

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

ADRIAN CENNI and MAX ARC, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CASE NO. ST-15-CV-383
	)	
ESTATE CHOCOLATE HOLE LANDOWNERS	)	
ASSOCIATION, INC., JOHN DOE and JANE DOE,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Pending before the Court is the motion for joinder filed by Defendant Estate Chocolate Hole Landowners Association, Inc.¹ For the following reasons, ECHLA's motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

The facts of this case have been discussed at length in a previous Opinion.² For purposes of this Opinion, the Court notes that Plaintiffs filed a Complaint on August 17, 2015, seeking a declaration that Cenni possesses a prescriptive easement permitting him to maintain gateposts adjacent to Parcel 197, Estate Chocolate Hole, St. John (Count I). Also, Max Arc seeks a declaration that it is entitled to use the [Parcel] 501 Access Road and Easement A for ingress and egress to Parcel 501, and for other purposes that are usual and

¹ "ECHLA is the largest and oldest association of its kind on St. John ... with 300-plus member lots in a subdivision in the Chocolate Hole area." Counterclaim, at page 13.

² See *Cenni v. Estate Chocolate Hole Landowners Ass'n*, 2016 V.I. LEXIS 98, *5-6 (V.I. Super. Ct. July 18, 2016).

customary on St. John (Count II).³ In the alternative, Max Arc seeks a declaration that these uses are within its rights “under the doctrine of easement by necessity” (Count III)⁴ and injunctive relief “enjoining ECHLA to respect and refrain from interfering with those rights” (Count IV).⁵ Further, Max Arc makes claims for fraudulent misrepresentation (Count V) and negligent misrepresentation (Count VI) against ECHLA for inducing CZM⁶ to deny its application for developing and paving the Parcel 501 Access Road by falsely, or negligently, representing “that Max Arc had no right to use the [Parcel 501 Access Road] other than as a footpath.”⁷ Max Arc seeks an award of damages, including punitive damages, for ECHLA’s alleged slander of its title and wrongful acts, which have “denied the effective use of Parcel 501,” as well as the development and sale of the property (Count VII).⁸

On September 2, 2016, ECHLA filed a Counterclaim for threatened breach of ECHLA covenants based on Plaintiffs’ efforts to develop the access road (Count I); continued breach of ECHLA covenants (Count II); trespass (Count III); private nuisance (Count IV); public nuisance (Count V); fraudulent misrepresentation (Count VI);

³ Compl. ¶¶ 73-75.

⁴ Compl. ¶¶ 76-77.

⁵ Compl. ¶¶ 78-80. Although the claims are listed as separate counts, Max Arc’s request for declaratory relief under the doctrine of easement by necessity and request for injunctive relief are both labeled as Count III, due to what appears to be a clerical error. The Court refers to Max Arc’s request for injunctive relief as Count IV, rather than Count III, and rennumbers the counts that follow accordingly. *See* Compl. ¶¶ 76-80.

⁶ Division of Coastal Zone Management of the Virgin Islands Department of Planning and Natural Resources.

⁷ Compl. ¶¶ 81-91.

⁸ Compl. ¶¶ 92-95. Both Plaintiffs also seek a declaration of the legal rights and responsibilities of Cenni, Max Arc, and ECHLA as to ECHLA’s power to assess fines, costs, and attorney’s fees, whether those levied against Cenni and Max Arc are reasonable, and the extent to which ECHLA has a lien against the property to secure payment of those sums, if any (Count VIII).

intentional interference with contractual obligations (Count VII); preliminary injunction (Count VIII); and declaratory judgment (Count IX).

In the Counterclaim, ECHLA indicates that Parcel 501 Access Road, as referred to in the Complaint, is actually Lot 557⁹ as described on P.W.D. Drawing No. D9-325-T62 and other drawings.¹⁰ ECHLA asserts that it owns Lot 557¹¹ and that each member of ECHLA owns a fractional undivided interest in Lot 557 to access natural areas.¹² The counts of the Counterclaim are all directed at Plaintiffs' actions to develop a road on Lot 557.

ANALYSIS

a) Compulsory Joinder

A person must be joined as a party to an action if:

- (A) in that person's absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - (i) as a practical matter impair or impede the person's ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.¹³

"The moving party bears the burden of advancing a cogent argument on why the absent party is needed to prevent inconsistent or inadequate judgments."¹⁴

⁹ On other drawings, Lot 557 is referred to as Parcel 557. See Exhibit B to ECHLA's Counterclaim.

¹⁰ Counterclaim, at page 2.

¹¹ *Id.*, at page 13.

¹² *Id.*, at page 14.

¹³ Virgin Islands Rule of Civil Procedure 19.

¹⁴ *Grassy Brook Village v. Richard D. Blazej, Inc.*, 140 Vt. 477, 478, 439 A.2d 273, 274, 1981 Vt. LEXIS 631, *1 (Vt. Dec. 3, 1981).

The gist of ECHLA's argument for joinder is that thirteen property owners¹⁵ who are members of ECHLA have an interest in keeping "Lot 577" undeveloped because their properties are in close proximity to Lot 577. The thirteen property owners fall into three categories: owners who own property directly adjacent to Lot 557,¹⁶ owners whose properties overlook the pedestrian trail on Lot 557,¹⁷ and owners whose properties are situated within walking distance of Lot 557.¹⁸ ECHLA contends that these thirteen individual property owners should be joined as additional counterclaim plaintiffs because they "share" in some of ECHLA's counterclaims, including trespass (Count III), private nuisance (Count IV), and intentional interference of contractual relations (Count VII).¹⁹

ECHLA's joinder motion is rather unusual because ECHLA does not seek to join the thirteen individual owners in order to assert a claim against them or because these owners have asserted a claim against ECHLA. Rather, ECHLA seeks to join the owners as fellow counterclaim plaintiffs so that the owners may assert claims against Plaintiffs. In this regard, ECHLA's motion for joinder reads like a motion to intervene on behalf of the

¹⁵ In its reply, ECHLA proposes to join eleven more individual owners. However, it is inappropriate for ECHLA to attempt to join more parties through a reply brief. See *Lorraine Associates, L.L.C. v. Gov't of the V.I.*, 2016 V.I. LEXIS 24, *15 (V.I. Super. Ct. Mar. 18, 2016) (Much like raising new arguments for the first time in a reply brief, attaching new exhibits to a reply brief is a troubling practice because it potentially deprives the opposing party of the right to be heard.); *Der Weer v. Hess Oil Virgin Island Corp.*, 2014 V.I. LEXIS 109, *10, 61 V.I. 87, 96 (V.I. Super. Ct. 2014) (citing *Dannasch v. Bifulco*, 184 A.D.2d 415, 585 N.Y.S.2d 360, 362 (App. Div. 1992) ("The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds for the motion")).

¹⁶ Daniel McElwee owns lot 123 and Mary Bartolucci owns lot 537-3.

¹⁷ Gregory Gray owns Lot 31, James and Kathleen Swan own Lot 33, Kathleen McLaughlin owns Lot 34, Alan and Magda Smith own Lot 36, Kevyn Salsburg and Steven Bass own Lot 460, and Christopher Clark owns Lot 37-38.

¹⁸ James and Carol Furneaux own Lot 460 located a few hundred yards from Lot 557.

¹⁹ Motion for Joinder, at page 7.

thirteen owners. Indeed, ECHLA specifically requests in the motion for joinder that the Court permit the owners to intervene.

The Court finds that ECHLA has not stated sufficient grounds for compulsory joinder. ECHLA has not demonstrated that, in the absence of the thirteen individual property owners, the Court cannot afford complete relief to the existing parties or that an existing party may be subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. In addition, while the thirteen owners have property interests that relate to the subject of this action, ECHLA has failed to demonstrate that the absence of these owners may as a practical matter impair or impede their ability to protect their interests. As members of the association, the interests of these thirteen owners are represented by ECHLA in this action. Indeed, ECHLA acknowledges that “ECHLA can probably adequately represent the interests of some its membership in this matter.”²⁰

Notwithstanding, ECHLA contends that “the Individual Owners and other members with property abutting or in close proximity to Lot 557 ... are themselves the best parties to defend their unique interests in Lot 557, and therefore may be required parties.”²¹ However, ECHLA has failed to indicate that these thirteen owners have claims that are separate and distinct from the claims ECHLA raises in its Counterclaim. Rather, ECHLA contends that these thirteen owners “share” in some of ECHLA’s counterclaims. Moreover, the damages that these thirteen owners purportedly suffer presumably differ only in degree from the damages that all the members of ECHLA allegedly suffer based the actions of

²⁰ Motion for Joinder, at page 8.

²¹ *Id.*

Cenni and Max Arc. As a result, ECHLA has failed to demonstrate that the thirteen owners are indispensable to this action, and compulsory joinder is inappropriate.

b) Permissive Joinder and Intervention

A person may be joined as a plaintiff to an action if:

- (A) [he] assert[s] any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
- (B) any question of law or fact common to all plaintiffs will arise in the action.²²

In addition, a person may be joined as a defendant if:

- (A) any right to relief is asserted against [him] jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
- (B) any question of law or fact common to all defendants will arise in the action.²³

The permissive joinder rule also provides that the “court may issue orders—including an order for separate trial—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.”²⁴

Considering that ECHLA does not seek to join the thirteen individual owners in order to assert a claim against them or because these owners have asserted a claim against ECHLA, the Court is not inclined to grant ECHLA’s request for permissive joinder. Rather, it would be more appropriate for an individual property owner to file a motion to intervene if it chooses. Despite ECHLA’s attempt to involve them, it does not appear that any nearby

²² Virgin Islands Rule of Civil Procedure 20.

²³ *Id.*

²⁴ *Id.*

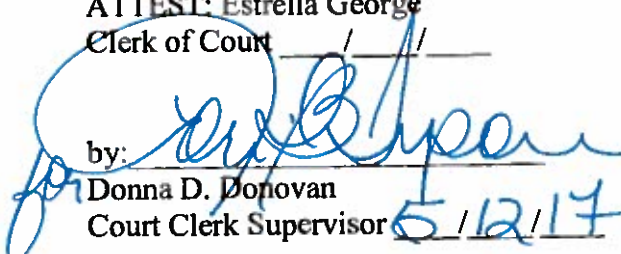
property owner has yet exhibited sufficient interest in joining this action to assert an individual claim. Of course, any motion to intervene that is actually filed must comply with Virgin Islands Rule of Civil Procedure 24(c), which requires that a motion to intervene “be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Moreover, an attorney must file an appearance on behalf of any property owner seeking to intervene in this action.

Finally, the Court observes that the parties have sprinkled disparaging remarks about each other throughout their briefs. This behavior wastes judicial resources, is unbecoming of officers of the Court, and may result in sanctions if it continues.

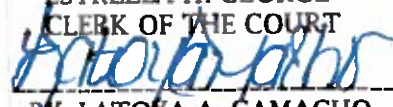
For the reasons stated, ECHLA’s motion will be denied. An Order consistent with this Opinion shall follow.

Dated: May 10, 2017.

ATTEST: Estrella George
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor 5/12/17


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

A CERTIFIED TRUE COPY
DATE: 5/15/2017
ESTRELLA H. GEORGE
CLERK OF THE COURT

BY: LATOYA A. CAMACHO
COURT CLERK II