

FILED

March 30, 2021

ST-2021-CV-00124

TAMARA CHARLES
CLERK OF THE COURT

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

MINERVA MARSH VAZQUEZ,)
 By her attorney in fact, Gary Lopez,)
 And EGLAH MARSH CLENDINEN)
 By her attorneys in fact, Jacqueline)
 Clendinen and Ernie Clendinen,)
)
 Plaintiffs,)
)
 v.)
)
 SUMMERS END GROUP, LLC)
 And Brion Morisette,)
)
 Defendants)
 _____)

CIVIL NO.:

ACTION: FOR DECLARATORY
RELIEF, UNJUST ENRICHMENT,
QUANTUM MERUIT, and
BREACH OF FIDUCIARY DUTY
JURY TRIAL DEMANDED

COMPLAINT

COME NOW, the Plaintiffs, Minerva Marsh Vazquez, by her attorney in fact, Gary Lopez, and Eglah Marsh Clendinen, by her attorneys in fact, Jacqueline Clendinen and Ernie Clendinen, through counsel, and for their Complaint against Defendants Summers End Group, LLC, and Brion Morisette state and allege as follows:

Prefatory Statement

Minerva Marsh Vazquez and Eglah Marsh Clendinen are sisters, both in their eighties, who seek to declare and enforce their right to possess, control and earn income from their valuable oceanfront properties in St. John Virgin Islands. For more than fifteen (15) years Defendants and their predecessors have tricked, induced, coerced and bamboozled Plaintiffs with a series of bogus agreements and false promises that they would be paid for the use of their land to develop a marina, which would provide income for their care and comfort. Instead, their land has been tied up, the promised rents have not been paid, and the development has yet to

materialize. Plaintiffs seek to declare their rights and be paid what is due to them from Defendants for the fair market value of the loss of use of their properties.

Parties and Jurisdiction

1. Plaintiff Minerva Marsh Vazquez (“Minerva Marsh”) is a native of St. John, Virgin Islands and is the record title owner of Parcel 10-18 Estate Carolina, St. John, Virgin Islands. She currently resides in New York.
2. Plaintiff Eglah Marsh Clendinen (“Eglah Marsh”) is a native and resident of St. John, Virgin Islands and is the record title owner of Parcel 10-17 Estate Carolina, St. John, Virgin Islands.
3. Defendant Brion Morisette is a resident of St. John, and an attorney and member of the Virgin Islands Bar.
4. Defendant Summers End Group LLC (“SEG”) is a Virgin Islands limited liability company.
5. On information and belief the members of Summers End Group LLC include, among others, Chaliese Summers, Richard Barksdale, and Brion Morrisette.
6. This action involves a dispute over the right to possession and control of the Plaintiffs’ properties at Nos. 10-17 and 10-18 Estate Carolina.
7. This Court has subject-matter jurisdiction over this matter pursuant to 4 V.I.C. § 76 and 5 V.I.C. §§1261-1272.
8. The actions that give rise to this Complaint took place in St. John, U.S. Virgin Islands, and the properties that are the subject of this Complaint are located in St. John, U.S. Virgin Islands.

9. Venue is appropriate in the division of St. Thomas and St. John pursuant to 4 V.I.C. § 78.

Factual Allegations

10. Eglah Marsh, a/k/a Eglah Nathalia Marsh Clendinen has been the record title owner of Parcel No. 10-17 Estate Carolina since November 24, 1975.
11. Minerva Marsh has been the record title owner of Parcel 10-18 Estate Carolina since December 15, 1991.
12. Minerva Marsh and Eglah Marsh are sisters and are currently in their eighties.
13. In 2004, Brion Morisette, Esq., was the “family attorney” for both Plaintiffs.
14. At some point prior to November 1, 2004, Attorney Morisette prepared the following legal documents: (a) a Lease for Parcels 10-17 and 10-18 Estate Carolina between the Marsh Sisters Family Trust, as Landlord, and Coral Bay Marina LLC (“CBM”), as Tenant, (b) a document captioned the “Marsh Sisters Family Trust”, (c) a quit claim from Minerva Marsh to the Marsh Sisters Family Trust for Parcel 10-18 Estate Carolina; and (d) a quit claim deed from Eglah Marsh to the Marsh Sisters Family Trust for Parcel 10-17 Estate Carolina.
15. The documents were prepared by Attorney Morisette to create a Trust for the sole purpose of owning, managing, and leasing its sole assets, which were to be Parcels 10-17 and 10-18 Estate Carolina, to create deeds from Eglah and Minerva Marsh to convey their properties to the Trust, and then to have the Trust execute a Lease for Parcels 10-17 and 10-18 to Coral Bay Marina LLC.

16. The signatory page on the 2004 Lease shows that Brion Morisette was the managing member of the Coral Bay Marina LLC, which made Brion Morisette an interested party to all of the transactions.
17. Plaintiffs were not represented by separate counsel in connection with the review of the legal documents prepared by Attorney Morisette and there is no evidence that Morisette obtained written waivers from his clients showing that each of them were fully informed and knowingly waived the conflict of interest posed by Morisette's role as counsel for the Plaintiffs and an interested party to the proposed Trust, deeds and Lease.
18. The Trust was prepared to be signed by Eglah and Minerva Marsh as Grantors, before two (2) witnesses and a notary. The signatures of both Eglah and Minerva Marsh on the Trust were attested on November 1, 2004 by a notary in "Kings County New York"
19. Eglah Marsh's signature on the quit claim deed from Parcel 10-17 to the Trust was witnessed and notarized on November 1, 2004 by Brion Morisette, located in St. John, on the same date that Eglah Marsh's signature on the Trust was notarized by Jean Claude Bernagene, located in Kings County New York.
20. Eglah Marsh could not have been physically present in both New York and St. John on November 1, 2004. A notary only has the power to attest to the signature of a person who is physically present in the jurisdiction where the notary is both authorized and located, which means both attestations of Eglah Marsh's signatures on the deed and Trust cannot be valid.

21. There is no record that the quit claim deeds were ever attested by the cadastral division of the Recorder of Deeds for the District of St. Thomas and St. John.
22. The quit claim deeds were never recorded by the Recorder of Deeds for the District of St. Thomas and St. John.
23. The location of the original quit claim deeds is unknown to Plaintiffs.
24. Plaintiffs only have possession of copies of the deeds, both of which contain a notation showing transmission by facsimile by “J B Morisette” from “340 773 4363”.
25. The 2004 Lease consists of fourteen (14) unnumbered pages, and a two (2) page document labeled “Exhibit Two”, and it provides for an initial term of 120 months and two (2) options of 20 years each. The rental rate for years one and two is \$40,000.00, with the \$20,000.00 payable on execution, with an increase to \$77,000.00 commencing in year three, followed by annual CPI or 5% increases thereafter.
26. On March 12, 2011, a document labeled “Option Agreement” was executed between the Trust and Coral Bay Marina LLC, to provide CBM with one year to exercise an option to execute a Lease for Parcels 10-17 and 10-18 for a payment of just \$1,000.00, and the right to extend the option for a second year, for a payment of \$15,000.00. The signatures of Eglah and Minerva Marsh on the Option Agreement, as “Trustees”, do not match their signatures on any other documents, and were not witnessed or notarized. Morisette signed for CBM. The 2004 Lease, signed by CBM on March 2, 2011, was attached as an exhibit.
27. On or about July 30, 2012, another Lease was created, consisting of fifteen (15) unnumbered pages. There is an “Exhibit Two” with very different terms from the 2004

version. The Tenant was changed from CBM to “Brion Morrisette and Robert O’Connor or Marina Asset Partners “MAP””. This Lease was also for 120 months, with two (2) options of 20 years each, however, under this Lease, the compensation to the Landlord was dramatically reduced to just \$5,000.00 on execution and \$34,000.00 annually, with an increase in the second year to \$65,450.00 annually, and CPI or 5% increases every four years thereafter. **The Lease provides for a waiver of any rental payments until Tenant or its assignee has closed on funding for marina assets and construction.** Under this Lease, instead of receiving \$80,000.00 for the first 2 years, and \$77,000.00 each year thereafter, with annual CPI or 5% increases, Eglah and Minerva Marsh were to receive just \$5,000.00, and the document purported to include an agreement to waive all rents until the Tenant closes on funding for its marina development. There is no time limit on this waiver.

28. Eglah and Minerva Marsh never agreed to the drastically reduced rental terms in the 2012 Lease, nor to the conditions precedent to payment. Because both versions of the Lease consist of numbered pages, and both have an “Exhibit Two”, assuming Plaintiffs had executed a Lease in 2012, it would be void or voidable because there was no meeting of the minds on the essential terms.

29. Indeed, on or about August 1, 2016, Plaintiffs served a demand for unpaid rents based upon the rental rates stated in the 2004 Lease, and asserting that the only payment they had ever received from any purported tenant for the use of their property was the initial deposit of \$20,000.00. No other rents were paid. None of the “so-called” option fees were paid.

30. On July 31, 2013, and September 5, 2013, respectively, Morisette and O'Connor signed a document captioned "First Addendum", which was purportedly executed by Minerva and Eglah Marsh on an unknown date. This document provides that in exchange for a payment of \$10,000.00, Eglah and Minerva Marsh agreed to extend the waiver of all rents for another two (2) years, or until the Tenant obtains a CZM Permit for the marina development, whichever occurs first, and it further provides that they consented to an absolute assignment of the Lease to a third party, which shall completely release the original tenant from all liability.
31. On or about February 18, 2014, Morisette and O'Connor executed an absolute assignment of the Lease to Summers End Group, LLC (SEG).
32. A document captioned "Short Form Lease" was purportedly executed by Minerva and Eglah Marsh on or about March 21, 2014, and by O'Connor and Morisette on March 8, 2014, which was *after* O'Connor and Morisette had already absolutely assigned and transferred all of their right and interest in the Lease to SEG.
33. A document captioned "Second Addendum" was purportedly executed in counterparts in 2016. Eglah Marsh's signature on this document is dated September 1, 2016 and was witnessed by persons who, on information and belief, were employees of Robert O'Connor. Eglah Marsh was transported by Mr. O'Connor to his office to sign this document, and was not accompanied by anyone else.
34. The Second Addendum goes even further, and waives ALL rents, in exchange for a payment of just \$25,000.00 and a 1% membership interest in SEG, an entity that has no current value. No rents will be due throughout the permitting and construction

phase, and once SEG has all permits, it will commence annual rent payments of at the rate of \$65,450.00.

35. SEG paid the \$25,000.00.
36. On March 8, 2018, SEG recorded as Document No. 2018001567, a Memorandum of Lease against Parcels 10-17 and 10-18 in the Office of the Recorder of Deeds for the District of St. Thomas and St. John.
37. Over the years, SEG has submitted various applications for the development of a marina project on a site that includes Parcels 10-17 and 10-18 as a centerpiece of the project, and has represented to the various agencies of the Virgin Islands Government, and to the Legislature, that it has the unconditional right to use Parcels 10-17 and 10-18 Estate Carolina, based upon the purported Lease and related documents.
38. Specifically, SEG has submitted Permit Application CZJ-4-14(W) to the Department of Planning and Natural Resources, Division of Coastal Zone Management for the construction of a marina development, which includes the use of Plaintiffs' properties at Parcels 10-17 and 10-18 Estate Carolina.
39. Plaintiffs advised Defendants that, based upon all of the facts and circumstances, the Trust, and Leases and all related documents are void or voidable.
40. Plaintiffs have advised SEG that they have not agreed to the use of their Properties for this or any other development, and they will not agree unless new and valid documents are agreed to and all amounts due are paid.
41. Plaintiffs have demanded payment from SEG for the fair market value for the use of their property for the past seventeen (17) years.

42. SEG has consistently refused to commit to any immediate payment to Plaintiffs for the use of their property, and has insisted it has the right to continue to use and control Parcels 10-17 and 10-18, without any obligation to pay any compensation to Plaintiffs until some unspecified, future date when all permits are in place.
43. For seventeen (17) years, Defendants Morisette and SEG, or their predecessors in interest, used these sham, one-sided documents executed under questionable circumstances, as a basis to claim to Eglah and Minerva Marsh that they had a right to exert possession and control over Parcels 10-17 and 10-18, to the exclusion of all other potential tenants, developers or buyers.
44. During that time, Eglah and Minerva Marsh have received not more than \$45,000.00 in total compensation for the use of their properties.
45. At an annual rate, Defendants and their predecessors have paid Plaintiffs just \$2,647.00 annually, or about \$220.50 monthly, for the use of these valuable Parcels 10-17 and 10-18 Estate Carolina.

Count I-Declaratory Judgment

46. The allegations in paragraphs 1-45 are repeated and realleged.
47. There is an actual, bona fide dispute between Plaintiffs and SEG over the validity of the Trust, the deeds, and the Leases and related documents.
48. The circumstances under which Plaintiffs were convinced by Morisette to execute the Trust, the deeds, and the Lease were such that they were subjected to undue influence from a person with a clear conflict of interest who occupied a position of trust and confidence.

49. The attestation of the signatures of Eglah Marsh on the deed for 10-17 and the Trust are inconsistent and defective, which renders both documents void or voidable.
50. There is no evidence that the original quit claim deeds, purportedly executed in 2004, were ever delivered, attested or recorded. The location of the original deeds is unknown to Plaintiffs.
51. Plaintiffs have not conveyed their properties to the Trust and still own their properties individually.
52. Plaintiffs never funded the Trust, and it is therefore void or voidable and of no legal effect.
53. All documents purportedly executed by Plaintiffs as “Trustees of the Marsh Sisters Family Trust” are therefore void or voidable.
54. There was no meeting of the minds as to the material terms between the parties to the 2012 Lease upon which Morisette and SEG rely in asserting their rights to possession and control over Parcels 10-17 and 10-18 Estate Carolina, rendering it void or voidable.
55. The options, extensions and addendums are all based upon and dependent upon the alleged validity of the Trust and the 2012 Lease, and are therefore void or voidable.
56. Defendants have breached the terms of the purported contracts upon which they rely, rendering them subject to termination, and Plaintiffs have in fact given due notice of termination of these sham agreements.
57. The terms of the leases, extensions and addendums are unconscionable and thus unenforceable.

58. Plaintiffs are persons interested under a deed, written contract or other writing who are entitled to seek a declaration by the Court of their rights and of the status of all of the disputed documents under the Virgin Islands Declaratory Judgment Act, Section 1262.
59. Plaintiffs seek a declaratory judgment as follows:
- (a) Declaring that Eglah Marsh has not conveyed Parcel 10-17 Estate Carolina to the Marsh Sisters Family Trust.
 - (b) Declaring that Minerva Marsh has not conveyed Parcel 10-18 Estate Carolina to the Marsh Sisters Family Trust.
 - (c) Declaring that the Marsh Sisters Family Trust is void and a nullity.
 - (d) Declaring that all leases, contracts, agreements, options, addendums or other documents purportedly executed by Eglah Marsh and Minerva Marsh as “Trustees of the Marsh Sisters Family Trust” are void and of no legal effect.
 - (e) Declaring that the 2012 Lease is void because there was no meeting of the minds by the parties thereto as to the material terms.
 - (f) Declaring that the 2012 Lease, and all subsequent options, extensions and addendums are void due to the invalidity of the Trust as purported Landlord; due to their unconscionable terms; and because the documents were the products of undue influence, and abuses of a fiduciary relationship of trust and confidence.
 - (g) Declaring that the Memorandum of Lease recorded by SEG against Parcels 10-17 and 10-18 as Document No. 2018001567 is also void, and shall be canceled, stricken and removed from the public record and shall no longer create a cloud upon Plaintiffs’ free and clear title to Parcels 10-17 and 10-18.

Count II Unjust Enrichment

60. The allegations in paragraphs 1-59 are repeated and realleged.
61. The Defendants have had possession and control over Plaintiffs' properties, to the exclusion of all others, without paying fair compensation.
62. The Defendants have been unjustly enriched at Plaintiffs' expense.
63. Defendant SEG, as successor in interest to Morisette and O'Connor, is jointly responsible for all amounts owed to Plaintiffs for the use and control of Plaintiffs' properties by its predecessors.
64. Equity and good conscience require that Defendants must compensate Plaintiffs for the fair market value of the use of their properties for the past seventeen (17) years.
65. Defendants are jointly and severally indebted to Plaintiffs for the amount owed to fairly and justly compensate them for the use of their properties in an amount to be determined, which is not less than SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00).

Count III *Quantum Meruit*

66. The allegations in paragraphs 1-65 are repeated and realleged.
67. Defendants have enjoyed the use of Plaintiffs' valuable properties, without paying fair market rent, for seventeen (17) years.
68. The Lease and related documents upon which Defendants have relied to use, control and occupy Plaintiffs' properties are unenforceable because these documents are void, defective and unconscionable and were obtained by undue influence and gross breaches of a fiduciary relationship of trust and confidence.

69. Defendants are required to compensate Plaintiffs on a *quantum meruit* basis for the fair market value of their use of Plaintiffs' properties.
70. Defendants are jointly and severally indebted to Plaintiffs for the amount owed to compensate them in *quantum meruit* for the use of their properties in an amount to be determined, which is not less than SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00).

Count IV Breach of Fiduciary Duty- Defendant Morisette

71. The allegations in paragraphs 1-70 are repeated and realleged.
72. Defendant Morisette is an attorney duly licensed to practice law in the Virgin Islands.
73. In 2004, when Plaintiffs were first induced to sign the deeds and Trust and were presented with the terms of the proposed 2004 Lease, Morisette was their family lawyer, or held himself out to be their family lawyer. As such, Morisette had a fiduciary duty to act in Plaintiffs' best interest and a duty of loyalty to protect their best interests.
74. Plaintiffs were not represented by independent counsel when they were convinced and persuaded by Morisette to sign away possession of and control over their properties, again and again, under increasingly unconscionable, unfair and grossly one sided terms.
75. At all times beginning in 2004, and continuing to this date, Morisette has been an interested party who stood to gain personally and financially from the transactions to which he and the Plaintiffs were parties, which placed him in a irreconcilable conflict of interest.

76. Plaintiffs have been damaged by Morisette's breaches of fiduciary duty, which have continued as each agreement was presented for them to sign, and for each day, week and month that they have been deprived of the right to earn income from their properties.
77. Morisette's actions have placed Plaintiffs in a situation where SEG now claims a continuing right to control and use their properties for its development, without any obligation to pay just compensation.
78. Morisette's actions shock the conscience.
79. Plaintiffs are entitled to an award of compensatory and punitive damages in an amount to be determined.

WHEREFORE, Plaintiffs seek judgment against Defendants Summers End Group LLC and Brion Morisette as follows:

- A. Under Count I for a Declaratory Judgment as stated therein;
- B. Under Count II for Damages for Unjust Enrichment;
- C. Under Count III for Payment in *Quantum Meruit*; and
- D. Under Count IV, against Defendant Brion Morisette, for damages and punitive damages for breach of fiduciary duty; and
- E. For their costs and attorney's fees incurred in pursuing their rights and seeking relief; and
- F. For such other and further relief as the Court deems just and appropriate.

Plaintiffs Demand a Trial By Jury on Counts II, III, and IV

DATED: March 30, 2021

Respectfully submitted,

DUDLEY RICH LLP

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