

**FILED**

December 07, 2020

ST-2020-CV-00298

TAMARA CHARLES  
CLERK OF THE COURT

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

SAVE CORAL BAY, INC.,	)	
	)	
Plaintiff,	)	CASE NO. ST-2020-CV-00298
	)	
v.	)	ACTION FOR INJUNCTIVE
	)	AND DECLARATORY RELIEF
ALBERT BRYAN, JR. IN HIS OFFICIAL	)	
CAPACITY AS GOVERNOR OF THE VIRGIN	)	
ISLANDS AND SUMMERS END GROUP, LLC,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

**THIS MATTER** is before the Court on Defendants’ joint “Motion to Dismiss for Lack of Subject Matter Jurisdiction” filed on November 2, 2020. In response, Plaintiff filed a “First Amended Complaint” on November 23, 2020. For the reasons set forth below, Defendants’ motion will be denied.

This case is about a proposal to build a large-scale commercial marina in the waters of Coral Bay, St. John, Virgin Islands. The project’s proponent, Summers End Group, LLC, is seeking approval from various territorial and federal agencies so it can begin construction of the marina. Save Coral Bay is a citizens’ group that opposes the project for many reasons, from environmental concerns to the social and cultural impacts on St. John communities.

Save Coral Bay’s initial complaint asserted three counts: first, to declare the permit invalid; second, to declare the Governor’s modification to the permit invalid; and third, to enjoin the project from moving forward. Defendants’ moved to dismiss for lack of subject matter jurisdiction, arguing that Save Coral Bay had not exhausted its administrative remedies with the

Board of Land Use Appeals (“Board”). In response, Save Coral Bay amended and cured its complaint by removing the count under the Board’s jurisdiction.

Defendants moved to dismiss because the Board, not the Court, is vested with authority to hear initial appeals from the Coastal Zone Commission’s grant or denial of a Coastal Zone permit. 12 V.I.C. § 914. Section 913(d) requires the proponent or opponent of a permit to exhaust its administrative remedies prior to seeking judicial review. The granting of the permit(s) at issue should be appealed to the Board, so Defendants argue Save Coral Bay is precluded from seeking judicial review. The Court agrees the Coastal Zone Commission’s grant of a Coastal Zone permit is not subject to judicial review until the Board has resolved the appeal. That said, Save Coral Bay’s Complaint no longer challenges the issuance of Summers End Group’s permit.

Save Coral Bay now seeks (1.) review of the Governor’s modification of the permit and (2.) an injunction halting construction because of an alleged violation of the Coastal Zone Management Act (“Act”), codified at 12 V.I.C. §§ 901–914. Section 913(b)(1) provides that “[a]ny person may maintain an action for declaratory and equitable relief to restrain *any* violation of this chapter.” (emphasis added). Section 913(a) provides that “[t]he provisions of this section shall be cumulative and not exclusive and shall be in addition to any other remedies available at law or equity.” The exhaustion requirement relied on by Defendants applies only to “the granting or denial of an application for a coastal zone permit.” § 913(d). It does not apply to the Governor’s modifications to an existing permit. The Act does not give the Board jurisdiction to review the Governor’s actions. *See* § 913. Rather, section 913 gives the Court jurisdiction to review violations of the Act and to issue an injunction upon “a prima facie showing of a violation . . . .” § 913(b)(1). The Governor’s modifications to the permit are thus reviewable by the Court for compliance with the Act.

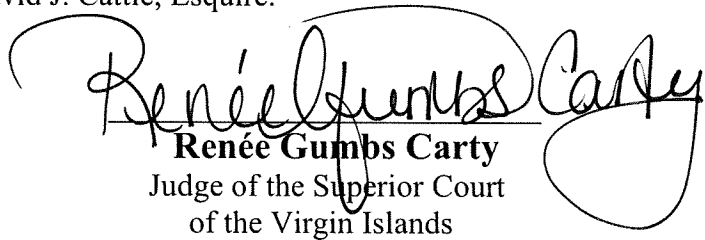
The two counts asserted in the First Amended Complaint are within the Court's subject matter jurisdiction as specifically conferred by section 913 of the Act. Save Coral Bay has cured its complaint by removing the count under the Board's jurisdiction. The Court being satisfied in the premises, it is hereby

**ORDERED** that the motion is **DENIED**; and it is further


**ORDERED** that Defendants shall file an answer within thirty (30) days after entry of this Order; and it is further

**ORDERED** that a copy of this Order be distributed to Andrew C. Simpson, Esquire, Christopher M. Timmons, Esquire, and David J. Cattie, Esquire.

Dated: December 7, 2020

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
Donna D. Donovan  
Court Clerk Supervisor 12/8 / 2020