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

STEVE WHITE, Trustee of the Curtis White Family Trust, dated May 21, 2008,	)
Plaintiff,	)
vs.	) **CASE NO. ST-13-CV-400**
NINA JEAN McGRANE WHITE,	)
Defendant.	)

MEMORANDUM OPINION

Pending before the Court are Defendant's motion to dismiss and Plaintiff's motion for summary judgment. For the following reasons, Defendant's motion will be granted rendering Plaintiff's motion moot.

STANDARD

Fed. R. Civ. P. 12(b), made applicable to the Superior Court through SUPER CT. R. 7, provides that upon motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a "failure to state a claim upon which relief can be granted" to the claimant. When determining whether the allegations in a complaint are sufficiently pled, a court must engage in a three step inquiry:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim.".... Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth".... Finally, "where there are well pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief."[1]

[1] *Santiago v. Warminster Tp.*, 629 F.3d 121, 130 (3d Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 881 (2009)).

A motion to dismiss a complaint should be denied if the factual allegations are "enough to raise a right to relief above the speculative level."[2]

ANALYSIS

While Count II of Plaintiff's Complaint, titled "Slander of Title," evokes a potentially actionable claim under Restatement (Second) of Torts § 624, Count I, titled "An Action to Expunge Lien," is merely a request for an equitable remedy and does not state a claim upon which relief can be granted.[3] However, rather than dismissing Count I, the Court will treat Count I as an integral part of Plaintiff's claim of slander of title.

Reviewing Count II, the Court notes that:

> The rules on liability for the publication of an injurious falsehood stated in § 623A apply to the publication of a false statement disparaging another's property rights in land, chattels or intangible things, that the publisher should recognize as likely to result in pecuniary harm to the other through the conduct of third persons in respect to the other's interests in the property.[4]

Restatement (Second) of Torts § 623A indicates that:

> One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if
> (a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and
> (b) he knows that the statement is false or acts in reckless disregard of its truth or falsity.

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[2] *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008). See also *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
[3] See, e.g., *Crain v. Chesapeake Appalachia, L.L.C.*, 2013 WL 4419023, at *7 (M.D. Pa. 2013) (claim for specific performance was dismissed because "specific performance is a remedy, not a freestanding legal claim."
[4] Restatement (Second) of Torts § 624.

Pecuniary loss, as defined by Restatement (Second) of Torts § 633(1), is:

> (a) loss that results directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and
> (b) the expense of measures reasonably necessary to counteract the publication, including litigation to remove the doubt cast upon vendibility or value by disparagement.

In addition, the "most usual manner in which a third person's reliance upon disparaging matter causes pecuniary loss is by preventing a sale to a particular purchaser."[5]

In *Glenn v. Dunlop*,[6] the District Court of the Virgin Islands cited *Gilbert v. Beaver Dam Ass'n of Stratford*,[7] for the proposition that "a clouded title, alone, does not constitute damages per se. Rather, a plaintiff must present evidence of how the clouded title resulted in some pecuniary loss." In reversing the District Court in part, the Third Circuit determined that:

> it would seem that Glenn actually had proved [the element of pecuniary loss because] … Glenn … adduced evidence that Dunlop's recorded documents … impeded the Trust from selling the Property [including] evidence ... that the Trust's contract for the sale of the Property to a third party was terminated because of Dunlop's recorded documents [and] evidence ... that the Trust has since been unable to find another buyer for the Property because of those documents.

Accordingly, the Third Circuit's opinion upheld the proposition that a plaintiff asserting a claim of slander of title must demonstrate how a clouded title results in pecuniary loss.

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[5] *Glenn v. Dunlop*, 423 F. App'x 249, 254-55 (3d Cir. 2011) (citing Restatement (Second) of Torts § 633(1)(a) & cmt. c.).
[6] CIVIL 2005-145, 2009 WL 482481 (D.V.I. Feb. 23, 2009) aff'd in part, vacated in part, rev'd in part, 423 F. App'x 249 (3d Cir. 2011).
[7] 85 Conn. App. 663, 858 A.2d 860, 867 (Conn. App. Ct. 2004).

Here, Plaintiff has alleged that Defendant filed a lis pendens against Parcel 5-16 Estate Sorgenfri, St. Thomas,[8] but has not alleged facts demonstrating how the lis pendens has affected the conduct of third persons in relation to the property and caused pecuniary loss as required by Restatement (Second) of Torts § 633.[9] In addition, Plaintiff has failed to allege facts suggesting that Defendant intended for the lis pendens "to result in harm to interests of the other having a pecuniary value, or either recognize[d] or should [have] recognize[d] that it [was] likely to do so," as required by Restatement (Second) of Torts § 623A. Accordingly, Plaintiff has failed to allege a claim upon which relief can be granted, and the Court will dismiss the Complaint without prejudice. Plaintiff will have thirty (30) days from the issuance of this Memorandum Opinion and its accompanying Order to amend his Complaint, and if he fails to do so within that time period, the Court will dismiss the Complaint with prejudice. An Order consistent with this Opinion shall follow.

Dated: October 10, 2013

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

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ___/___/___

by: Donna D. Donovan

Donna D. Donovan
Court Clerk Supervisor 10/15/2013

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[8] The property is corpus of the Curtis White Family Trust.

[9] Restatement (Second) of Torts § 633 establishes that the effect of the conduct of third persons is necessary to satisfy the element of pecuniary loss under § 633(1)(a) and § 633(1)(b). See Restatement (Second) of Torts § 633(1)(a) and cmt. k to § 633.