

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS & ST. JOHN**

|                                                     |   |                                  |
|-----------------------------------------------------|---|----------------------------------|
| VIOLET SEWER MAHABIR,                               | ) | CIVIL NO. ST. 09-CV-231          |
|                                                     | ) |                                  |
| Plaintiff,                                          | ) | ACTION TO QUIET TITLE BY ADVERSE |
|                                                     | ) | POSSESSION                       |
| vs.                                                 | ) |                                  |
|                                                     | ) |                                  |
| HEIRS OF: JAMES WELLINGTON                          | ) |                                  |
| GEORGE, ANNA MARIA GEORGE born                      | ) |                                  |
| Wilson, EMILE ROBERTS born George,                  | ) |                                  |
| AFRED VICTOR LAMBERTUS, WILLIAM                     | ) |                                  |
| D. GEORGE, including but not limited to Heirs)      | ) |                                  |
| of BEULAH BATTISTE, Heirs of EARL                   | ) |                                  |
| CHRISTIAN, Heirs of MONROVIA                        | ) |                                  |
| GEORGE WELLS, CARMEN REYES,                         | ) |                                  |
| MARY FLORES, and anyone else claiming               | ) |                                  |
| any right, title estate, lien or interest in Parcel | ) |                                  |
| No. 6ab Estate Hansen Bay A, East End               | ) |                                  |
| Quarter, St. John, Virgin Islands, as shown on      | ) |                                  |
| PWD No. A9-282-T80,                                 | ) |                                  |
|                                                     | ) |                                  |
| Defendants.                                         | ) |                                  |
|                                                     | ) |                                  |

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**MEMORANDUM OPINION**

Pending before the Court is Defendant Wilmar Corporation's motion for attorney's fees. For the following reasons, Defendant's motion will be granted in part.

**STANDARD**

5 V.I.C. § 541(b) provides that "there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto ..." The criteria for an award of attorney's fees are "the time and labor required, the uniqueness of the questions involved, the legal skill demanded, the customary charges for these services, the amount involved in the dispute, the benefits resulting to the client, and the contingency or

certainty of payment.”<sup>1</sup> The amount of attorney's fees to be awarded to the prevailing party is “intended to be an indemnification for a fair and reasonable portion of his attorney's fees and not for the whole amount charged by the attorney.”<sup>2</sup>

### ANALYSIS

As a prevailing party in this matter, Defendant seeks an award of \$35,906.25 in attorneys' fees and \$2,326.16 in costs.

Defendant's attorneys' fees consist of \$24,431.25 generated by attorneys Maria Tankenson Hodge, Denise Francois, and Gaylin Vogel; \$11,100.00 generated by law clerk Hayley Cotter; and \$375.00 by paralegal Pam Bayless. Hodge, a partner at the firm, had an hourly rate of \$325.00; Francois, a partner of the firm at the time, had an hourly rate of \$325.00; Vogel, an associate of the firm, had an hourly rate of \$250.00; Cotter had an hourly rate of \$200.00; and Bayless had an hourly rate of \$125.00.

Defendant's attorneys charge hourly rates that are high compared to the customary and prevailing market rates for attorneys in the Virgin Islands. In addition, Defendant was defending an adverse possession claim, which generally does not present a particularly novel or complex issue of law. Moreover, Defendant's counsel conducted minimal discovery and presented only one witness at trial. As a result, the Court will reduce the total fees generated by Hodge, Francois, and Vogel accordingly for a total amount of \$12,215.63.

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<sup>1</sup> *Melendez v. Rivera*, 24 V.I. 63, 66, 1988 V.I. LEXIS 35 (Terr. Ct. St. C. 1988).

<sup>2</sup> *Trailer Marine Transp. Corp. v. Charley's Trucking, Inc.*, 20 V.I. 286, 1984 V.I. LEXIS 17 (Terr. Ct. 1984).

Defendant also seeks fees generated by a law clerk and a paralegal. Defendant has provided no argument or case law demonstrating that 5 V.I.C. § 541(b) stands for the proposition that a prevailing party may obtain law clerk or paralegal fees as part of its award of attorney's fees. Other courts in the Virgin Islands have denied similar fees on this basis.<sup>3</sup> In addition, Defendant's submission describing the work performed by the law clerk and paralegal indicates that their work was supervised, reviewed, and edited by an attorney licensed in the Virgin Islands. Expenses that are duplicative are not included in assessments of reasonable fees.<sup>4</sup> Accordingly, the Court will not award Defendant any fees generated by Cotter and Bayless.

In addition, Defendant seeks \$414.95 in costs for online legal research, \$1,150.50 in copying costs, and \$760.67 in mediation expenses. Computer legal research charges and copying costs are general overhead expenses that are not compensable costs under 5 V.I.C. § 541.<sup>5</sup> Mediation fees are also "not among the six classes of costs that are recoverable under [5 V.I.C. § 541]."<sup>6</sup> In the absence of a showing that Plaintiff failed to mediate in good faith, the Court will not award Defendant mediation costs as this would "provide a disincentive for parties to enter into mediation freely" and would generally "undermine the mediation process" set forth in Superior Court Rule 40.<sup>7</sup> As a result, the Court will award Defendant no costs in this case.

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<sup>3</sup> See *Morcher v. Nash*, 32 F.Supp.2d 239, at footnote 1 (D.V.I. 1998) (paralegal fees were denied "because no authority [was] advanced for their inclusion"); see also *Coral World (V.I.), Inc. v. Ross*, CIV. 1995-183, 2000 WL 1672610 (D.V.I. 2000).

<sup>4</sup> *Staples v. Ruyter Bay Land Partners, LLC*, CIV. 2005-11, 2008 WL 450265 (D.V.I. Feb. 6, 2008).

<sup>5</sup> See, e.g., *Morcher v. Nash*, 32 F. Supp. 2d 239 (D.V.I. 1998).

<sup>6</sup> See *Ryan v. Ryan*, 53 V.I. 140, 147 (Sup. Ct. 2010).

<sup>7</sup> *Id.*

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An Order consistent with this Opinion shall follow.

Dated: April 4, 2014

ATTEST: Estrella George  
Acting Clerk of Court

by: Donna D. Donovan  
Donna D. Donovan  
Court Clerk Supervisor

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