SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

MERCHANTS COMMERCIAL BANK, **Plaintiff,** **v.** **VI F.F.O., LLC, RICHARD G. VENTO, AND LANA VENTO,** **Defendants.**	**) CIVIL NO. ST-18-CV-183**

MEMORANDUM OPINION

Before the Court is Defendants' jointly filed motion for a preliminary injunction. Because Defendants have failed to make a showing on all four injunction factors, the motion will be denied.

FACTUAL & PROCEDURAL HISTORY

On March 28, 2018, Merchants Commercial Bank ("the Bank") filed a Complaint, amended on May 25, 2018, asserting claims for breach of contract and debt and foreclosure against VI F.F.O., LLC, and breach of contract against Richard and Lana Ventos, in connection with allegations that Defendants failed to meet their obligations on loans issued by the Bank.[1] On June 11, 2018, Defendants jointly filed an Answer asserting, in part, counterclaims against the Bank for intentional interference with contractual relations between Defendants and their counsel, Kellerhalls, Ferguson, and Kroblin, PLLC, ("the Law Firm") and breach of the duty of good faith and fair dealing.[2]

[1] First Amended Complaint, ¶¶ 26-44.
[2] Answer & Counterclaims, pp. 7-9, ¶¶ 18-31.

Defendants' Answer alleges that, after the original Complaint was filed, the Law Firm applied for a commercial loan from the Bank to finance the expansion of its office space.[3] Following the Law Firm's loan application, which remains pending,[4] Defendants hired the Law Firm as their representation with respect to the Bank's claims.[5] Because the Law Firm is currently the legal counsel for the Bank in two unrelated matters,[6] the Bank's President and a partner of the Law Firm signed a conflict of interest waiver regarding the Law Firm's representation of Defendants in this action, after which the Law Firm filed a Notice of Appearance on May 17, 2018.[7] The Answer further alleges that on May 30, 2018, the Bank's Vice President telephoned an attorney in the Law Firm and expressed that the Law Firm's loan application would be denied if the Law Firm failed to inform Defendants that the Bank's claims against them would proceed directly to judgment with only the normal case-processing delays,[8] demanding that the Law Firm agree to abstain from executing available litigation strategies against the Bank, regardless of the facts revealed in discovery.[9]

On June 14, 2018, Defendants filed a Motion for a Preliminary Injunction prohibiting the Bank from "making further threats and/or from making adverse lending decisions as to the Ventos' counsel, not based on lending criteria, but for the purpose of influencing the advice and representation" of the Defendants.[10] Finally, on July 10, 2018, the Bank's Vice President filed a

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[3] Answer & Counterclaims, p. 6, ¶¶ 6-7. *See also* Motion for Preliminary Injunction, p. 2.
[4] *See* Motion for Preliminary Injunction, p. 1 ("Defendants . . . hereby move for a preliminary injunction prohibiting Merchants Commercial Bank from making further threats and/or from making adverse lending decisions as to the Ventos' counsel, Kellerhals Ferguson Kroblin PLLC ('KFK'), not based on lending criteria . . . .").
[5] *See id.* ¶¶ 8-9.
[6] *See* Declaration from Rohit Khiani, ¶ 3.
[7] *See* Answer & Counterclaims, p. 6, ¶ 10.
[8] *See id.* at pp. 6-7, ¶¶ 11-12.
[9] *See id.* at p. 12, ¶ 13.
[10] *See* Motion for Preliminary Injunction, p. 1.

Declaration with this Court in which he admitted calling the Law Firm attorney on May 30, 2018.[11] The Vice President declared that during the phone call he expressed that the Bank "wanted to know where KFK [the Law Firm] stood" on the VI F.F.O. litigation and that "if KFK [the Law Firm] sought to stymie the [B]ank's collection efforts by filing a bunch of frivolous motions, Merchants would not be interested in expanding its relationship with KFK [the Law Firm]."[12] The Vice President further declared that his purpose in calling the Law Firm attorney was for the Bank "to know if the Defendants intended to assert any defenses or counterclaims" because the Bank "was concerned that KFK [the Law Firm] might assert bogus defenses or file baseless motions that would lead to unjustified delays and legal expenses."[13] He further stated that his objective was "not to dissuade KFK [the Law Firm] from asserting *valid* claims and defenses" but rather, that his "concern was only about *invalid and illegitimate* claims or defenses."[14]

STANDARD

Under V.I. R. CIV. P. 65(a), the Court may issue a preliminary injunction on notice to the adverse party. "[T]he basic purpose of a preliminary injunction is to protect the movant from irreparable injury that would occur before a full trial took place."[15] "[A] party seeking injunctive relief must demonstrate that the injunction is necessary to avoid 'certain and imminent harm for which a monetary award does not adequately compensate' — in other words, harm without an adequate legal remedy."[16] "'An extraordinary and drastic remedy,' a preliminary

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[11] *See* Declaration from Rohit Khiani, ¶ 12.
[12] *Id.* ¶ 13.
[13] *Id.* ¶ 14.
[14] *Id.* ¶ 15.
[15] *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 559 (V.I. 2015) (quoting Rachel A. Weisshaar, *Hazy Shades of Winter: Resolving the Circuit Split over Preliminary Injunctions*, 65 Vand. L. Rev. 1011, 1018 (2012)).
[16] *Id.* at 554 (quoting *Yusuf v. Hamed*, 59 V.I. 841 (V.I. 2013) (internal quotation marks and citation omitted)).

injunction is 'never awarded as of right,' but only 'upon a clear showing that the plaintiff is entitled to such relief.'"[17] "The four injunction factors to be considered are: '(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary injunction relief will result in even greater harm to the nonmoving party; and, (4) whether granting the preliminary relief will be in the public interest.'"[18] "To prevail on a motion for preliminary injunction, the moving party bears the burden of 'making some showing on all four injunction factors,' which the Superior Court must evaluate 'under a sliding-scale standard.'"[19]

ANALYSIS

I. Defendants' counterclaim for intentional interference with existing contractual relations

A. Reasonable probability of success on the merits

The Bank first contests the likelihood that Defendants' counterclaim for the intentional interference with existing contractual relations will succeed on the merits. This counterclaim requires a showing of:

> (1) the existence of a contract between a party to the action and a third party;
> (2) that the opposing party knew of that contract;
> (3) that the opposing party interfered with the contract using improper means or with an improper motive; and
> (4) that the party was damaged as a result.[20]

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[17] *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 596 (V.I. 2018) (quoting *Yusuf*, 59 V.I. at 847).

[18] *Id.* (quoting *3RC & Co.*, 63 V.I. at 550).

[19] *Id.* (quoting *3RC & Co.*, 63 V.I. at 557).

[20] The Virgin Islands Supreme Court has not conducted a *Banks* analysis to adopt the common law claim for the intentional interference with existing contractual relations. But, in *Donastorg v. Daily News Publ'g Co., Inc.*, 63 V.I. 196, 139-140 (V.I. Super. Ct. 2015), the Superior Court adopted as the soundest rule for the Virgin Islands the following standard: "To prevail on a claim for intentional interference with existing contractual relations, a plaintiff in this jurisdiction must prove: (1) the existence of a contract between the plaintiff and a third party; (2) that the defendant knew of that contract (3) that the defendant interfered with the contract using improper means or with an

In response, Defendants argue that their claim will succeed on the merits because (1) an engagement agreement existed between the Ventos and the Law Firm, (2) the Bank knew of the engagement agreement as evinced by a conflict waiver signed by the Bank's President, (3) the Bank's Vice President interfered with the engagement agreement by telephoning to the Law Firm regarding the Bank's claims against Defendants, and (4) the threatening phone call damaged Defendants by prompting them to file for a preliminary injunction to protect their right to the counsel of their choice.[21] Assuming without deciding that the first three the elements for the intentional interference with existing contractual relations are satisfied, the Law Firm continues to provide legal representation to Defendants in this action, and the fees alone associated with the filing of a motion for a preliminary injunction do not constitute "damages" that indicate that Defendants are likely to succeed on the merits of their counterclaim.[22] In *3RC & Co.*, the Virgin Islands Supreme Court indicated that at least a prima facie case is necessary to satisfy the first factor of the test for a showing on the merits.[23] Because Defendants have failed to show that they were damaged, without which a likelihood of success on the merits on their counterclaim is not probable, they have failed to make out a prima facie case for intentional interference with existing contractual relations. Thus, the first factor of the preliminary injunction test weighs against granting the injunction.

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improper motive; and (4) that the plaintiff was damaged as a result." After reviewing this *Banks* analysis and agreeing with the methodology and conclusions, the Court adopts the standard articulated in *Donastorg v. Daily News Publ'g Co., Inc.*

[21] *See* Motion for Preliminary Injunction, pp. 4-5.

[22] The Defendants have not yet been damaged as a result of the Vice President's phone call since their engagement agreement remains intact. Defendants' suggestion that the fees associated with filing their motion constitute the damages necessary for the success of their claim on the merits is akin to suggesting that the only damages a party must show for a claim to succeed on the merits are fees associated with filing a motion in Court.

[23] In *3RC & Co.*, 63 V.I. at 555, the Court stated, "the showing on the merits may be as minimal as simply making out a prima facie case if the showing on the moving party's likelihood of irreparable harm is strong enough — and the likelihood that the injunction would cause irreparable harm to the nonmoving party is low enough — to outweigh the weaker showing on the merits."

B. Irreparable harm

Even if Defendants were to establish the damages requisite for a reasonable probability of success on the merits, the Court would still be required to find that Defendants face immediate irreparable harm in the absence of injunctive relief. "Irreparable harm is certain and imminent harm for which a monetary award does not adequately compensate."[24] "A moving party will satisfy this test if it can demonstrate that its monetary damages are either 'difficult to ascertain or are inadequate.'"[25] "Accordingly, when 'the record indicates that [a moving party's loss] is a matter of simple mathematic calculation, a plaintiff fails to establish irreparable injury for preliminary injunction purposes.'"[26]

Here, Defendants assert that the phone call has "damaged" them and that they "have been and may continue to be threatened with irreparable harm."[27] With respect to whether Defendants have already suffered irreparable harm, Defendants assert that the only damages they have incurred as a result of the Vice President's phone call constitute the fees associated with their motion for a preliminary injunction.[28] Because fees are calculable, Defendants have failed to establish irreparability. Defendants assert that any future damages will "be shown at trial"[29] but fail to offer any evidence of certain and imminent harm to Defendants in the event that the Vice

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[24] *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (2018) (quoting *Yusuf v. Hamed*, 59 V.I. 854 (V.I. 2013) (citations and internal quotation marks omitted).
[25] *Id.* (quoting *Yusuf*, 59 V.I. at 854) (other citation omitted).
[26] *Id.* (quoting *Yusuf*, 59 V.I. at 854) (other citation omitted).
[27] Motion for Preliminary Injunction, p. 5 ("This conduct [the May 30th phone call] has damaged the Ventos in that they have been required to now seek relief from the Court in order to protect their right to the Counsel of their choice . . . they have been and may continue to be threatened with irreparable harm").
[28] *See id. See also id.* at p. 11 ("the instant filing has caused the Ventos financial hardship in the form of causing them to incur additional attorneys' fees").
[29] *See* Answer & Counterclaims at p.8, ¶ 26 ("Merchants' continued conduct threatens VI F.F.O. and the Ventos with the irreparable harm of denial of their right to be represented by counsel of their choice and being allowed to participate in a fair judicial proceeding over the merits of the parties' disputes free from threats to either VI F.F.O. and the Ventos or their counsel, and also has caused VI F.F.O. and the Ventos damages in an amount to be shown at trial").

President continues to threaten to deny the Law Firm's loan application. It remains unclear whether the Bank will continue to threaten to deny the Law Firm's loan application, but even if the Bank denies it, any resulting harm will be to the Law Firm, not to Defendants. The only ways Defendants could lose their right to the counsel of their choice is if the Law Firm is disqualified or attempts, and is permitted to, withdraw as Defendants' counsel. Because Defendants bear the burden of making any showing on all four injunction factors to prevail on their motion for preliminary injunction, and because Defendants have failed to make any showing of certain and imminent irreparable harm necessary for the Court to grant the motion for a preliminary injunction, the Court need not consider the remaining factors for injunctive relief, i.e., the balancing of the harms and the public interest.

II. Defendants' counterclaim for breach of the duty of good faith and fair dealing

Defendants also fail to show a reasonable probability of success on the merits for their counterclaim of breach of the duty of good faith and fair dealing. The Virgin Islands Supreme Court has expressed that "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement"[30] and that "[t]he duty of good faith limits the parties' ability to act unreasonably in contravention of the other party's reasonable expectations."[31] For the purpose of this analysis, the Court adopts the Banks analysis conducted in *Merchants Commercial Bank v. Oceanside Village, Inc.*, in which the Court observed that "the implied covenant recognizes that 'neither party will do anything which will injure the right of the

[30] *Chapman v. Cornwall*, 58 V.I. 431, 441 (V.I. 2013) (quoting Restatement (Second) of Contracts § 205).
[31] *Id.* at 441-442 (quoting *Pennick v. V.I. Behavorial Serv., Inc.*, No. 2006-0060, 2012 U.S. Dist. LEXIS 23402 2012 WL 593137, at *3 (D.V.I. App. Div. Feb. 22, 2012) (internal quotation marks and citations omitted) (unpublished)).

other to receive the benefits of the agreement'"[32] and concluded that "a party breaches the implied covenant of good faith and fair dealing by taking actions that deprive another party of the benefits for which it had bargained."[33] Here, Defendants first argue that the Bank's attempt to influence the course of the litigation in the Bank's favor constitutes a breach of the implied duty of good faith and fair dealing derived from the loan agreement between the Bank and the Ventos.[34] But, Defendants fail to establish any damages suffered as a result, since the Bank's attempt to achieve a more favorable result was unsuccessful. Second, Defendants appear to contend that the Vice President's threatening phone call to the Law Firm attorney interfered with the engagement agreement for legal representation between the Law Firm and Defendants.[35] Because the Bank is not a party to that engagement agreement, the Bank could not have breached any implied duty to Defendants found in that agreement. At a minimum, regarding the counterclaim for breach of the implied duty of good faith and fair dealing based upon either the loan agreement or the engagement agreement, Defendants have failed to establish damages, and thus, to demonstrate a reasonable probability of success on the merits. Moreover, the record remains deficient regarding certain and imminent irreparable harm. Since some showing on all

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[32] *Merchs. Commercial Bank v. Oceanside Vill., Inc.*, 64 V.I. 3, 35 (V.I. Super. Ct. 2015) (quoting *Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032, 1036-37 (1973)).
[33] *Id.* Having reviewed the *Banks* analysis conducted in *Merchants*, the Court is satisfied with *Merchants'* reasoning and conclusion and adopts its *Banks* analysis.
[34] *See* Motion for Preliminary Injunction, p. 5.
[35] *See* Answer & Counterclaims, pp. 8-9, ¶¶ 28-30 (Under Count II for breach of the duty of good faith and fair dealing, Defendants assert: "28. Merchants has a duty of good faith and fair dealing with respect to VI F.F.O. and the Ventos. 29. Merchants violated the duty of good faith and fair dealing by acting in contravention to VI F.F.O. and the Ventos' reasonable expectations. 30. Specifically, Merchants interfered with representation of VI F.F.O. and the Ventos in this proceeding and VI F.F.O. and the Ventos' entitlement to a fair judicial proceeding over the merits of the parties' disputes free from threats to either VI F.F.O. and the Ventos"). *See also* Motion for Preliminary Injunction, p. 7 ("Here, the threat of adverse economic harm to Counsel for the Ventos in the form of the denial of a loan for a non-lending reason and for the purpose of influencing the course of the instant litigation . . . constitutes an intentional interference with the Ventos' representation in this matter. The threat constitutes bad faith and threatens the Ventos' right to the counsel of their choice. Accordingly, the Ventos are likely to succeed on the merits, and, therefore, the injunction should be entered").

four factors is required for the issuance of preliminary injunction, the Court need not evaluate the remaining factors.

Finally, "where the moving party rests on allegations alone without submitting sufficient supporting evidence with its moving papers, it fails to 'present[ ] a colorable factual basis to support [its] claim' for a preliminary injunction, and the Superior Court is not required to hold a hearing on the motion before summarily denying it."[36] Here, because the Law Firm has failed to present a colorable basis for its motion for preliminary injunction on either one of its counterclaims, the Law Firm's request for an evidentiary hearing and its motion for a preliminary injunction are both denied.

III. The Law Firm's conflict of interest based upon its pending commercial loan application

Virgin Islands Supreme Court Rule 211 established the Virgin Islands Rules of Professional Conduct, effective February 1, 2014.[37] "[T]o the extent applicable, the accompanying or related ABA I[nterpretive] G[uidelines], C[omments], and C[ommittee] C[omments] . . . shall govern the conduct of members of the Bar of this Territory[.]"[38] V.I. S. Ct. R. Rule 211.1.7(a) provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest", which exists if "(2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer." "'[C]onflicting interests' ... arise out of personal interests of counsel that [a]re 'inconsistent, diverse or otherwise discordant' with those of his client and which affected the exercise of his professional

[36] *3RC & Co.*, 63 V.I. at 561 (quoting *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1175-76 (3d Cir. 1990)).
[37] V.I. S. Ct. R. Rule 203(a).
[38] *Id.*

judgment on behalf of his client."[39] As to the material limitation of a conflict of interest, Comment 8 to Model Rule 1.7 instructs:

> Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. ... The critical questions are the likelihood that a difference in [the client's and lawyer's] interests will eventuate and, if it does, whether ... [the conflict] will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.[40]

Here, the Law Firm's interest in the Bank's approval of the loan application applies to the Law Firm as a whole[41] and poses a significant risk that its representation of Defendants will be materially limited. This significant risk exists because of the pending loan application, apart from the Bank Vice President's alleged attempt to improperly influence Defendants' representation in reference to the Law Firm's pending loan application.

Moreover, the Law Firm appears decidedly invested in the loan's approval because its motion for preliminary injunction contended that if the Bank was not enjoined from "making further threats and/or from making adverse lending decisions as to the Ventos' counsel[,]"[42] Defendants "simply c[ould not] be assured they [we]re receiving zealous representation[.]"[43]

[39] *Gov't of V.I. v. Zepp*, 748 F.2d 125, 135 (3d Cir. 1984) (quoting Model Code of Professional Responsibility EC 5-2; EC 5-14 (1980)). This Court concludes that this quotation from a relatively older case remains consistent with spirit of the current rule.
[40] MODEL R. PROF. CONDUCT 1.7 cmt. 8.
[41] *See* V.I. S. Ct. R. Rule 211.1.10(a) ("While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 211.1.7 or 211.1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers of the firm").
[42] Motion for Preliminary Injunction, p. 1.
[43] Reply to Opposition to Motion for Preliminary Injunction, p. 3.

The motion for a preliminary injunction further argued that if the Court did not grant the preliminary injunction, the Defendants' "right to be represented by counsel of their choice w[ould] otherwise be destroyed."[44] Most notably, the motion characterized the Vice President's threat as one to "Ventos' Counsels' economic livelihood and business,"[45] suggesting that a denial of the loan may threaten the financial viability of the Law Firm. These statements indicate that the Law Firm lacks confidence that its representation of Defendants will not be materially limited by the Bank's threat to deny the Law Firm's loan application. The Law Firm fails to make clear why Defendants cannot be assured of zealous representation notwithstanding the Vice President's threat or his unsuccessful attempt to improperly discuss Defendant's case with the Law Firm.[46]

V.I. S. Ct. R. Rule 211.1.7(b) provides that the existence of a concurrent conflict of interest will not preclude representation *only* if four requirements are met:

> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> (2) the representation is not prohibited by law;
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> (4) each affected client gives informed consent, confirmed in writing.

[44] *Id.* at p. 6.
[45] Motion for Preliminary Injunction, pp. 6-7.
[46] Despite the Vice President's conduct, the Law Firm is required to observe the duty of attorney-client confidentiality articulated in V.I. S. Ct. R. Rule 211.1.6, and, with limited exceptions, not reveal information to the Bank or others with respect to Defendants' case. V.I. S. Ct. R. Rule 211.1.6(a) provides that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by" a limited set of circumstances outlined in V.I. S. Ct. R. Rule 211.1.6(b). The comments to ABA Model Rule 1.6, after which V.I. S. Ct. R. Rule 211.1.6 is patterned, expound the rule's application and may be found on the American Bar Association website.

Notably, to waive a conflict of interest, V.I. S. Ct. R. Rule 211.1.7(b)(4) requires an affected client's written, informed consent, and V.I. S. Ct. R. Rule 211.1.0 defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Here, the record reflects that the waiver of the conflict of interest signed by the Bank's President and a partner of the Law Firm regarded the Bank's and Defendants' status as current clients of the Law Firm in unrelated matters[47] and not the Law Firm's interest in procuring a loan from the Bank. Since a conflict of interest exists because of the significant risk that the Law Firm's representation is materially limited by its interest in the Bank's approval of its pending loan application, rather than because the Bank and Defendants remain current clients of the Law Firm, and, because the record is devoid of any evidence that Defendants provided written, informed consent to that the conflict, the Law Firm must first satisfy the requirements of V.I. S. Ct. R. Rule 211.1.7(b), if possible, before proceeding further.[48]

With respect to V.I. S. Ct. R. Rule 211.1.7(b)(1), "[c]onsentability is typically determined by considering whether the interests of the client[] will be adequately protected if the client[] [is] permitted to give their informed consent to representation burdened by a conflict of interest. Thus … representation is prohibited if in the circumstances, the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation."[49]

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[47] *See* Opposition to Motion for Preliminary Injunction, Exhibit 3.

[48] Comment 3 to Model Rule 1.7 provides that "[a] conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client [or the affected client] under the conditions of paragraph (b)." MODEL R. PROF. CONDUCT 1.7 cmt. 3. Since the record reflects that the Law Firm applied for the loan prior to assuming representation in this action, and the Law Firm should have obtained the informed consent of Defendants prior to undertaking their representation.

[49] MODEL R. PROF. CONDUCT 1.7 cmt. 15.

Accordingly, before proceeding further as Defendants' counsel in this action, the Law Firm is ordered to file a brief with the Court demonstrating whether the Law Firm's interest in the Bank's approval of its pending commercial loan application presents a consentable conflict of interest under V.I. S. Ct. R. Rule 211.1.7(b)(1). In so doing, the Law Firm must evaluate whether its professional judgment in representing Defendants in this action will be adversely affected by its own financial interests and must demonstrate to the Court a *reasonable* belief that it will be able to provide competent and diligent representation to Defendants. If the Law Firm establishes that the conflict of interest is consentable, it must consult with Defendants and obtain and provide the Court with a conflict waiver signed by the Law Firm and Defendants. If, however, the Law Firm cannot demonstrate that the requirements of the V.I. S. Ct. R. Rule 211.1.7(b) can be satisfied, then the conflict of interest cannot be cured by Defendants' consent.

CONCLUSION

For the foregoing reasons, Defendants' motion for a preliminary injunction must be denied without prejudice. Further, before proceeding further as Defendants' counsel in this action, the Law Firm is ordered to conduct an analysis on the consentability of the Law Firm's conflict of interest, and if the Law Firm finds that the conflict of interest is consentable, to obtain and provide the Court with a valid waiver signed by the Law Firm and Defendants.

Dated: September 17, 2018

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

ATTEST: Estrella George
Clerk of Court __/__/__

by: ______
Lori Boynes-Tyson
Court Clerk Supervisor 9 / 18 / 18