

IT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

IRVIN A. SEWER

Plaintiff)

)

)

)

vs)

)

CHARLES A. HAMILTON

CHARLES A. HAMILTON AND
ASSOCIATES

)

)

Defendant

CASE NO. ST-00-CV-0000473

ACTION FOR: TRESPASS

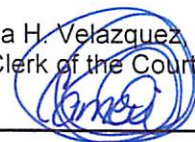
**NOTICE OF ENTRY OF
MEMORANDUM OPINION &
(2) ORDERS**

TO: ARCHIE JENNINGS, ESQ.
IRVIN A. SEWER, PRO SE
LYLE A. BAPTISTE, PRO SE
JUDGES & MAGISTRATES OF THE SUPERIOR
COURT
LAW BOOK, IT, CLERK OF THE COURT

Please take notice that on July 06, 2011 a(n) MEMORANDUM OPINION &
(2) ORDERS dated July 05, 2011 was entered by the Clerk in the above-entitled
matter.

Dated: July 06, 2011

Venetia H. Velazquez, Esq.
Clerk of the Court



CAMEIL A. CLARKE
COURT CLERK I

DIVISION OF ST. THOMAS AND ST. JOHN

vs.

Defendants.

CASE NO. ST-00-CV-473

Pending before the Court are Defendants' motion for summary judgment¹ and Plaintiff Lyle Battiste's motion for summary judgment.² For the following reasons, both motions will be denied.

On August 11, 2000, Plaintiffs filed a *pro se* Complaint alleging trespass, professional negligence, and malpractice on the part of Defendants. Plaintiffs alleged the following facts: (1) they are co-owners of a two acre property known as 6ab Hansen Bay A, East End Quarter, St. John, USVI; (2) between 1979 and 1982, Defendants entered onto Plaintiffs' land and conducted surveys, which were subsequently recorded; (3) in the surveys, Defendants located Parcel 6e partially or wholly within the bounds of Parcel 6ab; and (4) on or about May 19, 1990, Violet Sewer, sister to Plaintiff Irvin Sewer, wrote a letter to Defendants requesting that Defendants correct surveying errors concerning the

² Battiste filed his motion on June 14, 2010.

boundaries of Parcel 6e. On September 12, 2000, Defendants filed an Answer asserting that Plaintiffs were estopped from bringing their claims due to the running of the statutes of limitations on those claims.

ANALYSIS

Rule 56 of the Federal Rules of Civil Procedure, made applicable to the Virgin Islands Superior Court through Rule 7 of the Rules of the Superior Court, provides that summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In considering a motion for summary judgment, a court must “draw ... all reasonable inferences from the underlying facts in the light most favorable to the non-moving party.” *Battaglia v. McKendry*, 233 F.3d 720, 722 (3d Cir. 2000). An issue is “genuine” if a reasonable jury could possibly hold in the nonmovant’s favor with regard to that issue. *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

a) Defendants’ motion for summary judgment.

Foremost, Defendants assert that this action should be dismissed based on the doctrines of res judicata and collateral estoppel. The doctrine of res judicata, or claim preclusion, “bars repetitious suits involving the same cause of action once a court of competent jurisdiction has entered a final judgment on the merits.” *U.S. v. Tohono O’Odham Nation*, 131 S.Ct. 1723, 1730 (2011). See also *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1070 (3d Cir.1990) (“res judicata gives dispositive effect to a prior judgment if the particular issue, albeit not litigated in the prior action, could have been

raised”). Collateral estoppel, or issue preclusion, “bars relitigation only of an issue identical to that adjudicated in the prior action.” *Id.* Generally, however, a person:

who is not a party or privy to a party to an action in which a valid judgment other than a judgment in rem is rendered (a) cannot directly or collaterally attack the judgment, and (b) is not bound by or entitled to claim the benefits of an adjudication upon any matter decided in the action.

Restatement of Judgments § 93 (1941). See also *Selkridge v. United of Omaha Life Ins. Co.*, 237 F.Supp.2d 600, 604 (D.V.I. 2002).

In *Netsky v. Violet Sewer et al.*, the District Court of the Virgin Islands determined that Defendant Hamilton had recorded surveys that correctly established the boundaries lines between Parcel 6e and Parcel 6ab. 205 F. Supp.2d 443, 456, 457 (D.V.I. 2002). The Court concluded that:

no genuine issue of material fact exist[ed] as to the validity and accuracy of Hamilton Surveys of Parcel 6E. Hamilton surveyed Parcel 6E in accordance with established surveying practices. He properly drew conclusions from available historical documents, informed testimony of the property owners, and his own investigative fieldwork.

Id. Notwithstanding, *Netsky* was an action to determine color of title, while the claims in this action sound in tort. Moreover, Defendants were not parties, or in privity with a party, in *Netsky*. See Restatement of Judgments § 93, Comment d, “collateral estoppel” (“if in an action it is found ... that one of the parties was or was not guilty of ... negligence ... the finding has no effect upon persons who were not parties or privies to the judgment”). As a result, the doctrines of res judicata and collateral estoppel are inapplicable to this case.

Defendants also make the following statement: “[t]herefore besides the issue of being beyond the two year statute of limitations for negligence as per Title 5 V.I.C. §

31(5)(A)..." As written, the statement is not a complete sentence and is insufficient to be construed as a valid legal argument. As a result, Defendants' motion will be denied.

b) Plaintiff Battiste's motion for summary judgment.

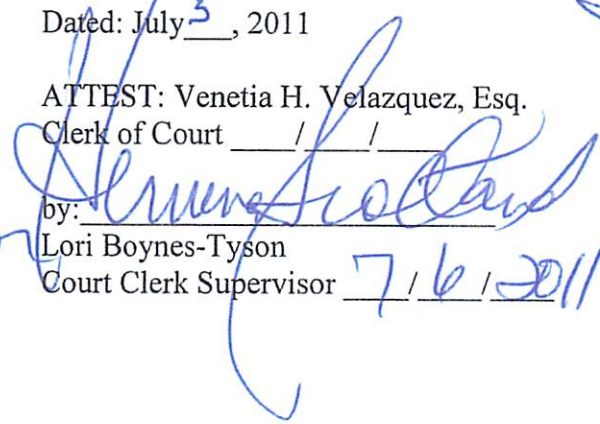
In his motion, Plaintiff Battiste raises several constitutional arguments that challenge "prior Superior Court cases, Civil No. 99-237, Civil No. 13-1979, and 02-2696," as well as a "District Courts (sic) Ruling." Plaintiff may not use this action as a vehicle to appeal previous court rulings. See *El-Hewie v. Supreme Court of New Jersey*, 2011 WL 1899298, at *2 (D.N.J. 2011) ("[t]o the extent [plaintiff's] allegations reflect her disagreement with the resolution of her previous cases, the proper vehicle for raising such a challenge is to file an appeal in those cases, not bring a new action"). As a result, Plaintiff Battiste's motion for summary judgment will be denied.

An Order consistent with this Opinion shall follow.

Dated: July 5, 2011

ATTEST: Venetia H. Velazquez, Esq.

Clerk of Court / /

by: 

Lori Boynes-Tyson

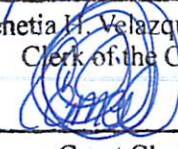
Court Clerk Supervisor 7 / 6 / 2011


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

CERTIFIED A TRUE COPY

Date: 07/06/2011

Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

IRVIN A. SEWER and LYLE A. BATTISTE,

Plaintiffs,

vs.

CHARLES A. HAMILTON and CHARLES A.
HAMILTON AND ASSOCIATES,

Defendants.

CASE NO. ST-00-CV-473

ORDER

Upon consideration of the premises, it is hereby

ORDERED that Defendants' motion for summary judgment is DENIED; and it is

ORDERED that Plaintiff Battiste's motion for summary judgment is DENIED;

and it is

ORDERED that a copy of this Order shall be directed to Plaintiff Irvin Sewer,
Plaintiff Lyle Battiste, and to Defendants' counsel of record.

Dated: July 5, 2011

ATTEST: Venetia H. Velazquez, Esq.

Clerk of Court

by:

Lori Boynes-Tyson

Court Clerk Supervisor

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

CERTIFIED A TRUE COPY

Date:

Venetia H. Velazquez, Esq.
Clerk of the Court

By:

Court Clerk

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

IRVIN A. SEWER and LYLE A. BATTISTE,

Plaintiffs,

vs.

CHARLES A. HAMILTON and CHARLES
HAMILTON AND ASSOCIATES,

Defendants.

CASE NO. ST-00-CV-0000473

ACTION FOR: TRESSPASS,
PROFESSIONAL NEGLIGENCE
AND MALPRACTICE

JURY TRIAL DEMANDED

ORDER

IT IS HEREBY ORDERED that this matter is scheduled for FINAL PRETRIAL CONFERENCE on Monday, August 22, 2011, at 3:00 p.m., in Courtroom IV; and it is

ORDERED that this matter is scheduled for JURY SELECTION on Friday, September 16, 2011, at 9:00 a.m., in Courtroom IV; and it is further

ORDERED that copies of this Order shall be served on the Plaintiffs, pro se, at the address provided to the Court and that a copy thereof shall be directed to Archie Jennings, Esq.

DATED: July 5, 2011

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: Lori Boynes-Tyson
Court Clerk Supervisor 07 / 06 / 2011

MICHAEL C. DUNSTON
Judge of the Superior Court
of the Virgin Islands

CERTIFIED A TRUE COPY

Date: 07/06/2011

Venetia H. Velazquez, Esq.
Clerk of the Court

By: [Signature]
Court Clerk