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

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| **3RC & COMPANY, INC.,** Plaintiff, vs. **BOYNES TRUCKING SYSTEM, INC., BOYNES GROUP, BREEZE SHIPPING INC., JAMES BOYNES, AND JOANNA BOYNES,** Defendants. | ) | CASE NO. ST-14-CV-624<br><br>APPLICATION FOR TEMPORARY RESTRAINING ORDER, INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT AND DAMAGES |

## MEMORANDUM OPINION

**THIS MATTER** is before the Court on Plaintiff's Motion for Partial Summary Judgment as to Counts III (Breach of Fiduciary Duty), V (Breach of Joint Venture), and VI (Breach of Contract) made pursuant to Federal Rule of Civil Procedure 56(a) and Virgin Islands Rule of Civil Procedure 56(a). Also before the Court is Defendants' Motion for Summary Judgment on all counts in the complaint. For the reasons set forth below, the Court will deny both motions.

### Factual and Procedural Background

Plaintiff 3RC filed a complaint in the Virgin Islands Superior Court on December 31, 2014, alleging that Defendants James and Joanna Boynes, and their company Boynes Trucking (collectively, "Boynes"), violated a joint venture agreement they entered into with 3RC in early 2009. The arrangement between the parties concerned a fuel depot and sales operation to be conducted by Boynes on St. Thomas, U.S. Virgin Islands. Under the parties' agreement, Roan Creque ("Creque"), principal and vice president of 3RC, was to provide the investment capital for the venture and secure the necessary rental property and equipment, while Boynes was to pay the operating costs of the business, collect revenues, service loans incurred by Creque to secure financing, purchase fuel from Hovensa petroleum refinery, pay the monthly rent on the rental property, and serve clients. Whatever the finer details of the agreement between the parties, the agreement was not put in writing.

3RC alleges Creque secured the funding for the venture by obtaining a $900,000 mortgage loan from Banco Popular de Puerto Rico ("BP"), a $100,000 loan from the Virgin Islands Government Development Bank ("GDB"), and a $50,000 loan from the United States Small Business Development Association ("SBDA"). 3RC further alleges Creque put up his home as mortgage collateral in obtaining the loan from BP. Creque also alleges he contributed $400,000 of his personal savings. Defendants did not participate in securing any of these loans and none was party to any of the loans. In order to secure a location from which to run the business, Creque obtained a lease in 3RC's name for Lot 14-1 Lindbergh Bay, St. Thomas. Pursuant to the parties' arrangements, Boynes was to pay the monthly rent due under the lease to 3RC, who would remit the rent to the landlord. In servicing the loans Creque obtained for the startup, Boynes would make payments either directly to Creque, who would pay the lenders, or directly to the lenders on Creque's behalf.

On February 25, 2009, 3RC and Boynes met to discuss the fuel business and certain aspects of the parties' working relationship. The parties' discussions were documented in meeting minutes ("Minutes") that were prepared after the meeting and then signed by both parties. The Minutes indicated that there was, "discussion regarding the formation of a joint venture company primarily for the purpose of paying the month overhead," but that, "[b]y unanimous vote the plan was tabled permanently."

The loose arrangement between 3RC and Boynes apparently worked to the parties' satisfaction for a number of months. Creque and 3RC provided investments funds, and Boynes ran the day-to-day operations of the business. Boynes made regular payments either directly to 3RC or to Creque's lenders (indeed, Boynes appears to have made nearly $800,000 in payments to either Creque, 3RC, GDB, or SBDA beginning in 2010 through 2013[1]). Boynes even advertised "Boynes and 3RC Trucking" on the business' fuel trucks. However, at some point things began to fall apart, and the parties began to quarrel; Creque claims it all started because Boynes refused to provide any financial statements to 3RC, which Creque had to provide to BP as part of its loan obligations; Boynes claims it was because Creque misrepresented to Boynes his monthly loan payment obligations as substantially higher than they actually were. Whatever the reasons, things went sour, 3RC's name came off the trucks, and the parties split. Boynes eventually ceased making payments to 3RC and the lenders, and Creque claims this led to him defaulting on his loans and a foreclosure on his house. Plaintiff sued claiming that the parties were

[1] *See* Defs. Mot. for Summ. J. and Supp. Mem. of Law (Corrected), Ex. Y, Z, AA & AB.

engaged in a joint venture and that Boynes' termination of payments was a breach of the parties' obligations.

The complaint asserts as Count I, injunctive relief. Injunctive relief is not a cause of action, and the issue of injunctive relief in this case was dealt with in an earlier decision of this Court. *See 3RC & Company, Inc. v. Boynes Trucking System, Inc., et al.*, Super. Ct. Civ. No. ST-14-CV-624 (V.I. Super. Ct. Jan. 8, 2015) (unpublished), *aff'd, 3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 548, 2015 V.I. Supreme LEXIS 22, *2. Of the remaining Counts, Count II alleges self-dealing; Count III, breach of fiduciary duty; Count IV, waste; Count V, breach of joint venture agreement; Count VI, breach of contract; and Count VII, unjust enrichment. Plaintiff filed a Motion for Partial Summary Judgment on September 1, 2017, and Defendants filed a Motion for Summary Judgment on all counts on the same day. On May 5, 2018, Plaintiff filed an Emergency Motion for a Ruling on its motion for partial summary judgment. As both parties' motions are before the Court, the Court will consider both in responding to the emergency motion.

## Legal Standards

Summary judgment is a "drastic remedy," *Williams v. United Corp.*, 50 V.I. 191, 194, 2008 V.I. Supreme LEXIS 9, *5, which should only be granted 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 movant is entitled to judgment as a matter of law," *id.* (citing Fed. R. Civ. P. 56). A fact is material only where it 'might affect the outcome of the suit under the governing law,'" *Gerald v.*

*R.J. Reynolds Tobacco Co.*, 2017 V.I. LEXIS 150, *5 (V.I. Super. Ct.) (quoting *Williams*, 50 V.I. at 194)), and a factual dispute is deemed genuine if, "'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Greene v. Virgin Islands Water & Power Authority*, 65 V.I. 67, 73 (V.I. Super. Ct. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

When reviewing the record under a summary judgment motion, a court, "must view the inferences to be drawn from the underlying facts in the light most favorable to the non-moving party," and, "must take the non-moving party's conflicting allegations as true if supported by "'proper proofs.'" *Williams*, 50 V.I. at 194 (citing *Seales v. Devine*, Civ. No. 2007-040, 2008 V.I. Supreme LEXIS 23 (2008)).[2] A party opposing a motion for summary judgment, the non-movant, "'may not rest upon the mere allegations or denials of his [or her] pleadings, but must set forth specific facts showing that there is a genuine issue for trial.'" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (quoting Fed. R. Civ. P. 56(e)).

To entitle the non-movant to proceed to trial, an issue of material fact needn't be clear enough, "to be resolved conclusively in favor of the party asserting its

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[2] The court in *Williams* cites to *Seales* when using the term "proper proofs," but the term does not appear in *Seales*. It does appear in *Haugh v. Allstate Ins., Co.*, 322 F.3d 227, 230 (3rd Cir. 2003), also cited by the *Williams* court. *Haugh* however attributes the expression to another Third Circuit case, *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 223 (1999), in which the phrase also does not appear. Most all the cases that use the term "proper proofs" in discussing a non-movant's burden under summary judgment come from the Virgin Islands, the U.S. District Court for the Eastern District of Pennsylvania, or the Third Circuit. A cursory review of all those cases reveals that most attribute the term either directly or indirectly to *Kopec v. Tate*, 361 F.3d 772, 775 (3rd Cir. 2004), which itself attributes the term to *Meritcare*, but again, "proper proofs" does not appear in *Meritcare* (let alone 'proof' or 'prove'); thus, this Court is left guessing to some extent precisely what sort of burden it entails.

existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Id.* at 248-49 (citation and internal quotations omitted). Such evidence presented by the non-movant, "may be direct or circumstantial, but the mere possibility that something occurred in a particular way is not enough, as a matter of law," for a jury or judge to find it *probably* happened that way. *Williams*, 50 V.I. at 195 (citation and internal quotations omitted). Distilling then what is required to survive summary judgment, there is that familiar rule that, "the nonmoving party's evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." *Id.* (citing *Saldana v. Kmart Corp.*, 43 V.I. 361, 364 (3rd Cir. 2001)).

## Analysis

### I. Breach of Joint Venture

While not yet addressed by the Virgin Islands Supreme Court, a number of courts have found that whether or not a joint venture exists is a fact question for the trial court to determine.[3] In *Estate of Antonio v. Pederson*, for example, the U.S.

[3] *Estate of Antonio v. Pedersen*, 2012 U.S. Dist. LEXIS 174987, *14-15 (D. Vt. December 11, 2012) (collecting a number of the cases that follow and finding that, whether a joint venture exists is a question of fact for the jury and that the existence or non-existence of a joint venture may be decided as a matter of law only if reasonable minds could not differ); *see, e.g., Rhodes v. Sunshine Mining Co.*, 113 Idaho 162, 166 (1987) ("Whether a relation of joint adventures exists is primarily a question of fact for the trial court to determine from the facts and the inferences to be drawn therefrom."); *In re PCH Assocs.*, 949 F.2d 585, 598 (2d Cir. 1991) ("Under Pennsylvania law, 'what constitutes a joint venture is a question of law; but whether a joint venture exists is generally a question of fact.'") (citation omitted); *Bd. of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Palladium Equity Partners*, LLC, 722 F. Supp. 2d 854, 865 (E.D. Mich. 2010) (denying summary judgment on question of whether a joint venture existed, noting that the facts "create issues that cannot be resolved at the summary judgment stage[,]" and explaining that the agreements "which decidedly disclaim any joint

District Court for the District of Vermont declined to enter summary judgment where a "rational juror" could find either way, writing, "the existence or non-existence of a joint venture may be decided as a matter of law only if reasonable minds could not differ." 2012 U.S. Dist. LEXIS 174987, *14-15 (D. Vt. December 11, 2012) (emphasis added) (citing *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir. 1991) ("Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper.")). Assuming the Virgin Islands Supreme Court would adopt the same approach, this Court concludes that because of the material, factual ambiguities surrounding the parties' relationship, it cannot decide through summary judgment whether or not the parties entered into a joint venture, and will decline to do so.

A joint venture can exist without a writing. The Virgin Islands Code incorporates the Uniform Partnership Act of 1997, which governs both partnerships and joint ventures in the Virgin Islands. *3RC*, 63 V.I. at 560 (citing *Yusuf v. Hamed*, 59 V.I. 841, 849-50, 2013 V.I. Supreme LEXIS 67, *15) (the partnership act is

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relationship among the three [parties] - are not themselves dispositive on the issue[.]"); *Bowers v. Wurzburg*, 207 W. Va. 28 (1999) ("[T]he question of whether or not a joint venture exists is to be answered by the jury."); *Bahrs v. RMBR Wheels, Inc.*, 574 N.W.2d 524, 529 (Neb. Ct. App. 1998) ("Whether a joint or common enterprise exists is generally a question of fact."); *Olson v. Smithtown Med. Specialists, P.C.*, 602 N.Y.S.2d 649, 650 (N.Y. App. Div. 1993) ("The issue of whether a partnership or joint venture exists is a question of fact."); *Latiolais v. BFI of Louisiana, Inc.*, 567 So.2d 1159, 1161 (La. Ct. App. 1990) ("It is well settled that while what constitutes a joint venture is a question of law, the existence or nonexistence of a joint venture is a question of fact."); *Mountain State Props., Inc. v. Robinson*, 771 P.2d 5, 6 (Colo. App. 1988) ("Whether a joint venture exists is a question of fact."); *Dority v. Driesel*, 706 P.2d 995, 999 (Or. Ct. App. 1985) ("Those elements necessary to constitute a joint venture are matters of law; whether a joint venture exists under the evidence is a question of fact."); *Helfenbein v. Barae Inv. Co.*, 508 P.2d 101, 104 (Ariz. Ct. App. 1973) (concluding that whether the parties intended to form a joint venture is an issue for the trier of fact); Restatement (Second) of Torts § 491 cmt. c (1965) ("Whether these elements [of a joint venture] exist is frequently a question for the jury, under proper direction from the court.").

incorporated at 26 V.I.C. §§ 1-274). Under the Act, a partnership or joint venture can be shown even absent a written agreement by evidence of (1) the express or implied intent of the parties, (2) joint control and management of the business, (3) the sharing of the profits and losses, and (4) a combination of property, skill or knowledge. *Id.* (citation and internal quotations omitted). The manner in which parties to an agreement define the relationship is probative of whether it is a joint venture, but the question ultimately is an objective one—whether the parties intended to do the acts that in law constitute a partnership. *Yusuf*, 59 V.I. at 850. Thus, the lack of subjective intent to form a partnership is not determinative under the UPA, and a court should look also at whether the parties intended to do things that constitute a partnership. *Id.* (citing *Redland v. Redland*, 288 P.3d 1173, 1213 (Wyo. 2012)).

3RC argues that the parties' interactions with each other demonstrated an "explicit intention to form a partnership or joint venture." It points to the February 25, 2009 meeting Minutes in support of this assertion, in spite of the fact that the Minutes expressly disclaim a joint venture agreement.[4]

3RC argues alternatively that, even if there was no express agreement between the parties, there was an implied agreement to form a partnership or joint venture.

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[4] 3RC makes the peculiar argument that, "the oral agreement between the parties to 'table permanently' cannot defeat the express written intention of contracting parties without running afoul of the parole evidence rule." Yet if the Court is to rely on the Minutes as the document expressing the parties' agreement, as 3RC seems from time to time to suggest it do, then writing contained in the Minutes—i.e., "By unanimous vote the plan was tabled permanently"—is not parole evidence but *is* the parties' agreement (to consider contemporaneous oral agreements, as 3RC would have the Court do, would in fact violate the parole evidence rule). In that case, the sentence in the Minutes about tabling a joint venture does not "defeat the express written intention" of the parties; it *is* their expressed, written intention.

In support of this argument, 3RC alleges that it was, "[Creque's] intention to bring in the defendants as partners in his company and he actively sought out the defendants to join him in the endeavor."[5] 3RC points to the parties' shared interest in the subject matter of the venture—a fuel distribution business—and argues that, "the mutuality of interest between the parties was so intertwined that they had key and overlapping roles in the effectuation of the fuel delivery business."[6] And while conceding that, "plaintiff was denied actual control over the business," 3RC asserts that, "[p]laintiff had a superior right and authority to direct the affairs of a joint business that bore the name of '3RC & Boynes Trucking' to govern the movements, conduct and outcome of the enterprise."[7] 3RC insists also that, "Creque only mortgaged his home and assume [sic] millions of dollars in debt because he intended to be co-owner and partner in the fuel delivery business," and argues that the repayments Defendants made to Creque and 3RC are, "*prima facie* evidence of the intent of the parties to share the profits."[8] Lastly, 3RC contends that, "in his deposition [James Boynes] acknowledged he had a fuel delivery idea similar to Creque's, but did not know how to get it off the ground,[9]" and contends that the Boynes would never have been able to develop the business without Creque's input.

To the contrary, Defendants argue that the arrangement between the parties was no more than a debt servicing agreement, and that, "Creque offered to make

[5] Pl.'s Am. Opp'n to Defs.' Mot. for Summ. J. 7.
[6] *Id.* at 8.
[7] *Id.* at 9.
[8] *Id.*
[9] *Id.* at 10.

funds available to Boynes in connection with a wholesale and retail gasoline operation to be conducted by Boynes . . . ."[10] Defendants argue that there was no joint management of that operation, and offer the Minutes from the February 2009 as proof that, "the parties unanimously agreed to table the formation of such a company permanently." They contend that, "the parties here ultimately did not do the acts in law that constitute a joint venture," and conclude that, "3RC can point to no evidence that any of the partnership test factors have been met." The Court does not agree.

Defendants reference frequently to the prior Superior Court and Supreme Court decisions issued in this matter, wherein both of those courts suggested that evidence of a joint venture was lacking. *See, e.g.*, *3RC*, 63 V.I. at 560 ("3RC failed to submit any evidence supporting any of [the elements of a partnership absent written agreement]."); *3RC & Co. v. Boynes Trucking System, Inc., et al.*, Super. Ct. Civ. No. ST-14-CV-624 at 7 (V.I. Super. Ct. June 21, 2015) (unpublished) ("To emphasize, [this] Court notes the finding in the January 2015 Order that 'Plaintiff's own evidence demonstrates that no joint venture was conceived.'") (quoting the earlier order of Jan. 8., 2015)). This Court is of course mindful of those decisions. However, it has before it now more evidence than was in the record before any of the earlier decisions were granted. Importantly, it now has deposition testimony, including from Roan Creque, Ornette Creque, James Boynes, and Joanna Boynes. That testimony sheds more light onto the parties' relationship.

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[10] Defs. Mot. for Summ. J. and Supp. Mem. of Law (Corrected) 1.

Also, the courts in those earlier decisions were addressing different legal maneuvers, which have different purposes and come with different burdens.[11] In moving for a preliminary injunction, for example, a movant is held to a different standard than under a summary judgment motion: "the party seeking relief must by a clear showing, carry the burden of persuasion," that it, "has a reasonable probability of success on the merits." *Samuel v. V.I. Joint Bd. of Elections*, 2013 U.S. Dist. LEXIS 3689, *9-10 (citations and internal quotations omitted). Summary judgment is a different kind of creature: a court must review the facts in the light *most favorable* to the non-movant, and a party opposing summary judgment need only successfully *produce* "more than a scintilla" of evidence.

Through the deposition testimony submitted, the Court gleans more than a scintilla of evidence supporting both parties' arguments. In the March 23, 2017

[11] *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 391 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. A party thus is not required to prove his case in full at a preliminary-injunction hearing . . . and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merit[.]) (citations omitted); *Samuel v. V.I. Joint Bd. of Elections*, 2013 U.S. Dist. LEXIS 3689, *10 ("The purpose of a preliminary injunction is to preserve the status quo, not to decide the issues on their merits.") (quoting *Anderson v. Davila*, 37 V.I. 496 (3d Cir. 1997)); *Smyth v. Rivero*, 282 F.3d 268, 277 (4th Cir. 2002) ("The proceedings below in this case present an example of the preliminary, incomplete nature of the merits examination . . . in the preliminary injunction inquiry. . . . The interplay of these equitable and legal considerations and the less stringent assessment of the merits of claims that are part of the preliminary injunction context belie the assertion that the district court's decision to grant a preliminary injunction was an 'enforceable judgment[] on the merits' or something akin to one for prevailing party purposes.) (quoting *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 600 (2001)); *Wachovia Sec., L.L.C. v. Stanton*, 571 F. Supp. 2d 1014, 1019 (N.D. Iowa 2008) ("In making any findings of fact in this ruling, the court is mindful of the general rule that 'the findings of fact and conclusions of law made by a court granting a preliminary injunction or temporary restraining order are not binding at trial on the merits.'") (quoting *Camenisch*, 451 U.S. at 395).

deposition of James Boynes, for example, Boynes was asked about the arrangement between 3RC and Boynes:

> Q: Yeah, what was the arrangement about?
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> . . .
>
> A: Yeah. We were supposed to sit down and talk about selling some– purchasing and selling some fuel down at the Home Depot– I mean – not at the Home Depot, at the fuel depot, at the fuel gas station, and that's basically what it was.
> Q: You were supposed to sit down and talk–
> A: Well, that's what I'm saying. We sit down and discuss about, you know, doing something like that.
> Q: But tell me what the substance of the agreement to do something is.
> A: The substance of the agreement–
> Q: Yes.
> A: – was to run a fuel depot, one that purchases and sells fuel.
> Q: And that would be 3RC & Company and whom?
> A: Myself, Boynes Trucking System. Dep. 12.

He confirmed Creque's contention that Creque reached out to him about starting a business:

> Q: Prior to the meeting at Secret Harbor, did you have any cause to have any relations with 3RC & Company and Mr. Roan Creque?
> A: No. Prior to Secret Harbor, he made contact with my parents about a concept. They told him that I had the same concept, so that's why we got together and talked. *Id.* at 15-16.

At another point in the deposition, his answers suggested the parties might have intended to operate a business together:

> Q: So there was an agreement you were going to be moving fuel for 3RC?
> A: No, not for 3RC.
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> . . .
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> Q: Well, tell us what the agreement was.
> A: The agreement was we'll be moving fuel– both of us had the same idea.
>
> . . .

> A: We're going to be moving fuel from St. Croix to St. Thomas to distribute to the different clients and stuff like that, different gas stations. *Id.* at 20.

Offering more detail about the parties' agreement, Boynes said:

> Q: When did you and Mr. Creque agree that he was going to advance the money to purchase the fuel?
> A: We didn't agree that he was going to advance the money to purchase the fuel.
> Q: What did you agree on?
> A: We had a lot of discussions about how we're gonna run this operation, how we're going to put it together. We discussed and discussed and discussed. *Id.* at 45.

Elaborating further about the parties' discussions, Boynes went on:

> A: No. What I'm saying is we discussed trying to get this operation going. You bring what I bring, I'm going to bring what I can bring, and we're going to put this thing together to make it happen. At that time [of the initial fuel purchase] [Creque] was able to come up with this money for this initial purchase, at that time. *Id.* at 46.

And still later, when discussing the parties' relationship, Boynes testified:

> A: No. [Creque] asked for financial statements because he wanted to meet with some people. He said to me, "I need some financial statements because I need to meet with some people." And I said, "No. You have the people them call me."
> Q: When was it that he asked for the financial statements?
> A: That was several years. This is– we're talking about five, six years ago. This is naturally when we were–
> Q: Together?
> A: – together, not broke up yet. So in there. *Id.* at 52.

Before this "break up", Boynes testified that the parties held out the operation in both the parties' names:

> Q: Okay. All right. Did the tanks on the truck, did they carry a label on them?
> A: Yeah.
> Q: What's the label?

> A: At the time it was "Boynes and 3RC Trucking."
> Q: At what time?
> A: At the time they were going in to Hovensa initially.
> Q: Did that change? It's no longer that way?
> A: Yeah, that changed.
> Q: When?
> A: That changed after Mr. Creque and I broke up.
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> . . .
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> Q: What, in your mind, caused the breakup?
> A: What, in my mind, caused the breakup?
> Q: Yeah.
> A: Finding out–realizing that this is– realizing that the chemistry isn't right, a lot of bad information– just chemistry ain't right. *Id.* at 48-50.

Boynes also testified that the companies, "operated from [20]08 to '12 or '10 . . . somewhere in there before we formally broke up, as far as I remember. *Id.* at 51-52. All of the above testimony, taken together and viewed in the light most favorable to 3RC, supports 3RC's argument that both parties intended—initially, if not for a number of years—to "run a fuel depot" together as a joint operation. It also hints that Boynes intended to hold the business out to the public as a joint operation.

There is also evidence suggesting that Creque held some sway in deciding how that operation was set up. Creque testified in his deposition:

> A: . . . So, after I received the lease from Mr. Parrott, I notify Jimmy, we are going to move down to Lindberg. So, I start–
>
> . . .
>
> Q: And when did you move down there?
> A: I don't remember the exact time. But it took some time because I had it hand cleaned first. There were a lot of trees and stuff and the fence had to be– the area where the fence had to be put up, I had the fence put up. Roan Creque Dep. 84-85, Mar. 23, 2017.

Boynes testified to a similar version of events: "All I remember, [Creque] calling me and saying that we found a spot that we're going lease; it's going to be down in

Lindbergh Bay. And I responded by saying 'Okay. Fine. I have to finish my lease in Smith Bay before . . ..'" James Boynes Dep. 92. Additionally, Boynes' testimony that the parties agreed, "[y]ou bring what I bring, I'm going to bring what I can bring, and we're going to put this thing together to make it happen," speaks to the "combination of property, skill or knowledge" that evidences a partnership. And the Court does agree with 3RC's observation that it would be odd for Creque, a retired, "regular civil service employee," to expend tremendous amounts of money procured through loans with third parties, and secure a long-term lease on a rental property, "simply to hand over the entire enterprise lock, stock, and barrel," to Boynes without expecting anything more in return than an uncertain payback on the money loaned, apparently without interest.

On the other hand, there is as well evidence that supports Boynes' position. The statement from the Minutes that the parties, "by unanimous vote," tabled permanently a plan for a joint venture, while not determinative, is nonetheless highly probative. *Bergford v. Commissioner*, 12 F.3d 166, 169 (9th Cir. 1993) ("To determine whether a partnership has been formed, the court does not look simply to the stated intent of the parties; rather, it analyzes the terms of their agreement and their conduct."); *but see Mannion v. CBI Acquisitions, LLC*, 2015 U.S. Dist. LEXIS 25863, *25 (D.V.I.) ("Where the agreement at issue contains clear language regarding the parties' intent to form, or not form, a joint venture or partnership, courts have given credence to that express intention."). Also, while there is some evidence that Creque influenced some decision-making in the formation of the venture (e.g., determining where the operation would set up), the evidence reflects that 3RC exercised no control over the day-to-day operations of the business. Finally, 3RC has put forward no evidence supporting its claim that 3RC shared in the profits or losses of the fuel shipping venture: contrary to 3RC's assertion, Defendants' payments made to Creque and 3RC are not proof, "of the intent of the parties to share the profits" if the payments were made in repayment of debts, *see* 26 V.I.C. § 22(c)(3); Boynes alleges that they were,[12] and 3RC has provided no evidence that they were not.

Viewing all the evidence in the light most favorable to the non-movants, the Court finds that both parties have produced the more than a scintilla of evidence necessary to overcome a motion for summary judgment, and neither has met its burden of showing "an absence of evidence to support the [other's] case. *Williams*, 50 V.I. at 194 (citing Celotex *Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Having considered the testimonial evidence in particular, the Court is confident that reasonable minds could differ as to whether a joint venture existed between the parties. Therefore, deciding the issue through summary judgment is not appropriate.

The motions with regard to Count V must be denied.

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[12] Boynes argues that, "[i]t did not matter to 3RC whether there was any net income, Boynes was obligated to make the debt service payment/reimbursement to 3RC." Such an arrangement is normally characteristic of a debt arrangement as opposed to a partnership. However, the payment amounts and payment dates were not in fact consistent. Also, a debtor also does not simply choose to stop paying a creditor, as Boynes did. And the Minutes did have a provision that seemed to indicate the parties agreed to each receive a one-third share of weekly profits, which is again an arrangement inconsistent with a debtor-creditor arrangement. The evidence of the payments made is therefore not conclusive as to whether those payments were debt payments or sharing of profits.

## II. Breach of Contract

Both parties move for summary judgment on the breach of contract claim, however neither has properly briefed that claim.

Beyond citing the basic elements for a breach of contract action, Defendants do little more than conclude that, "Since the parties never formed a joint venture, there is no contract as to which Boynes could be in breach."[13]

Plaintiff starts off on the right foot, describing the elements of breach of contract, but then proceeds to discuss equitable remedies (quasi-contract, unjust enrichment), which—as the cases *Plaintiff* cites make clear—are not available where the parties have a contract.[14] In addition to being paradoxical, Plaintiff's breach of contract analysis, like Defendants', ends up coming back to the question of a joint venture. In fact, Plaintiff quotes from Defendants' Motion for Summary Judgment in concluding, "[e]ither a joint venture or partnership is necessary for 3RC to succeed on Counts 1-V [sic] of their complaint and is the central issue in this matter [sic]."[15]

Since both parties argue that the success of the breach of contract claim turns on the existence of a joint venture or partnership, and since neither has offered any

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[13] Defs.' Mot. for Summ. J. and Supp. Mem. of Law (Corrected) 11.

[14] *E.g., Cacciamani & Rover Corp. v. Banco Popular de Puerto Rico*, 61 V.I. 247, 252, 2014 V.I. Supreme LEXIS 43, *5 ("Due to the unavailability of equitable remedies when a legal remedy is available, the general rule is that no equitable quasi-contractual claim can arise when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests since legal remedies are available to a plaintiff in a breach of contract action.") (citation and internal quotations omitted). *See also, Peppertree Terrace v. Williams*, 52 V.I. 225, 243, 2009 V.I. Supreme LEXIS 36, *31 ("An implied-in-law contract or a quasi-contract is established where 'there is no actual agreement between the parties, but the law imposes a duty in order to prevent injustice.'") (quoting *Int'l Data Prods. Corp. v. United States*, 492 F.3d 1317, 1325 (Fed. Cir. 2007)).

[15] Pl.'s Am. Opp'n to Defs.' Mot. for Summ. J. 5.

apt legal argument on the issue independent of the joint venture issue, the Court finds it is not appropriate to grant summary judgment on that claim.

The motions as to Count VI shall be denied.

### III. Breach of Fiduciary Duty

Plaintiff alleges that Defendant James Boynes breached his fiduciary duty to 3RC by withholding business information. 3RC alleges that because of this breach, Creque was unable to comply with BP's requirement that Creque provide "ongoing financial information related to the startup loan," and that as a result, Creque faced foreclosure on his home which was used to collateralize the loan.

"[T]o establish a claim for breach of fiduciary duty: (1) there must be a fiduciary relationship, (2) the fiduciary must have breached its duty imposed by such relationship, (3) the plaintiff must have been harmed, and (4) the fiduciary's breach must be a proximate cause of the plaintiffs harm." *Guardian Ins. Co. v. Khalil*, 63 V.I. 3, 18 (V.I. Super. Ct. 2012) (citing *Watts v. Blake-Coleman*, 2012 U.S. Dist. LEXIS 43454, *12-13 (D.V.I. Mar. 29, 2012)). The breach 3RC claims Boynes committed was of a duty imposed by the alleged joint venture: "Jimmy was a trusted family friend who maintained access to the confidential information about the joint fuel business and therefore, Jimmy owed 3RC a duty to provide information, without demand, so that 3RC could be informed of the *partnership business and affairs* . . .."[16] (emphasis

[16] Pl.'s Mot. for Partial Summ. J. 27.

added). Thus, no matter whether 3RC claims a fiduciary duty independent of the alleged joint venture (which it's not clear it does), the duty that 3RC claims was breached could only have arisen out the joint venture, if one existed. What's more, the crux of Defendants is again that the breach of fiduciary claim—like the breach of contract claim—"fails because there was no joint venture." The Court agrees the resolution of the joint venture issue is important to the resolution of the fiduciary duty claim.

Since the Court will not rule here on the existence of a joint venture or partnership, it cannot determine the issue of a breach of fiduciary duty.

The motions as to Count III shall be denied.

## IV. The Remaining Claims

Defendants seek summary judgment on the remaining claims: Count II, self-dealing; Count IV, waste; and Count VII, unjust enrichment.

Defendants' only argument regarding Counts II and IV is that they fail because of the absence of a joint venture (and again here, 3RC makes no argument to the contrary: "[e]ither a joint venture or partnership is necessary for 3RC to succeed on Counts 1-V [sic] of their complaint and is the central issue in this matter [sic]."[17] Defendants have made no other argument that they are entitled to judgment as a matter of law independent of the joint venture and fiduciary duty claims. Since the

[17] Pl.'s Am. Opp'n to Defs.' Mot. for Summ. J. 5.

Court will not determine those issues here, summary judgment must be denied as to self-dealing and waste claims.

Regarding the unjust enrichment claim, Defendants argue that it fails because, "3RC was fully compensated for its debt servicing arrangement with Boynes." Whether 3RC and Creque were fully compensated for their financial investments is far from clear in the record (e.g., $800,000 is not $1.4 million), and neither party has even provided the Court with a full accounting of 3RC's investments into the ventures or of Boynes' repayments.[18] In any case, the parties certainly do not agree that Plaintiff has been reimbursed. A genuine issue of material fact remains as to the unjust enrichment claim, and summary judgment must be denied on that alone.

The Court adds however, that as a legal matter, if it is found that a joint venture and contract existed then the unjust enrichment claim necessarily must fail. *Peppertree*, 52 V.I. at 243 ("An implied-in-law contract or a quasi-contract is established where there is no actual agreement between the parties, but the law imposes a duty in order to prevent injustice.") (citations and internal quotations omitted). Since those questions remain unresolved, that is an additional reason that the unjust enrichment claim cannot be decided here.

Defendants' motion as to the remaining counts must be denied.

[18] Creque claimed in his deposition that he doesn't recall receiving hundreds of thousands of dollars in checks despite apparently having endorsed the checks, and has made no mention of what he did with any money he has received. Defendants for their part claim that they've repaid Creque in full, even though they admit to stopping payments to him, and have not explained the clear difference between what they have paid (some $700,000) and what Creque allegedly invested (over $1 million).

## V. Conclusion

Because reasonable minds could differ as to whether the parties had entered into a joint venture or partnership, it is not appropriate for the Court to determine that issue on summary judgment. Also, a review of the evidence reveals that both parties have produced sufficient evidence to survive a motion for summary judgment. The parties' motion as to the breach of joint venture claim therefore must be denied. Both parties argue that a resolution of the joint venture question is determinative to the breach of contract claim, and neither party has thoroughly produced argument on the breach of contract issue independent of the joint venture claim. The motions as to the breach of contract claim also must be denied. The remaining claims cannot be determined at this stage, wherein the Court must decline to decide the issue of the existence of a joint venture. As such, the motions as to the remaining claims must be denied as well.

DATED: May 31, 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 5/31/2018