

FILED

June 08, 2021

ST-2021-CV-00124

TAMARA CHARLES

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

CLERK OF THE COURT IVA MARSH VAZQUEZ, By her attorney)
In fact, Gary Lopez, and EGLAH MARSH)
CLENDINEN, By her attorneys in fact, Jacqueline)
Clendinen and Ernie Clendinen)
Plaintiff,)
v.)
THE SUMMER'S END GROUP, LLC, and)
BRION MORISETTE)
Defendant(s))

CASE NO: 2021-CV- 00124

ANSWER AND AFFIRMATIVE DEFENSES OF THE SUMMER’S END GROUP, LLC

COMES NOW, Defendant, The Summer’s End Group, LLC. (“SEG”), by and through its undersigned counsel, and files its Answer and Affirmative Defenses and says:

Response to Prefatory Statement

Plaintiffs include a “Prefatory Statement” to their Complaint which is improper as a matter of law.¹ This statement also contains demonstrably false allegations. Minerva Marsh Vazquez and Eglah Marsh Clendinen executed and created the subject Marsh Sisters’ Family Trust in 2004. In 2006 Minerva Marsh Vazquez and Eglah Marsh Clendinen *expressly* reaffirmed the validity of the Trust. At no time while they were tending to their own affairs did either sister ever challenge, alter, or cancel the Trust. Gary Lopez, Jacqueline Clendinen, and Ernie Clendinen are Trust beneficiaries who attempted to force

¹ V.I.R.Civ.P. 8 mandates that the complaint contain a short plain statement of jurisdiction and a short plain statement of the claim set forth in numbered paragraphs as outlined in V.I.R. Civ.P. 10(b), which states “[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Wide ranging “prefatory statements” (particularly demonstrably false ones) are not permitted under the rules.

SEG into paying funds not required by the lease with the Trust. When those attempts failed, they filed this patently frivolous lawsuit. Tellingly, Plaintiffs have failed to advise the Court that in December 2019, Jacqueline Clendinen, as attorney in fact for Eglah Marsh Clendinen, executed a “Certificate of Resignation of Trustees and Acceptance of Successor Trustees” in which she admitted that the Trust was valid and admitted that Minerva Marsh Vazquez and Eglah Marsh Clendinen “executed ‘The Marsh Sisters’ Family Trust” on November 1, 2004. In February 2020, both Gary Lopez *and Minerva Marsh Vasquez* executed the same document. That document was prepared by Plaintiffs’ current counsel. As such, any contention that the Trust was not properly created, settled, or executed is demonstrably false. SEG is in compliance with all lease obligations to the Trust and will continue to comply therewith. By filing this meritless lawsuit, Gary Lopez, Jacqueline Clendinen, and Ernie Clendinen have each forever forfeited any benefits or income from the Trust pursuant to ¶ 12 of the Marsh Sisters’ Family Trust.

Parties and Jurisdiction

1. Admitted in part, denied in part. It is admitted that Minerva Marsh is a native of St. John who resides in New York. Parcel 10-18 Estate Carolina, St. John, Virgin Islands, however, is owned by The Marsh Sisters’ Family Trust as part of a consolidated parcel.
2. Admitted in part, denied in part. It is admitted that Eglah Marsh is a native and resident of St. John. Parcel 10-17 Estate Carolina, St. John, Virgin Islands, however, is owned by The Marsh Sisters’ Family Trust as part of a consolidated parcel.
3. The allegations contained in paragraph 3 of Plaintiffs’ Complaint pertain to a non-answering Defendant and, as such, no response is required.
4. Admitted.
5. Denied.

6. Denied.
7. The allegations contained in paragraph 7 of Plaintiffs' Complaint contain legal conclusions to which no response is required.
8. Denied.
9. The allegations contained in paragraph 9 of Plaintiffs' Complaint contain legal conclusions to which no response is required.

Factual Allegations

10. Denied.
11. Denied.
12. Admitted.
13. The allegations contained in paragraph 13 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
14. The allegations contained in paragraph 14 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
15. The allegations contained in paragraph 15 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
16. The allegations contained in paragraph 16 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
17. The allegations contained in paragraph 17 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
18. Denied.
19. Denied.

20. Denied.
21. Answering Defendant is without sufficient information to admit or deny the allegations contained in paragraph 21 of Plaintiffs' Complaint and, as such, Plaintiffs are left to their proofs.
22. Answering Defendant is without sufficient information to admit or deny the allegations contained in paragraph 22 of Plaintiffs' Complaint and, as such, Plaintiffs are left to their proofs.
23. Answering Defendant is without sufficient information to admit or deny the allegations contained in paragraph 23 of Plaintiffs' Complaint and, as such, Plaintiffs are left to their proofs.
24. Answering Defendant is without sufficient information to admit or deny the allegations contained in paragraph 24 of Plaintiffs' Complaint and, as such, Plaintiffs are left to their proofs.
25. Answering Defendant is without sufficient information to admit or deny the allegations contained in paragraph 25 of Plaintiffs' Complaint and, as such, Plaintiffs are left to their proofs.
26. The allegations contained in paragraph 26 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
27. The allegations contained in paragraph 27 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
28. Denied.
29. Denied.
30. The allegations contained in paragraph 30 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
31. Denied. While there was an assignment of the lease, that occurred in February 2015, not 2014.
32. Denied.
33. Denied.

34. Admitted in part. The language of the addendum speaks for itself, and it is admitted that Eglah Marsh and Minerva Marsh accepted \$25,000 in bargained for consideration. The allegation that SEG has no value is Denied.
35. Admitted.
36. Admitted.
37. Admitted.
38. Admitted in part. It is admitted that SEG's permit applications include the subject consolidated parcels. It is Denied that the subject properties are owned by Plaintiffs individually. The Trust is the actual owner.
39. Denied. Neither Minerva Marsh Vazquez nor Eglah Marsh Clendinen ever made any such claim. Gary Lopez, Jacqueline Clendinen, and Ernie Clendinen have made these unsupported contentions for their own personal benefit.
40. Denied. Neither Minerva Marsh Vazquez nor Eglah Marsh Clendinen ever made any such claim. Gary Lopez, Jacqueline Clendinen, and Ernie Clendinen have made these unsupported contentions for their own personal benefit.
41. Denied. Neither Minerva Marsh Vazquez nor Eglah Marsh Clendinen ever made any such claim. Gary Lopez, Jacqueline Clendinen, and Ernie Clendinen have made these unsupported contentions for their own personal benefit.
42. Denied. SEG is in complete compliance with its contractual obligations to the Trust and all payments have been made as required.
43. Denied.

44. Answering Defendant is without sufficient information to admit or deny the allegations contained in paragraph 44 of Plaintiffs' Complaint and Plaintiffs are therefore left to their proofs.

45. Denied.

Count I- Declaratory Judgment

46. Answering Defendant incorporates all preceding paragraphs as if repeated herein.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

a) Denied.

b) Denied.

c) Denied.

d) Denied.

e) Denied.

f) Denied.

g) Denied.

Count II-Unjust Enrichment

60. Answering Defendant incorporates all preceding paragraphs as if repeated herein.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

Count III-Quantum Meruit

66. Answering Defendant incorporates all preceding paragraphs as if repeated herein.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

Count IV-Breach of Fiduciary Duty-Defendant Morisette

71. Answering Defendant incorporates all preceding paragraphs as if repeated herein.

72. The allegations contained in paragraph 73 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.

73. The allegations contained in paragraph 73 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.

74. The allegations contained in paragraph 74 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
75. The allegations contained in paragraph 75 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
76. The allegations contained in paragraph 76 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
77. The allegations contained in paragraph 77 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
78. The allegations contained in paragraph 78 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.
79. The allegations contained in paragraph 79 of Plaintiffs' Complaint pertain to a non-answering Defendant and, as such, no response is required.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted against Answering Defendant.
2. Plaintiffs lack standing.
3. Plaintiffs' alleged damages were the result of actions or omissions of third parties over whom Answering Defendant had no dominion, control, or legal responsibility.
4. Plaintiffs' Complaint should be dismissed due to the failure to join parties indispensable to the complete resolution of this matter.
5. Any damages suffered as alleged by Plaintiffs were the result of intervening causes for which Answering Defendant bears no legal responsibility.

6. Plaintiffs' claims are barred by the doctrine of laches.
7. Plaintiffs' claims are barred by the doctrine of acquiescence.
8. Plaintiffs' claims are barred by the doctrines of good faith, agency, lack of privity.
9. Plaintiffs' claims are barred by the parol evidence rule and the statute of frauds.
10. Plaintiffs' claims are barred by the applicable statutes of limitation.
11. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.
12. Plaintiffs failed to mitigate any damages suffered as alleged.
13. Plaintiffs' claims are barred as to by the absence of duty, the absence of proximate causation as well as by the doctrines of consent, waiver, release and estoppel.
14. Plaintiffs expressly waived and released any claims against Answering Defendant as alleged.

WHEREFORE, The Summer's End Group, LLC respectfully requests this Court dismiss Plaintiffs' Complaint with prejudice and award all reasonable fees, costs, and expenses together with any other relief the Court deems just and equitable.

Date: June 8, 2021

Respectfully submitted,

The Cattie Law Firm, P.C.

David J. Cattie

David J. Cattie, Esq. (V.I. Bar No. 964)
1710 Kongens Gade
St. Thomas, Virgin Islands 00802
Telephone: 340.775.1200
Facsimile: 800.878.5237
E-mail: david.cattie@cattie-law.com

Attorney for The Summer's End Group

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June 2021, I served a copy of the foregoing document on the person(s) listed below via the e-filing system, email and/or first class mail:

<p>Carol Ann Rich, Esq. Dudley Rich, LLC 5194 Dronningens Gade, Suite # 3 Te. 340.776.7474/Fax 340.776.8044 e-mail: crich@dudleylaw.com</p> <p><i>For Plaintiffs</i></p>	<p>Chad C. Messier (Bar No. 497) 1000 Frederiksberg Gade St. Thomas, VI 00802 Telephone: (340) 774-4422 Email: cmessier@dnfvi.com</p> <p><i>Attorneys for Defendant, Brion Morrisette</i></p>
---	---

David J. Cattie
