

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

**DR. OSWALDENE WALKER, D.D.S.; and
MARK WALKER, ESQ.,**

Plaintiffs,

v.

**WATERGATE VILLAS WEST d/b/a SEA CLIFF
VILLAS; LEASING MANAGER LESLIE LIVACZ
(IN HER CORPORATE CAPACITY); and the
BOARD OF DIRECTORS OF SEA CLIFF
VILLAS,**

Defendants.

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) Case No.: ST-13-CV-489
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)

CIVIL RIGHTS
VIOLATION,
PERSONAL INJURY,
BREACH OF
FIDUCIARY DUTY

)
) JURY TRIAL DEMANDED
)
)
)

AMENDED MEMORANDUM OPINION¹

THIS MATTER is before the Court on (i) Motion of Plaintiff Mark Walker to Voluntarily Dismiss with Prejudice Pursuant to Fed. R. Civ. P. 41(a)(2), filed on September 6, 2016 (the “Motion to Voluntarily Dismiss”); and (ii) Defendants’ Motion for Leave to Exceed Page Limit, filed on August 23, 2016 (the “Motion for Leave to Exceed Page Limit”). Defendants filed a Response to Mark Walker’s Motion to Voluntarily Dismiss on September 23, 2016. No opposition to the Motion for Leave to Exceed Page Limit has been filed. The Court held a Status Conference on June 13, 2017 and heard further argument from the parties.² For the reasons set forth herein,

¹ This Amended Memorandum Opinion replaces the Memorandum Opinion entered June 29, 2107 to remove scrivener’s notes in Footnote 1 thereof.

² Also discussed at the June 13 Status Conference were Plaintiffs’ “Motion To Release Security For Costs” filed on March 16, 2016, and “Defendants’ Motion To Compel Discovery” filed on August 23, 2016. The Court noted that the

Plaintiff Mark Walker's Motion to Voluntarily Dismiss will be denied and Defendants' Motion for Leave to Exceed Page Limit will be granted.

BACKGROUND

Dr. Oswaldene Walker ("Dr. Walker") is the owner of the condominium property known as Unit 32 Building 18, Sea Cliff Villas, St. Thomas, Virgin Islands (the "Property"). In or about the fall of 2012, a section of the soffit below a balcony attached to the Property came loose and fell to the ground.³ In December 2012, Watergate Villas West d/b/a Sea Cliff Villas ("Sea Cliff") contacted Dr. Walker to inform her that the condition of the balcony was creating a hazardous situation and Sea Cliff would be invoking its authority under the condominium documents to make necessary repairs to the Property.⁴ Subsequently, Sea Cliff hired a contractor to make said repairs.⁵ In or about June of 2013, Sea Cliff billed Dr. Walker for the repair work.⁶ On September 24, 2013, Dr. Walker filed a complaint in the Superior Court of the Virgin Islands (the "Complaint"), naming Sea Cliff, Manager Livacz (In Her

security for costs should be released as the V.I. Supreme Court has ruled the statute unconstitutional. But Defendants have asked that the costs not be returned to Plaintiffs but instead be payable to Defendants in the form of sanctions against Plaintiffs. The motion for sanctions is under advisement. Hence the Court reserved ruling on the Motion To Release Security For Costs. As to Defendants' Motion To Compel, Defendants represented that they had just received certain discovery responses and had not yet determined if the responses made moot the Motion To Compel. Defendants agreed to notify the Court within two (2) weeks of the date of the Status Conference (by June 27, 2017) whether the Motion To Compel is moot.

³ Defs.' Answer and Affirmative Defenses to Plt.'s Second Am. Compl. and Countercls. of the Bd. of Dirs. of Sea Cliff Villas 19 at 11.

⁴ *Id.* 20 at 13.

⁵ *Id.* 20 at 14-16.

⁶ Cmpl. 4 at 24.

Corporate Capacity), and the Board of Directors of Sea Cliff Villas (collectively, “Defendants”) as Defendants. The Complaint alleges six (6) claims against Defendants in connection with the construction work performed at the Property, including counts of negligence and civil rights violations.⁷ Defendants filed a Motion to Dismiss on January 14, 2014 (the “Motion to Dismiss”) under Federal Rules of Civil Procedure Rule 12(b)(7), asserting that Mark Walker (together with Dr. Walker, “Plaintiffs”) was a co-owner of the Property and thus an indispensable party to the litigation.⁸ On January 23, 2014, Plaintiffs filed the Second Amended Complaint (the “Second Complaint”), naming Mark Walker as an additional plaintiff. In response, on July 27, 2015, Defendants filed the Answer and Affirmative Defenses to Plaintiffs’ Second Amended Complaint and Counterclaims of the Board of Directors of Sea Cliff Villas (the “Counterclaim”) against both Dr. Walker and Mark Walker, alleging debt obligations owed to Sea Cliff with respect to the Property.⁹

On August 23, 2016, Defendants filed Defendants’ Motion to Compel Discovery (the “Motion to Compel”), asking that the Court compel Dr. Walker and Mark Walker to provide supplemental and original discovery materials and that sanctions be levied against both Plaintiffs. Also on August 23, 2016, Defendants filed a Memorandum in Support of Defendants’ Motion to Compel Discovery (the “Memorandum in Support”),

⁷ See Compl.

⁸ Fed. R. Civ. P. 12(b)(7): “[A] party may assert the following defenses by motion: . . . (7) failure to join an indispensable party.”

⁹ Defs.’ Answer and Affirmative Defenses 23.

together with the Motion for Leave to Exceed Page Limit in the filing of the Motion To Compel.

DISCUSSION

I. The Motion to Voluntarily Dismiss Cannot Be Granted

Mark Walker's Motion to Voluntarily Dismiss cannot be granted as he remains a party to the litigation, per the Counterclaim. The Federal Rules of Civil Procedure Rule 41(a)(2) states that "[i]f a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication."¹⁰ Dr. Walker and Mark Walker became owners of the Property by way of a warranty deed dated August 14, 2009, in which both are named as Grantees.¹¹ On September 22, 2015, Mark Walker executed a quitclaim deed (recorded February 29, 2016, the "Quitclaim Deed")¹², relinquishing all his right, title and interest in the Property, after the instant suit was filed and after Mark Walker was added as a Plaintiff. Mark Walker now asserts that any claims made on his behalf in this litigation are moot, as he no longer holds an ownership interest in the Property. Further, he asks that the Court "dismiss this case pursuant to Rule 41(a)(2)"¹³ "so that the claims and any counterclaims [can] proceed without his involvement being

¹⁰ Virgin Islands Rules of Civil Procedure Rule 41(a)(2) is identical to Fed. R. Civ. P. 41(a)(2).

¹¹ Defs.' Mem. in Supp. Of Mot. to Dismiss, Ex. 1 (Warranty Deed).

¹² Defs.' Resp. to Mark Walker's Mot. to Voluntarily Dismiss, Ex. 2.

¹³ Mot. to Voluntarily Dismiss 3.

necessary.”¹⁴ Conveying title to the Property in 2015 does not relieve Mark Walker of his responsibilities as an owner during 2012 and 2013, the time in which the disputed repairs were made and the debt in question was incurred. While conveying his interests in the Property may mean that he is no longer an indispensable plaintiff to the litigation, Mark Walker remains a counterclaim defendant for purposes of Defendants’ debt action.¹⁵ In addition, while Mark Walker is free to stipulate with Defendants to dismiss his claims against Defendants, this Court cannot dismiss his claims against Defendants purely upon Walker’s voluntary dismissal.¹⁶ Therefore, Mark Walker’s Motion to Voluntarily Dismiss cannot be granted.

II. The Motion for Leave to Exceed Page Limit is Justified

Defendants’ Motion For Leave To Exceed Page Limit seeks permission to exceed the page limit on the contemporaneously filed Memorandum In Support of the Motion To Compel. Local Rules of Civil Procedure 37.2(b) requires that all “discovery requests and responses, or parts thereof, to which objections are made should be set forth in the motion, response or reply or an accompanying brief.”¹⁷ LRCi 7.1(d) instructed that “[w]ith the exception of exhibits and other supporting documentation,

¹⁴ *Id.*

¹⁵ Defs.’ Resp. to Mark Walker’s Mot. to Voluntarily Dismiss 5.

¹⁶ Rule 41(a) f.r. Civ. P.

¹⁷ LRCi 37.2(b) has not been carried forward to the new Virgin Islands Rules of Civil Procedure. However, at the time of the filing of the instant Motion, parties were permitted to apply the Local Rules of Civil Procedure through Rule 7 of the Superior Court Rules, and Defendants’ Memorandum in Support of Motion To Compel followed LRCi 37.2(b), Therefore, the Court will decide the motion under that rule.

no document filed with the Court shall exceed twenty (20) pages without leave of Court.”¹⁸

Defendants’ Motion to Compel raises challenges to sixteen (16) of Dr. Walker’s interrogatory responses, along with multiple other challenges.¹⁹ As each challenge must be set forth in the brief per LRCi 37.2(b), the resulting Memorandum in Support exceeds the twenty (20) page limit mandated by LRCi 7.1(d). Defendants have properly filed the Motion for Leave to Exceed Page Limit, asking the Court’s permission to file the Memorandum in Support of Motion To Compel. Defendants have shown cause for exceeding the twenty (20) page limit and have restricted the number of additional pages to twelve (12), for a total of thirty-two (32) pages. Plaintiffs have not opposed the Motion for Leave to Exceed Page Limit. The Court finds Defendants’ Motion for Leave to Exceed Page Limit is justified.

CONCLUSION

The Motion of Plaintiff Mark Walker to Voluntarily Dismiss with Prejudice Pursuant to Fed. R. Civ. P. 41(a)(2) will be denied, as Mark Walker remains a counterclaim defendant for purposes of Defendants’ debt action. In addition, NMark Walker may not voluntarily dismiss his claims against Defendants. Defendants’ Motion for Leave to Exceed Page Limit is justified and has been properly filed.

¹⁸ The Virgin Islands Rules of Civil Procedure Rule 6-1(e)(2) reads, “[e]xcept as provided in Rule 56-1, all motions, responses and replies filed with the court shall not exceed . . . 20 pages . . . in length unless leave of court has been obtained in advance for a longer submission.”

¹⁹ Defs.’ Mot. for Leave to Exceed Page Limit 2.

Therefore, the Court will deny Mark Walker's Motion to Voluntarily Dismiss and grant Defendants' Motion for Leave to Exceed Page Limit.

An Order consistent with this Memorandum Opinion will be entered.

DATED: July 11, 2017

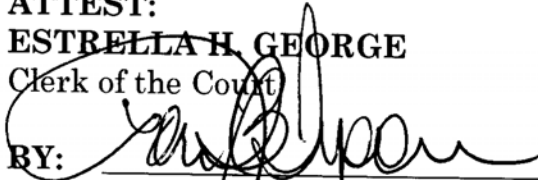


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Chief Deputy Clerk

7, 11, 17