571, 584 n. 11 (V.I. 2015)).

Virgin Islands Rule of Appellate Procedure 30 governs costs including attorney's fees on appeal. *Hansen v. Bryan*, 2018 V.I. Supreme LEXIS 6, *9. Rule 30(a) provides, "if a judgment is affirmed or a petition denied, reasonable costs shall be taxed against the appellant or petitioner unless otherwise ordered." 30(b) directs that, "[a] party who desires such costs to be taxed shall state them in an itemized and verified bill of costs, including attorney's fees, which the party shall file with the Clerk of the Supreme Court, with proof of service, within 14 days after the entry of judgment." V.I. R. App. P. 30(b).

The starting point for determining the amount of attorney's fee to award is the 'lodestar', the reasonable number of hours worked multiplied by the prevailing hourly rate in the community for similar work. A court should consider the reasonableness of the fees requested. In *Judi's of St. Croix Car Rental v. Weston*, the Virgin Islands Supreme Court looked to a number of factors in doing so:

[T]he time and labor required, the novelty and difficulty of the issues involved, the level of skill needed to properly conduct the case, the customary charges of the bar for similar services, the amount involved in the controversy, the benefits resulting to the client from the services, and the contingency or certainty of compensation.

2008 V.I. Supreme LEXIS 21, *3 (citing *Evans v. R&G Mortg. Corp.*, No. 2003/126, 2007 WL 187475, at *1 (D.V.I. Jan. 10, 2007)). Similarly, in determining the reasonableness of a fee charged by an attorney, the V.I. Rules of Professional Conduct direct that the following factors be considered:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

V.I. S. Ct. R. Rule 211.1.5(a)⁴; *Creative Minds v. Reef Broad*, 2014 V.I. LEXIS 82, *3-4 (V.I. Super. Ct.). Any award of attorney's fees, "should represent a fair and *reasonable* portion of the attorney's fees incurred in the prosecution or defense of the action, and [need] not necessarily [be] the whole amount charged by the attorney." *Kaloo*, 62 V.I. at 584 n. 11 (citing *Estien v. Christian*, 11 V.I. 464, 466 (3rd Cir. 1975)) (internal quotations omitted). Therefore, when exercising discretion in granting allowable fees and costs to a prevailing party, a court should do so with an eye toward making any award a fair and reasonable portion of those attorney's fees it finds were reasonably incurred.

⁴ The Rules of Professional Conduct were adopted as part of the V.I. Supreme Court Rules in 2014.

Finally, “[t]he prevailing party bears the initial burden of establishing that her requested hourly rates are in line with comparable market rates for legal services.” *Garvey v. Estate of Moorhead*, 2016 V.I. LEXIS 107, *9 (citing *Charlery v. STX Rx, Inc.*, 2011 U.S. Dist. LEXIS 101500, *4-5 (D.V.I. 2011)). A party who fails to do so may see its hourly fee rates reduced by a court.

APPLICATION

I. Defendant’s Costs and Fees in the Superior Court Case

a. Defendant’s Request for an Award of Attorney’s Fees and Costs is Ripe.

Plaintiffs argued in their “Response in Opposition to Defendant’s Attorneys’ Affidavit” that the Court was unable to make a determination on attorney’s fees until after Plaintiffs’ appeal was decided and litigation had concluded. Since in the interim the Supreme Court has handed down a decision upholding the trial court’s decision in favor of St. Mark, St. Mark is the prevailing party and Plaintiffs’ ripeness argument is moot: the request has ripened.

b. This Case Did Not Involve Issues of Public Import Such That the Awarding of Fees Is Inappropriate

Plaintiffs argue, “when [] litigation s[eeks] to resolve an important public issue, as the instant litigation did, it can be appropriate not to award attorney’s fees.”⁵ They rely largely on *Hodge v. Bluebeard’s Castle, Inc.*, a Superior Court decision from 2012. 2012 V.I. LEXIS 51. The court in *Hodge* denied the prevailing party’s motion for

⁵ Pls.’ Resp. in Oppo. to Def.’s Att’ys’ Aff. for Atty’s Fees and Costs (“Pls.’ Resp. in Oppo.”) 2.

attorney's fees, concluding that because, "there was no law in the Virgin Islands that governed the establishment of a public road," "no party can be considered at fault in this" "action brought to establish the existence of a public road . . ." *Id.* at *3. Important to that court's analysis was that prior to litigation, "there were no standards for establishing a public road in the territory," and that therefore, "all parties, including the general public, benefitted from the Court's resolution of this matter." *Id.*

This Court notes first of all that *Hodge* was overturned by the V.I. Supreme Court, which found that because the Superior Court made a ruling on attorney's fees while an appeal was still pending, the motion for attorney's fees was not ripe, and thus, "the Superior Court [had] no way to determine which party [was] the 'prevailing party' while the litigation [was] ongoing." *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 700 (2015). Hence, it's problematic for Plaintiffs to rely on *Hodge*, as it is not clear which party ultimately prevailed in that case, or whether or not that party was actually later awarded fees.

Also, there are significant differences between *Hodge* and this case. Here, there *was* law in the Virgin Islands governing the issues before the courts. Plaintiffs advocated for a change in this law, but the Supreme Court ultimately rejected it: "This Court rejects the usage of section 4.1 of the Restatement (Third) of Property: Servitudes in favor of narrowly construing covenants in promotion of the free use of land, consistent with *longstanding Virgin Islands law*." *Thomas v. V.I. Bd. of Land Use Appeals*, 60 V.I. 579, 595 (2014) (emphasis added). Moreover, the resolution of

the dispute in this case involved the reading of a restrictive covenant, which reading, because of the nature of restrictive covenants, had implications only for the deeds and parties in this case.

Lastly, as St. Mark notes, the area in which St. Mark intended to (and eventually did) build its church was zoned R-1. *Id.* at 582. An R-1 zoning district, “allows as a matter of right artists’ studios, dwellings . . . schools, swimming pools, etc.,” and, “subject to the conditions set forth . . . title 20 – churches, synagogues, temples, religious quarters, community centers, fire and police stations, hospitals, golf courses, etc.” *Id.* at 582 n. 2. Hence, this case involved an issue for which there was “longstanding Virgin Islands law,” turned on the reading of restrictive covenants that by their nature are unique to each deed or lease, and involved the placing of a church in a zoning area that already permitted churches and other public facilities as a matter of right.

Without pronouncing on whether it is inappropriate for a court to award costs and fees in a matter involving an issue of public import, the Court finds this is not such a case.

c. St. Mark’s Affidavit Complies with Statutory Requirements.

In their Response in Opposition, Plaintiffs contend that Counsel failed to comply with affidavit requirements of 5 V.I.C. § 543(b), which state that before a bill of costs is to be taxed:

[T]he party claiming any item of cost shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily

incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

Plaintiffs argue that Counsel had not filed a bill of costs, and that the “defendant’s Affidavit is woefully deficient.” However, Counsel filed a bill of costs, attached to their affidavit.⁶ The fact that Counsel did not file the bill of costs as a separate document and label it as such is of little consequence⁷, as the information provided accomplishes the task of delineating expenses. *See Creative Minds*, 2014 V.I. LEXIS 82, *5 (“Plaintiffs . . . combined bill of costs and affidavit is sufficiently detailed for the Court to determine the necessary expenses and reasonable compensation for representation in this matter.”).

Moving to Plaintiffs’ complaint that Counsel’s original affidavit was not in compliance with the statute, Counsel filed on November 25, 2015 a supplemental Affidavit of Counsels. That supplemental affidavit specifically avers that, “the items in [the original affidavit] are correct,” and, “have been necessarily incurred in the case and that the services for which fees have been charge were actually and necessarily performed.” These averments fill the holes in Counsel’s original affidavit.

d. The Court Rejects Plaintiffs’ Argument that Counsel Must Establish Each of the Seven Lodestar Elements.

The Court is not persuaded by Plaintiffs’ argument that Counsel, as the party seeking a fee award, “has the burden of establishing each of the seven loadstar

⁶ See Att’ys’ Aff. in Support of Award of Att’ys’ Fees and Costs.

⁷ The statute says nothing of the form the bill of costs must take.

elements”.⁸ The case to which Plaintiffs cite to support this contention is *E. End Taxi Operations, Inc. v. V.I. Taxi Ass’n, Inc.*, a case from the U.S. District Court for the Virgin Islands. 2012 U.S. Dist. LEXIS 12965. In that decision—which is not binding on this Court—the court said that a party seeking fees has, “the burden of producing sufficient evidence of what constitutes a reasonable market rate for the essential character and complexity of the legal services rendered.” *Id.* at *9. However, a burden of production is not the same as a burden of proof⁹, and producing evidence of what constitutes a reasonable market rate (or even a reasonable amount of fees charged) does not perforce require producing evidence supporting all the lodestar factors. More to the point, without clear guidance from the V.I. Supreme Court, this Court has no grounds to endorse a rule that imposes stringent limitations on its discretion to award fees. Indeed, the District Court in *E. End Taxi*, after discussing factors that a court considers in determining “a fair and reasonable award of attorneys’ fees,” echoed, “[h]owever, the decision whether to award fees to a prevailing

⁸ Pls.’ Resp. in Oppo. 3. Courts generally consider the lodestar factors to be those factors outlined by the Supreme Court in *Judi’s of St. Croix* and the Rules of Professional Conduct. See, e.g., *Yearwood Enters. v. Antilles Gas Corp.*, 2017 V.I. LEXIS 171, *3 (V.I. Super. Ct.). For ease of reading, those factors again are: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

⁹ The burden of production entails a, “party’s duty to introduce evidence on an issue to have the issue decided by the fact-finder,” while the burden of proof “includes both the *burden of persuasion* and the *burden of production*.” *Burden of Production & Burden of Proof*, BLACK’S LAW DICTIONARY (10th ed. 2014).

party and to what extent is within the Court's discretion." *Id.* at *5, *6 (citing *Jo-Ann's Launder Ctr. v. Chase Manhattan Bank*, 31 V.I. 226, 234 (1995)). Accordingly, the Court finds that even if Counsel's affidavit were "devoid of any reference to the . . . lodestar factors,"¹⁰ that would not necessarily be fatal to Counsel's case for fees or costs, nor does it find that Counsel must provide evidence of all the lodestar factors in order to recover.

e. Because Counsel Has Not Shown Which Attorney Completed Services, nor Established a Prevailing Rate for Fees in the Virgin Islands, the Court Must Reduce the Fee Rate for Desmond L. Maynard in the Superior Court Case.

The Court turns now to the specific fees and costs in Counsel's affidavit. Plaintiffs take issue with the fact that most of those entries fail to identify which of Defendant's attorneys provided services, and that Counsel has not established the prevailing fee rate for attorneys in the Virgin Islands. Indeed, as Plaintiffs point out, only seven out of 511 entries identify which attorney provided the services listed. The affidavit simply states on page 62, following all the itemized entries, that Desmond L. Maynard billed 512.85 of a total of 588.30 hours at a rate of \$400/hr., and that Shawn Maynard-Hahnfeld completed 75.45 of those hours at \$250/hr.¹¹ The seven

¹⁰ Pls.' Resp. in Oppo. 8.

¹¹ Counsel argues that, "[i]n its Affidavit, St. Mark's counsel indicated which of its counsels provided services that did not result in a formal pleading filed with the Court, and, therefore, could not be readily ascertained from the record." St. Mark's Reply 8. However, tracing back through years of pleadings, even if the Court were persuaded that were its duty, would not make certain for the Court which of St. Mark's attorneys contributed work to those pleadings. Also, Counsel listed a multitude of services that did not result in a formal pleading.

entries that do list an attorney¹² account for a mere 19.8 of a total 588.30 claimed hours (roughly 3%).

The Court agrees with Plaintiffs that simply giving a total number of hours worked by each attorney, without indicating for which services those attorneys billed hours, is an incomplete accounting, especially considering that the hourly rate difference between those attorneys is so large. More problematic, while the Court declines to endorse a rule that a prevailing party must prove all the lodestar factors, Counsel has not even averred that the rate charged by Desmond Maynard is a prevailing or reasonable rate in this jurisdiction. In its Reply, Counsel says that “the prevailing rate for its counsel’s services are stated in its Attorney’s Affidavit,” but at no point does Counsel actually aver that \$400 is a reasonable or prevailing rate *for the Virgin Islands*;¹³ only that \$400 is the rate Desmond Maynard billed in this case. On the other hand, counsel for Plaintiffs has submitted an affidavit contending that \$250 is the high rate for experienced civil litigation defense attorneys in both St. Thomas and St. Croix.

Under these circumstances—where the Court is almost entirely unaware of which attorney completed which services at what rate, and where the prevailing party has said nothing of the reasonableness of the higher rate charged by one of those attorneys—the Court is precluded from awarding the trial court fees at a rate

¹² Entries 348, 400-03, and 488-89.

¹³ Counsel does so in neither its Attorney’s Affidavit in Support of Award of Attorney’s Fees and Costs nor their November 25, 2015 Affidavit of Counsels, nor their Affidavit submitted to the Supreme Court.

above \$250.¹⁴ The Court will award fees for both Counsels at the same rate, \$250 per hour.

f. The Court Will Reduce Counsel's Total Hours by 20.35 Hours for Duplicative Entries.

Plaintiffs next argue that the entries where an attorney is identified are duplicative, and that the Court should thus reduce that time to remove double billing. As discussed above, there are seven entries in which Counsel has identified which attorney was responsible for the services claimed. Those entries are¹⁵:

- 348: 07/06/11- Shawn E. Maynard-Hahnfeld, Esq.'s appearance at Status Hearing on all outstanding motions (1.5 hours);
- 400: 12/11/11- Desmond L. Maynard, Esq.'s preparation for Status Conference to be held on December 12, 2011 (3 hours);
- 401: 12/11/11- Shawn E. Maynard-Hahnfeld, Esq.'s preparation for Status Conference to be held on December 12, 2011 (1.9 hours);
- 402: 12/12/11- Desmond L. Maynard, Esq.'s appearance at Status Conference (3 hours);
- 403: 12/12/11- Shawn E. Maynard, Esq.'s appearance at Status Conference (3 hours);
- 488: 08/27/12- Desmond L. Maynard's attendance at hearing on all pending motions (3.7 hours);
- 489: 08/27/12- Shawn Maynard-Hahnfeld's attendance at hearing on all pending motions (3.7 hours).

Plaintiffs argue that 18.3 of these 19.8 hours are duplicative billings for identical tasks. Plaintiffs note correctly that a court may, "[a]s needed . . . remove[] duplicative, disproportionate or superfluous charges or services" *Creative Minds*, 2014 V.I.

¹⁴ Other Virgin Islands' courts have determined that rates higher than \$250/hr. are reasonable and appropriate even where the prevailing party has failed to offer up evidence of a reasonable rate. However, because this Court faces the additional uncertainty of which attorney billed which services, it will not follow that lead here.

¹⁵ Counsel's original Attorneys' Affidavit in Support of Award of Attorneys' Fees and Costs had 61 pages of entries, but none of them numbered. Plaintiffs, in attaching a copy of the affidavit as Exhibit 1 to their Response in Opposition, numbered the entries. The Court will rely on that numbering.

LEXIS 82, *1; *id.* at *1 n.9 (“Although *Wenner [v. Gov’t of the V.I.]*, 29 V.I. 158 (D.V.I. 1993)] is not binding upon this Court, it is well understood that a prevailing party will not be awarded twice for the same services or be reimbursed for unnecessary work.”); *see also Jo-Ann’s Launder Ctr.*, 31 V.I. at 234-35 (reducing plaintiff’s award for trial time by two-thirds, from 75 hours to 25 hours, where plaintiff had sought to recover for three attorneys attending trial, but awarding at the highest hourly rate among those attorneys). Following those cases, the Court will strike entries 348¹⁶, 401, 403, and 499 as duplicative, and will reduce the total hours by 10.1 hours.

Plaintiffs next identify 91 entries, in addition to those just discussed, where they argue Counsel have again double or triple billed for the same task.¹⁷ The majority of the challenged entries, Counsel contend, “show time for St. Mark’s counsel to read and review documents served on said counsel in two and sometimes three different forms: via facsimile, email and mail. Many times, these documents would only contain supporting exhibits in one form or another.”¹⁸ In many of the instances where Counsel reviewed a duplicate copy of a document, they spent a minimal amount of time doing so.¹⁹ The Court does not find these brief periods of time—in

¹⁶ While Plaintiffs do not raise the issue for entry 348, the Court finds that entry to be duplicative also, as entry 347 also shows “Attend Status Hearing on all outstanding motions” for 1.5 hours.

¹⁷ Pls.’ Resp. in Oppo. Ex. 4.

¹⁸ St. Mark’s Reply 10. Counsel also provide their own exhibit with explanations for the apparent multiple billings. St. Mark’s Reply Ex. G.

¹⁹ For example, at entry 23, Counsel spent 0.5 hours reviewing a faxed copy of a motion to strike filed by Plaintiffs, and then at entry 24 spent 0.1 hours reviewing the mailed copy of that same document.

many instances mere minutes—spent reviewing a duplicate filing of a document to be superfluous or exorbitant.²⁰

Plaintiffs also point to certain pairs of entries and allege that Counsel double billed for work on the same documents; in fact Counsel's affidavit shows that those entries relate to different documents.²¹ Thus those entries are not duplicative.

Of the remaining entries Plaintiffs listed as duplicative, the Court finds the majority are not. It finds only a small number are duplicative and/or without sufficient explanation (36, 95, 167, 250, 347, and 359²²) and will correspondingly reduce the total hours billed by 10.25 hours.²³

g. The Court Will Reduce Counsel's Total Hours by 3.5 Hours for Impermissibly Vague Entries.

Plaintiffs next bone of contention is with some 116 entries that Plaintiffs argue do not adequately describe services.²⁴ Plaintiffs argue the entries are, "so vague and

²⁰ In fact, it seems prudent to spend a few minutes making sure a duplicate filing by opposing counsel doesn't contain additional material. To the point, Counsel contend that in this case many duplicate filings did in fact have additional exhibits.

²¹ For example, in their Exhibit 4, Plaintiffs allege that Counsel's entries 2 and 3 evidence "duplicative time" and indicate that this time was spent, "reviewing same documents." However, a look at the affidavit shows that Counsel spent 1.5 hrs. at entry 2 reviewing the Complaint and Summons, and 2.5 hrs. at entry 3 reviewing a different document.

²² Entry 36 duplicates entry 32. Entry 95 duplicates entry 98, without explaining why a review of different copies of the same document would add an additional 1.2 hrs., as opposed to a shorter time. Regarding entry 250, Counsel billed 14.5 hrs. for that same service on February 21, 2010 (entry 200) without sufficiently explaining why it was necessary to bill another 6.1 hrs. for the same service on March 24, 2010. And at entries 167 and 359, Counsel concede clerical errors. *See* Ex. G.

²³ Also listed on Plaintiffs' Exhibit 4 are entries 348, 400-03, and 488-89. Those entries were discussed earlier in this decision and the adjustment in hours made there. The Court will not address those entries again here.

²⁴ *See* Pls.' Resp. in Oppo. Ex's 5 and 6.

inadequately detailed as to prevent meaningful judicial review.”²⁵ Of the 116 entries, 15 are for legal research totaling 33.5 hours, and 101 are for other activities totaling 99.45 hours. Concerning the 101 entries:

- Some 33 of them, totaling 46.85 hours, were for “Conference with client”;²⁶
- Eight entries totaling 0.51 hours were for telephone conferences with client;²⁷
- Eight entries totaling 4.55 hours were for “meeting[s] with client”;²⁸
- Four hours were for “Preparation of client for October 26, 2009 hearing”;²⁹
- And 2.15 hours were for “Prepare Client for his deposition”.³⁰

In sum, approximately 58 hours of the 99.45 hours that Plaintiffs challenge for vagueness were billed for meetings, conferences, and prep sessions with the client. With only 6.15 of those 58 hours did Counsel describe in detail the purpose of the meeting. As Plaintiffs point out, courts in the past have, “note[d] with disapproval . . . overly general entries, such as ‘conference with attorney X’ or ‘law study and research’ that do not indicate the purpose for which the attorneys engaged in such activity.” *Good Timez, Inc. v. Phoenix Fire & Marine Ins. Co.*, 754 F. Supp. 459, 463 n. 6 (D. V.I. 1991); *see also Morcher v. Nash*, 32 F. Supp. 2d 239, 242-43 (D. V.I. 1998).

While this Court also emphasizes the desirability and necessity of a more precise accounting, it also notes the length of the professional relationship between Counsel and Defendant in this case. The trial court proceedings lasted over three and a half years, and the attorney-client relationship lasted from April 26, 2009 to

²⁵ Pls.’ Resp. in Oppo. 11.

²⁶ Entries 1, 26, 33, 40, 44, 47, 49, 52, 71, 78, 89, 93, 100, 104, 128, 135, 202, 331, 338, 344, 351, 365, 371, 399, 407, 409, 431, 477, 480, 496, 502, 507, and 510.

²⁷ Entries 175, 202, 259, 273, 291, 294, 297, and 304.

²⁸ Entries 180, 188, 213, 215, 238, 247, 253, and 276.

²⁹ Entry 126.

³⁰ Entry 190.

December 3, 2012 (approximately 43 months). The upshot is that the client-meeting billings Plaintiffs challenge equated to an average of only about 1.4 hours per month. The Court does not find this amount to be at all unreasonable or dubious and will not deduct those hours.

Moving now to the remaining entries the Plaintiffs challenge for vagueness, the Court has reviewed them and finds similarly that while a more precise billing is desirable, the vast majority of those entries are for services reasonably incurred. In many instances, the entries were for brief in-person or telephone conferences with non-parties (photographer, architect, appraiser, etc.). The entries were not excessive, and the Court can gather from them the subject and necessity of those communications (e.g. one meets with an appraiser to discuss appraisals). It has no reason to doubt those communications were necessary, and Counsel have affirmed they were.³¹ In only one instance does the Court find an entry impermissibly vague to support the time billed, entry 473, wherein Counsel simply indicated “Prepare letter to client.” The Court will reduce the total hours billed by 3.5 hours for that entry.

Moving to the 15 entries that Plaintiffs claim are for “Unspecified Legal Research,” Counsel submitted an additional exhibit in St. Mark’s Reply outlining the

³¹ Although addressing a conflict between a client and an attorney over fees (as opposed to fee shifting), the V.I. Supreme Court in *Rainey v. Hermon* disapproved of a court’s reducing an attorney’s billable hours because the court, “concluded that [the attorney’s] fees for communicating with [a third party] were unnecessary because it could not determine how many of these calls were necessary . . .” 55 V.I. 875, 883 (2011); *id.* at 886 (“With no explanation . . . and no evidentiary support for its conclusion that the calls were unnecessary, the Superior Court’s arbitrary reduction of [the attorney’s] bill by twenty-four and a half hours was clearly erroneous.”).

target of research in those entries.³² That additional detail allows meaningful review of those entries. The Court does not find them, independently or cumulatively, to be unreasonably lengthy or unnecessarily incurred; it will not reduce the total hours billed for those entries.

h. The Court Will Not Strike Any Entries as Being Unrelated to This Case.

Plaintiffs contend that Counsel billed 9.3 hours for matter not involving this cause. After reviewing both parties' arguments on this matter, and the list of entries Plaintiffs challenge³³, the Court is not persuaded by Plaintiffs' argument. To the contrary, Plaintiffs look either sloppy or disingenuous in making this argument. For example, 5.25 of those hours were billed by Counsel for reading, researching, and drafting St. Mark's response to Plaintiffs' Petition Pursuant to Superior Court Rule 14 for Immediate Hearing or Ruling on Plaintiffs' Motions for Preliminary Injunctive Relief. The Court is perplexed as to why that entry made Plaintiffs' list—if that work didn't relate to this case, what case did it relate to? In another instance, Plaintiffs challenge entry 122, an entry for 2.3 hours, as "Not [on] this Defendant's issue (Super. Ct. No. 404)." However, a look at entry 122 reveals Counsel billed 0.3 hours for reviewing a response from the Government of the Virgin Islands: in addition to stating only 0.3 hours instead of 2.3, the entry does not suggest that the services were unrelated to this case.

³² St. Mark's Reply Ex. H.

³³ Exhibit 8.

The Court will deduct no hours because of entries unrelated to this case.

i. The Court Will Not Strike Any Entries Because of Improper Grouping Together of Entries.

Plaintiffs next challenge a number of “bulk” entries, arguing Counsel, “improperly lumps time entries together and has bulk entries for multiple services[.]”³⁴ They point to a list of 35 “lumped or bulk entries”, comprising some 120 hours of time billed. While the Court agrees and disapproves of such lumping together of services under one entry, it finds no support for a steadfast rule that a court is precluded from awarding fees when a party does so. Firms undoubtedly practice several different methods for recording billable hours and Virgin Islands law has no set requirements for how firms should do so.

Plaintiffs also have not offered support for their contention that, “the Court is not permitted to speculate as to the amount of time spent on activities,” that are grouped together—*any* attempt by a court to consider the reasonableness of fees inevitably requires some level of speculation. Plaintiffs cite to the U.S. District Court’s decision in *Good Timez*, wherein the court expressed disapproval of lumping time entries together. 754 F. Supp. at 463 n. 6. But expressing disapproval is not the same as endorsing a blanket rule prohibiting such practices (this Court also cautions against such practices), and Plaintiffs cite no other case supporting such a rule.

³⁴ Pls.’ Resp. in Oppo. 11.

Having reviewed the entries Plaintiffs challenge, the Court finds they adequately describe the services Counsel provided. It will not strike any of those entries or make any deductions of time for improper grouping of services.³⁵

j. Plaintiffs' Remaining Objections Do Not Persuade the Court to Deduct Additional Time Billed.

The Court is unpersuaded by Plaintiffs remaining objections to attorney's fees.³⁶ In multiple instances, it again seems as if Plaintiffs are being cunning. For example, Plaintiffs state that, "it appears that defendant is seeking to recover for 2.65 hours for communication with appraisers (entries 295, 296, & 298), notwithstanding the fact there was no issue in this case with regard to the appraised valuation."³⁷ However, as Counsel points out, Plaintiffs designated their own expert witness *regarding property values*: "Mr Minkoff is knowledgeable as to property values on St. Thomas . . . [h]e will provide expert testimony as to plaintiffs' case in chief regarding the diminution in value caused by St. Mark's violations of the Restrictive Covenants at issue to plaintiffs' properties[.]"³⁸ What's more, although Plaintiffs claim Counsel seeks to recover for 2.65 hours solely for those communications, Counsel's affidavit shows that Counsel also billed time to draft and prepare St. Mark's Designation of

³⁵ The Court again—like the court in *Good Timez*—reiterates its disapproval with lumping together different services into the same entries; however, disapproval in this instance will not translate into the Court mechanically striking those entries.

³⁶ See Pls.' Resp. in Oppo. paras. 10-13.

³⁷ *Id.* at 15.

³⁸ Plaintiff's April 15, 2010 Designation of Expert Witness 2.

Expert Witnesses,³⁹ and court records show St. Mark actually filed its designation of four expert witnesses on or about April 28, 2010.

At another point, Plaintiffs allege Counsel billed 0.9 hours “to review a 1 pg motion,”⁴⁰ when in fact Counsel billed 0.5 hours for that entry. At yet another point Plaintiffs claim Counsel billed 6.2 hours at entries 179 and 192 “for self-executing disclosures”, when entry 179 additionally shows “Review V.I. Dist. Crt. Files; CZM Appeals file & Superior Court files” and entry 192 is not even related to self-executing disclosures (stating instead, “Attend Deposition of Father Conner”).⁴¹ And while Plaintiffs provide the Court with *some* documents as exhibits as evidence to support their allegations, they omit others without explanation, regardless of whether the documents are in the court file or not.

While each of these errors, misrepresentations or omissions might individually amount to little, the Court is left wondering which of Plaintiffs’ allegations are accurate and which are not.⁴² That being said, even taking Plaintiffs’ allegations at face value, Plaintiffs have not convinced the Court that the time billed in those entries

³⁹ See entry 295.

⁴⁰ Pls.’ Resp. in Oppo. 13.

⁴¹ Entry 9.

⁴² Plaintiffs also suggest that Counsel should not be awarded for the preparation of a motion for contempt against Plaintiffs for allegedly disobeying a discovery order. Plaintiff argues that the order was unsuccessful and, “since [it] was clearly a discovery motion, [] was filed in violation of LRCi 37.1 & 37.2[.]” Yet the trial judge apparently did not rule on that motion, so it’s not clear the motion was or would have been unsuccessful, and it would be for the trial judge—not for this Court in awarding fees—to determine if that motion was filed in violation of the Local Rules of Civil Procedure. Also, Plaintiffs offer no support for a rule that a prevailing party may not receive attorney’s fees for motions that are unsuccessful at trial.

is unreasonable or was unnecessarily incurred. The Court will reject those remaining challenges to attorney's fees and will not make further deductions to the total hours.

k. The Court Will Not Award Costs Claimed by Counsel in the Superior Court Case.

For costs other than attorney's fees, Counsel billed:

1. \$1200.00 fees paid to Paragon Construction, LLC, for property inspections of the Plaintiffs' property, on behalf of St. Mark
2. \$500.00 fees paid to Hecht Communications, Inc., for a photo shoot of Plaintiffs' properties, on behalf of St. Mark
3. \$700.00 paid to Stryker Duensing Casner & Collison for "services rendered to St. Mark
4. \$369.40 for a transcript copy of a hearing held on May 5, 2009
5. \$882.90 for a transcript copy of a hearing held on July 24, 2009
6. \$817.00 for a transcript copy of the deposition of Father Antonious Michael Connor
7. \$365.00 paid for courier services for delivering documents to the Court, "and from various person and organizations"
8. \$225.00 fees paid to Peter McElligott for "services rendered" to St. Mark
9. \$196.00 paid to Hill's Reporting Services for a transcript copy of a meeting dated May 26, 2011
10. \$2585.82 for legal research

Section 541 only permits the recovery of certain costs. "Computer legal research charges and copying costs are general overhead expenses that are not compensable costs" under 541. *Mahabir v. George*, 2014 V.I. LEXIS 20, *3 (V.I. Super. Ct.) (citing *Morcher*, 32 F. Supp. 2d at 243). The Court will not award costs for Counsel's legal research. Nor will the Court award costs for amounts paid for courier services, as Counsel does not indicate what documents were delivered and thus the Court cannot determine if those expenses are allowed.

Regarding the amount for the deposition transcript:

'Necessary expenses of taking depositions which were reasonably necessary in the action,' are taxable as costs. 5 V.I.C. 541(a)(2). Introduction of a deposition at trial is not a prerequisite for finding that it was reasonably necessary in the action. However, if not used at trial, the deposition must have been reasonably necessary for the proper presentation of the case, and not merely obtained for the attorney's convenience or for investigative purposes.

Arnold v. Arnold, 1987 V.I. LEXIS 24, *2-3 (V.I. Super. Ct.). Counsel has failed to specify if the deposition of Father Connor was used at trial, or if it was admitted into evidence. Further, "there is nothing in [Counsel's] affidavits which indicate how [the deposition] was reasonably necessary in this action." *Id.* at *3. The affidavit merely lists the date of the deposition and the amount expended. The Court is aware that it is quite common for counsel to depose an opposing party during the discovery phase of litigation and equally common for that party to purchase a copy of the transcript of that deposition. However, Counsel has not argued nor shown that the purchase of his client's deposition transcript was reasonably necessary for the proper presentation of his case. Therefore, the costs for that transcript will be disallowed.

Nor for the other transcript copies do Counsel indicate whether the documents were used as evidence at trial, or the necessity of those transcripts. Counsel says that, "the Court entered an expedited scheduling order . . . [c]onsequently, Plaintiffs contention that there is no reason why St. Mark would order transcripts . . . on an expedited basis is without merit."⁴³ But showing why Counsel ordered transcripts on

⁴³ St. Mark's Reply 14.

an expedited basis does not show for what purpose the transcript copies were ordered. Plaintiffs contend that there “was no need . . . for the transcripts of the non-evidentiary proceedings . . .”⁴⁴ In fact, the Court is unable to discern the need for *any* of the transcripts and will not allow those costs.

Finally, Counsel concede that, “5 V.I.C. § 541 authorizes recovery for costs of an expert[']s *attendance at deposition or trial*,” but ask the Court to use its “inherent power to tax costs,” and grant costs for services rendered and included in its lists of costs. St. Mark’s Reply 14 (emphasis added). Counsel cite to a V.I. Supreme Court case, *Terrell v. Coral World*, wherein the court said, “[w]e note that some Virgin Islands courts have held that a trial court possesses the inherent power to tax costs, including assessing costs not specifically enumerated by statute.” 55 V.I. 580, 586 n.6 (2011). However, the court added, “because Terrell sought an award of costs based solely on section 541, it is not necessary for this Court, as part of this appeal, to consider whether the Superior Court is authorized to assess costs other than those provided for in section 541.” Additionally, even though in the cases to which the Supreme Court cited, the courts noted that, “Section 541(a) does not necessarily preclude the court from assessing costs other than those specifically enumerated,” *Ryan v. Ryan*, 53 V.I. 140, 144-145 (V.I. Super. Ct. 2010), and that, “precedent indicates that the trial court generally may have some discretion to award costs not specifically authorized by [§ 541(a)],” *Morcher v. Nash*, 32 F. Supp. 2d 239, 243 (D.V.I.

⁴⁴ Pls.’ Resp. in Oppo. 15.

1998), neither one of those courts actually chose to exercise that discretion.⁴⁵ The Court declines to do so in this instance and will not award costs for those services.

II. Defendants' Costs and Fees in the Supreme Court Case

a. Because Counsel Has Not Established a Prevailing Rate for Fees in the Virgin Islands, the Court Must Reduce the Fee Rate for Desmond L. Maynard in the Supreme Court Case.

In the Supreme Court case, Counsel for St. Mark billed a total 142.7 hours. Desmond L. Maynard billed 6.8 hours for out-of-court services, and Shaw Maynard-Hahnfeld billed 135.90 hours for in- and out-of-court work. Counsel provided an affidavit itemizing all the services rendered and the corresponding hours expended on those services.⁴⁶ Although this affidavit, unlike the affidavit for the Superior Court case, does indicate for which services each attorney billed hours, Counsel again has not averred that \$400 per hour is an ordinary or prevailing rate in the Virgin Islands. The Court is therefore again deterred from awarding fees at that rate. The Court will thus award fees to Desmond Maynard at the rate of \$300/hr. *See Garvey*, 2016 V.I. LEXIS 107, *10 (“Here, without any proffer of its reasonableness from Petitioner, the Court finds the claimed hourly rate of \$400 to be excessive, and will assign as reasonable an hourly rate of \$300.”); *Interocean Ins. Agency v. Joseph*, 2014 V.I. LEXIS 73, *10 (V.I. Super. Ct. 2014) (“The Court accepts . . . hourly rates of

⁴⁵ It's thus not clear that either court actually *held* that a trial court possesses an “inherent power to tax costs,” rather than merely expressed the possibility.

⁴⁶ Att'ys' Aff. in Support of Itemized and Verified Bill of Costs and Att'ys' Fees.

\$350.00 for in-court services and \$300.00 for other services as fair and reasonable for an attorney with his experience and record.”).

b. The Court Will Award Attorney’s Fees for All Hours Billed in the Supreme Court Case.

Plaintiffs raised many of the same objections to fees in the Supreme Court case that they raised in the Superior Court case. Accordingly, several of Plaintiffs contentions here have already been addressed. For one, the Court reiterates its refusal to endorse a rule that a party seeking a fee award has the burden of establishing each of the lodestar factors. The Court declines to endorse a rule that a court is precluded from awarding fees when a party groups together services under bulk entries. The Court finds that this is not a case of public import such that it should not award attorney’s fees.⁴⁷ Also, addressing Plaintiffs’ contention that Counsel’s affidavit lacks the necessary averments, the Court points again to Counsel’s November 25, 2015 Affidavit of Counsels affirming that, “the items [billed in the appellate proceedings] . . . are correct and were necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.” Those averments satisfy the requirements of 5 V.I.C. § 543(b).

Moving to the specific challenges, Plaintiffs contend that the “time entries evidence the improper lumping of multiple tasks into bulk entries,” and that

⁴⁷ The Court notes, as St. Mark pointed out, that *Hodge* only concerned fees at the trial court level. It also notes that 5 V.I.C. § 541 says that costs, “*shall be allowed* to the prevailing party,” while V.I. R. App. P 30 says, “if a judgment is affirmed or a petition denied, reasonable costs *shall be taxed* against the appellant or petitioner *unless otherwise ordered*[.]” which suggests the analysis might be different for Supreme Court fees even if this were a case involving an issue of public import.

Counsel's affidavit "evidences excessive times," for "what appear to be duplicate entries, for the same or similar tasks, which are not adequately described" and that it contains "vague entries making it impossible to determine the reasonableness of those entries[.]"⁴⁸

The Court does not agree. While several date entries do lump together multiple different tasks, the entries are nonetheless adequately detailed. In none of the entries is the Court unable to discern what services Counsel rendered, and the Court can approximate in each instance the reasonableness of those services based on the descriptions provided in them. In many instances, the descriptions are indeed specific.⁴⁹

To the contrary, it is Plaintiffs who reorganize and lump together different entries and present a less accurate picture of Counsel's work. For example, for the entry for August 26, 2013, Counsel entered that they read and reviewed Appellants' corrected brief and drafted and prepared Appellee's brief. In their Exhibit 2, however, Appellants enter August 26 next to the basic description "Drafting & Preparing Appellees' Brief", which then no longer accounts for the fact that Counsel also spent time reviewing Appellants' brief on that date. Plaintiffs also merge different activities from several different dates under blanket headings, and in doing so omit

⁴⁸ Appellants' Resp. in Oppo. to St. Mark's Mot. for Costs and Att'ys' Fees ("Appellants Resp. in Oppo.") 1.

⁴⁹ E.g., compare "07/16/13: Read/review Joint Appendix (Volume #8) and tag relevant pages/documents for citation", with "07/17/13: Read/review Joint Appendix (Volumes #1, 6, & 7) and tag relevant pages/documents for citation."; "09/17/13: Draft and prepare Appellee St. Mark's Brief – Argument (Re: Action for Injunctive Relief Under § 913(b)(2)); Legal Research (Lexis Nexis) – Re: § 913(b)(2); Restrictive Covenants".

details that Counsel included, and which show what Counsel did on those dates. For example, Counsel's affidavit states that on multiple dates in September 2013, Counsel worked on different parts of St. Mark's' brief (e.g. the Statement of Case on 09/09; the Statement of Facts on 09/10; legal research on 09/22). Appellants simply merge all these different entries together under the blanket heading "Drafting and Preparing Appellees' Brief", and in doing so eliminate detail.

The Court also finds that the time spent by Counsel was not unreasonable for any individual entry, nor in the cumulative over the court of litigation. The Court has reviewed carefully the entries Plaintiffs contend represent excessively billed time (in addition to reviewing the remainder of Counsel's entries), and the parties' arguments, and it is not persuaded any of the entries were excessive. For example, Plaintiffs allege that, "the Standard of Review section, Statement of Related Cases, Statement of the Case, and Statement of Facts sections of [Appellees'] Brief, added little from Appellants' Brief, while other sections were essentially lifted right out of the Superior Court's Findings of Fact and Conclusion of Law." However, after ferreting out the relevant portions of the briefs—since they were not provided to the Court—a look at the two parties' appellate briefs reveals that Counsel's brief is in fact quite different. In explaining the standard of review, for example, Counsel didn't even cite to the same case law as Plaintiffs. In many instances Counsel did touch on largely similarly material (e.g., the standard for review on appeal from summary judgment), but this is expected: a party isn't at liberty to reinvent facts or established legal principles in a brief, so some overlap is natural.

Regarding Plaintiffs contention that Counsel lifted portions of Appellees' brief (at pages 35-36) from the Superior Court's November 30, 2012 decision⁵⁰, Counsel accurately notes that that language was adopted by the Superior Court from Counsel's own Proposed Findings of Fact and Conclusions of Law.⁵¹ That text, while wanting in proper citation, makes up about one page of Appellee's 40-page brief.

Finally, the fact that Counsel asserted arguments before the Supreme Court that were ultimately rejected by that court does not, as Plaintiffs assert, "militate[] against the award of attorney's fees," or, "a Finding [sic] that the amount of time allegedly expended by [Counsel] was reasonable or necessary."⁵² Plaintiffs cite no case law to support this position.

Having reviewed Counsel's affidavit and Plaintiffs' challenges to it, the Court will not deduct any hours billed for being excessive, vague, unreasonable, or unnecessarily incurred. Nor will it strike entries for being impermissibly grouped. The Court finds the fees are reasonable and will award fees for all hours billed by Counsel in the appeals case.

⁵⁰ See that decision at pages 25-27.

⁵¹ Filed October 1, 2012.

⁵² Appellants' Resp. in Oppo. 7.

c. The Court Will Not Award \$121.16 in Costs Claimed by Counsel in the Supreme Court Case.

For costs other than attorney's fees, Counsel billed:

1. \$173.00 for preparation of a transcript ("Hearing on Motions Transcript on August 27, 2012")
2. \$259.00 for preparation of a transcript ("Official Transcript of Temporary Restraining Order, Declaratory and Injunctive Relief Hearing on July 24, 2009")
3. \$101.16 for Office Max receipt for copies of St. Mark's designations for the Joint Appendix
4. \$20.00 Invoice from Best Messenger Service re delivery of St. Mark's designations for the Joint Appendix
5. \$403.00 Lexis Nexis Bill
6. \$97.79 Lexis Nexis Bill
7. \$253.07 Lexis Nexis Bill
8. \$52.14 Lexis Nexis Bill

As said above, costs for legal research are not compensable costs. Therefore the Court will not allow costs for the LexisNexis bills. The Court will not award costs for the July 24, 2009 hearing transcript, as Counsel concedes that was ordered out of mistake. Plaintiffs contend that Appellants bore the cost of reproducing the August 27, 2012 hearing transcript, and Counsel concede they ordered a copy of that transcript for reviewing, so that expense also will not be awarded.

Regarding the Office Max receipt for copies of St. Mark's designations for the Joint Appendix, Plaintiffs contend that "Appellants bore the entire cost for reproducing the Joint Appendix, not Appellee." However, Counsel has produced a letter in which Plaintiffs specifically asked St. Mark for "a clean copy of any

documents or pleading designated as soon as possible.”⁵³ This suggests to the Court that St. Mark bore the costs of reproducing the designations, so the Court will allow those costs of \$101.16.⁵⁴ Plaintiffs do not specifically challenge the \$20 invoice from Best Messenger Service; the Court will allow that cost.

III. The Costs and Fees to Be Awarded Are a Fair and Reasonable Amount

To summarize the costs and fees to be awarded from the Superior Court and Supreme Court cases:

Attorney's Fees in the Superior Court Case	588.30 hrs. - 23.85 hrs. 564.45 hrs. x \$250/hr. =	\$141,112.50
Costs in the Superior Court Case		--
Attorney's Fees in the Supreme Court Case	Desmond Maynard 6.8 hrs. x \$300/hr. = Shawn Maynard-Hahnfeld 135.9 hrs. x \$250/hr. =	\$2,040.00 \$33,975.00
Costs in the Supreme Court Case		\$121.16
Total		\$177,248.66

The Court must consider if that amount is fair and reasonable. It notes first that the length of the professional relationship between the client and Counsel was lengthy, the litigation spanning several years. In the Superior Court case alone, litigation went on for over three and a half years and included extensive motion

⁵³ See St. Mark's Coptic Orthodox Church, Inc.'s Reply to Appellants' Resp. in Oppo. to St. Mark's Mot. for Costs and Att'y's Fees Ex. A.

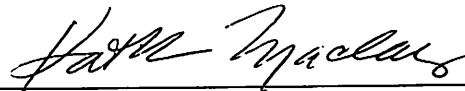
⁵⁴ Plaintiffs argue that because Counsel's bill of costs, "does not identify the number of pages copied or the per page charge, [] this defect requires that this amount be disregarded. Where a party does not itemize photocopy costs or explain why they were necessary, those costs should be disregarded." However, Plaintiffs cite to no Virgin Islands law, or even law for the U.S. District Court or the Third Circuit, to support this argument.

practice. Both parties agree the case involved complex legal issues.⁵⁵ And considering that St. Mark was successful in the Superior Court and Supreme Court cases, the result of the litigation supports the awarding of this amount of costs and fees.

At the same time, the Court will not award the full amount St. Mark requested. To the contrary, the Court will award a substantial amount less. More important than the proportion of the costs and fees that the Court will award, is that the Court reaches this amount after close consideration of the parties' arguments and a careful review of the information the parties provided.

The Court will award the sum of \$177,248.66 in costs and fees, and the amount to be awarded is fair and reasonable.

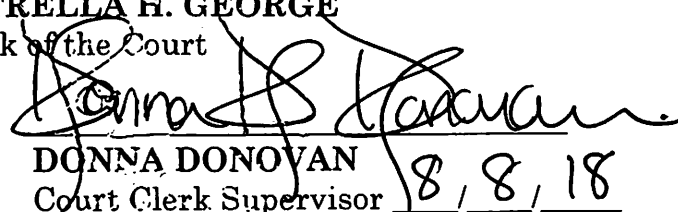
DATED: August 8, 2018



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:



DONNA DONOVAN
Court Clerk Supervisor

8, 8, 18

⁵⁵ Appellants' Resp. in Oppo. 3; St. Mark's Reply 3.