

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

NANCY ANDERSON,	)	Case No. ST-2008-CV-545
	)	
Plaintiff,	)	ACTION FOR PRELIMINARY
v.	)	INJUNCTIVE RELIEF, BREACH OF
	)	CONTRACT, DECLARATORY
BASIL BRYAN,	)	RELIEF, NUISANCE AND DAMAGES
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

On October 23, 2013, Defendant Basil Bryan ("Bryan") filed Defendant's Request for a Ruling on Defendant's Post-trial Motions Dated December 24, 2012 (Bryan's "Request for Ruling"). In his Request for Ruling, Bryan requests further ruling on the Post-trial Motions and Incorporated Memorandum of Law (Bryan's "Post-trial Motion") that he filed with the Court on December 27, 2012. Plaintiff Nancy Anderson ("Anderson") filed an Opposition to Bryan's Request for Ruling on November 25, 2013, and Bryan filed his Reply to Anderson's Opposition on December 9, 2013. In order to facilitate the resolution of a case that has been pending since 2008, the Court will entertain Bryan's Request for Ruling. However, Bryan's Post-trial Motion will be denied, not only because it is untimely, but also because the arguments raised therein are unsupported by the record.

BACKGROUND

This case concerns a real estate transaction that took place in 2002, in which Bryan contracted to sell Parcel No. 17-5C, Estate St. Peter, St. Thomas, Virgin Islands (the "Property"), to Anderson. As part of the deal, the parties executed an agreement that granted Anderson an easement to access her property and required Bryan to pave a roadway on that easement to certain specifications. Bryan's obligation to pave the easement was memorialized in Paragraph 15(b) of the contract of sale, and on page one of a description of the easement.¹ Bryan did not pave the roadway. On November 10, 2008, Anderson instituted this action against Bryan alleging breach of contract and nuisance, and requesting an injunction.² Prior to trial, the Court dismissed the breach of contract action on statute of limitations grounds.

¹ The contract of sale was admitted at trial as Plaintiff's Exhibit 1, and the discretion of the easement was admitted as Plaintiff's Exhibit 4.

² Moonpath, LLC was the original plaintiff in this case. However, by Order dated July 29, 2010, the Court dismissed Moonpath as a plaintiff because it did not have standing to assert any of the claims before the Court. Plaintiff Nancy Anderson was substituted. The Court found that Moonpath's status as a named plaintiff did not result from Anderson's bad faith. Order, 6 (July 29, 2010). Consequently, the Court refused to sanction Anderson for Moonpath's participation in the action. *Id.*

The matter went to trial in May of 2011, and the jury returned a verdict for Anderson on all counts. Specifically, the jury found that Bryan created a nuisance and awarded compensatory damages in the amount of \$75,000 to Anderson as a result.³ Additionally, the jury found that Bryan was obligated to pave a portion of the easement,⁴ and that Bryan agreed that he would not use the road along the easement.⁵ The jury also found for Anderson on Bryan's counterclaims. Specifically, the jury found that Bryan did not prove that Anderson trespassed on Bryan's property,⁶ that Bryan did not prove that he was not required to pave the road,⁷ and that Bryan did not prove that he was free to use the road along the easement to enter and leave his property.⁸

On June 22, 2011, Bryan moved for a directed verdict. He also submitted a memorandum of law on the defense of unconscionability, which he had raised in his Answer to the original Complaint but had not presented to the jury. In an Order dated November 2, 2012, the Court found that Bryan had a right to access the property covered by the easement, thus clarifying that Anderson could only enforce her right of exclusive use against third parties.⁹ The Court denied the remaining portions of Bryan's two motions.¹⁰

On November 2, 2012, the Court entered its Judgment in this matter. Among other things, the Judgment clarified that Anderson's exclusive easement did not prevent Bryan from using the easement. The Judgment mirrored the jury's findings in all other regards, and dismissed Bryan's counterclaims.

On January 17, 2013, the Supreme Court of the Virgin Islands issued an opinion in the case of *Anthony v. FirstBank Virgin Islands*,¹¹ discussing, among other things, the continuing violations doctrine. After reviewing the Supreme Court's opinion, this Court reconsidered the portion of its Judgment pertaining to Anderson's nuisance claim. By Order dated June 24, 2013, the Court found that Anderson's nuisance claim was barred by the statute of limitations,¹² vacated the jury's \$75,000 award, and dismissed Anderson's nuisance action.¹³ The Court did not disturb the portion of its Judgment ordering Bryan to pave a portion of the easement for Anderson. Approximately four months later, Bryan filed his Request for Ruling.

³ Verdict Form, 1, 2.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

⁹ Order, 6 (Nov. 2, 2012).

¹⁰ *Id.*

¹¹ 58 V.I. 224 (V.I. 2013).

¹² Order, 2-4 (June 24, 2013).

¹³ *Id.* at 5.

ANALYSIS

Bryan's Request for Ruling on his Post-trial Motion presents the only remaining issue in this case. Bryan's Post-trial Motion requests two forms of relief.¹⁴ First, Bryan requests that the Court vacate the jury's \$75,000 damage award because it was speculative.¹⁵ Since this award was already vacated by this Court's June 24, 2013 Order, Bryan's first request is moot. Thus only outstanding issue is whether this Court should vacate the jury's determination that Bryan is obligated to pave the easement.¹⁶

I. BRYAN'S POST-TRIAL MOTION WAS NOT TIMELY FILED, AND IS THUS NOT PROPERLY BEFORE THE COURT.

Bryan's Post-trial Motion was filed "pursuant to Rules 50 and 59, F.R. Civ. P."¹⁷ A motion under either Federal Rule 50 or Federal Rule 59 must be made within 28 days of the Court's judgment.¹⁸ Here, the Court entered its Judgment on November 2, 2012, and Bryan had until December 3, 2012 to file motions pursuant to Federal Rules 50 and 59. Because he did not file his Post-trial Motion until December 27, Bryan's Post-trial Motion was not timely filed.

In Bryan's Reply to Anderson's Opposition to Bryan's Request for Reconsideration, Bryan claims that his tardiness is excusable because he had moved for an enlargement of time to file his Post-trial Motion.¹⁹ The Court did not grant this extension, but Bryan was never entitled to an enlargement of time to file his Post-trial Motion. In addition to the language contained in Federal Rules 50 and 59,²⁰ Federal Rule 6(b)(2) prohibits courts from extending the 28-day deadline established by those rules.²¹

Although the Superior Court generally retains discretion to enlarge the period of time for filing papers with the Court,²² the restrictions imposed by Federal Rule 6 apply to motions filed under Federal Rules 50 and 59, regardless of whether those motions are filed in the Superior Court.

¹⁴ Def.'s Request for a Ruling on Def.'s Post-trial Mots. Dated Dec. 24, 2012 1. Bryan also clearly states that his Post-trial Motion raises "several other issues, which had been previously raised and adjudicated . . . but were not argued in the [Post-trial Motion] so as to preserve them for appeal." *Id.* (emphasis added). Since these issues have already been adjudicated and were not reargued Bryan's Post-trial Motion, they are not addressed in this Memorandum Opinion.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1. Federal Rule of Civil Procedure 59 applies to this proceeding through the operation of Superior Court Rule 50, while Federal Rule of Civil Procedure 50 applies to this proceeding through the operation of Superior Court Rule 7.

¹⁸ See FED. R. CIV. P. 50(b) (noting that motions for judgment as a matter of law must be filed not later than 28 days after the entry of judgment; *id.* 50(d) (observing that a losing party must file a motion for a new trial within 28 days after the entry of the judgment); *id.* 59(b) (observing that the time to file a motion for a new trial is no later than 28 days after the entry of judgment); *id.* 59(e) (stating that the same deadline applies to motions to alter or amend a judgment).

¹⁹ Def.'s Reply to Pl.'s Opp. to Def.'s Request for Ruling 2.

²⁰ See Committee Notes to Federal Rule of Civil Procedure 6(b) (observing that Rule 6(b) is a rule of general applicability, and that the time limits imposed under Rule 59(b) and (d) are exceptions).

²¹ Federal Rule of Civil Procedure 6 applies to this proceeding through the operation of Superior Court Rule 7.

²² SUPER. CT. R. 10.

According to Superior Court Rule 50, motions to set aside defaults, judgments by default, or judgments after trial are all governed by Federal Rules of Civil Procedure 59 to 61.²³ Thus, the Rules of the Superior Court contemplate that motions filed pursuant to Federal Rules 50 and 59 will be governed by the framework established by the Federal Rule 6, and not by Superior Court Rule 10's more permissive standard. Consequently, a party seeking to modify a judgment under either Federal Rule 50 or Federal Rule 59 only has 28 days after the entry of judgment to file its motions, and no more.

Even if the deadlines prescribed by the Federal Rules were inapplicable, Bryan was still obligated to receive the Court's permission to file his Post-trial Motion out of time. No such permission was granted.

Bryan was thus required to file his Post-trial Motion by December 3, 2012. Because he failed to do so, Bryan's request that this Court vacate the jury's determination that Bryan is obligated to pave the easement must be denied as untimely.

II. THE RECORD DEMONSTRATES THAT CONSIDERATION WAS EXCHANGED FOR BRYAN'S OBLIGATION TO PAVE THE EASEMENT.

Bryan argues that "[t]he [p]aving of the [e]asement was [u]nsupported by [c]onsideration, and the [j]udgment [e]ntered on [j]ury [v]erdict [m]ust [t]herefore be [v]acated."²⁴ He contends that "failure of consideration" was raised "early on in his pleadings."²⁵ Bryan also argues that "[t]he evidence adduced at trial . . . fully supported his defense;[] and **no** evidence was adduced by Plaintiff which showed *any* consideration for the paving obligation allegedly imposed on the Defendant, which was substantial"²⁶ A review of the trial transcripts and the exhibits introduced during trial contradicts Bryan's claim.

The contract between Anderson and Bryan and the description of the easement introduced at trial both recite consideration. Plaintiff's Exhibit 1, the contract of sale between Anderson and Bryan, demonstrates that Bryan covenanted to pave the easement at issue. In exchange for the purchase price of "\$75,790.00 USD,"²⁷ Bryan agreed, among other things, to "cause the intended roadway to be paved with concrete at a minimum width of sixteen (16) feet and six (6) inches thickness."²⁸ Similar language appears in Plaintiff's Exhibit 4, the description of the easement at issue. In Plaintiff's Exhibit 4, Bryan "agrees to pave Easement "B"²⁹ with concrete to a minimum width of sixteen (16) feet and a minimum thickness of six (6) inches within ninety (90) days . . ."

²³ SUPER CT. R. 50.

²⁴ Def.'s Post-trial Mot. and Incorporated Mem. of Law 2.

²⁵ *Id.*

²⁶ *Id.* at 3 (emphasis in original).

²⁷ Pl.'s Tr. Ex. 1, at 1.

²⁸ *Id.* at 3, ¶ 15(b).

²⁹ As used in Plaintiff's Exhibit 4, the term "Exhibit B" refers to a map attached to the easement description, which purports to show the location of the easement that Bryan was to pave.

in exchange for “Ten Dollars (\$10.00) and other sufficient consideration”³⁰ This document was signed by Bryan and by Anderson.³¹

Plaintiff adduced testimony from the attorney responsible for drafting both the contract of sale between Anderson and Bryan and the description of the easement at issue. With specific reference to Plaintiff’s Exhibit 4, the attorney testified that “the important language of that [document] is ‘and other sufficient consideration’”³² He explained that the paving obligation contained in paragraph 15(b) of the contract of sale “was part and parcel of the consideration” exchanged by the parties.³³ On cross examination, the witness was asked whether Bryan received “any additional consideration” in return for the obligation to have to pave that portion of the road as per the easement agreement.”³⁴ The witness responded “[y]es. [Bryan] did receive consideration.”³⁵ The witness again clarified that the paving obligation was “part and parcel of the purchase price.”³⁶ The witness stated that if the easement had come later, it would have been supported by separate consideration, but he clarified that the paving obligation was supported by consideration.³⁷

Plaintiff also adduced testimony from an appraiser that the purchase price paid by Anderson included the price of paving the easement. Specifically, the appraiser testified that “by paying \$75,790 Nancy Anderson actually paid Basil Bryan to pave the parcel.”³⁸

During Plaintiff’s cross examination of Bryan, Bryan was shown a copy of the contract of sale and the easement description.³⁹ Bryan acknowledge that he signed the document,⁴⁰ that he agreed to sell Anderson the Property,⁴¹ and that he knew he was signing a warranty deed.⁴² Bryan also testified that the contract of sale and the easement description were explained to him before he signed them.⁴³

Williston observes that “the law will not inquire into the adequacy of consideration”⁴⁴ He further instructs that “the fact that the relative value or worth of the exchange is unequal is irrelevant so that anything which fulfills the requirement of consideration will support a promise, *regardless of the comparative value of the consideration and the thing promised.*”⁴⁵ Although Williston and the myriad of case law that he cites does not bind this Court, it supports the Court’s

³⁰ Pl.’s Tr. Ex. 4, at 1.

³¹ *Id.* at 2.

³² Tr. Trans. 80:7–10 (May 9, 2011).

³³ *Id.* at 80: 1–25.

³⁴ *Id.* at 210:17–25

³⁵ *Id.* at 211:2.

³⁶ *Id.* at 211:3–8.

³⁷ *Id.* at 211:9–13.

³⁸ Tr. Trans. 163:14–16 (May 17, 2011).

³⁹ Tr. Trans. 180:10–13 (May 19, 2011).

⁴⁰ *Id.*

⁴¹ *Id.* at 185:14–16.

⁴² *Id.* at 185:23–25; 186:1–6

⁴³ *Id.* at 202:6–10.

⁴⁴ See WILLISTON ON CONTRACTS § 7:21, 456–61 (collecting cases).

⁴⁵ See *id.* § 7:21, 456–65 (emphasis added) (collecting cases).

conclusion that the evidence adduced by Plaintiff during the trial of this matter was sufficient to submit the question of whether Bryan was under an obligation to pave the easement to the jury. Because Bryan's argument concerning the alleged absence of consideration is without merit, the Court will not vacate the jury's determination that Bryan is under an obligation to pave the easement.

Accordingly, it is

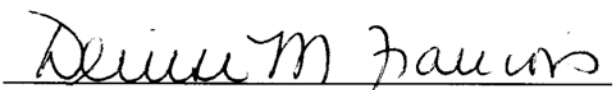
ORDERED that Defendant's Request for a Ruling on Defendant's Post-trial Motions Dated December 24, 2012 is **GRANTED**; and it is further

ORDERED that the portion of Defendant's Post-trial Motion and Incorporated Memorandum of Law requesting that this Court vacate the jury's \$75,000 damage award is **DENIED AS MOOT** pursuant to this Court's July 24, 2013 Order; and it is further

ORDERED that the remaining request for relief contained in Defendant's Post-trial Motion and Incorporated Memorandum of Law—that this Court vacate the jury's determination that Bryan is obligated to pave the easement—is **DENIED**; and it is further

ORDERED that a copy of this Order shall be directed to Attorney Karin A. Bentz, counsel for Plaintiff, and to Attorney Joseph Arellano, counsel for Defendant.

Dated: June 1, 2015

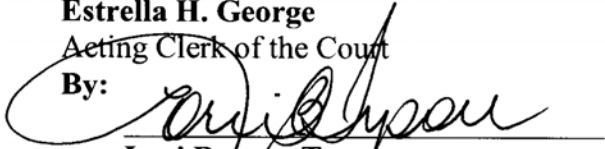

DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:

Estrella H. George

Acting Clerk of the Court

By:


Lori Boynes-Tyson

Court Clerk Supervisor 6/2/15