

FILED

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SCT-Civ-2021-0044

VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

In The
**Supreme Court of the
Virgin Islands**

APPEAL NO. 2021-0044

JOHN KLEIN,

Appellant,

v.

MADELINE A. BASSIL,

Appellee.

**ON APPEAL FROM THE SUPERIOR COURT OF THE
VIRGIN ISLANDS DIVISION OF ST. THOMAS
SUPERIOR COURT CIV. NO. ST-2021-CV-00148**

**JOINT APPENDIX
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**Superior Court of the Virgin Islands
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Case #	ST-2021-CV-00148	Judge	Hon. Sigrid M. Tejo
Case Title	MADELINE BASSIL v. JOHN KLEIN	Case Type	Civil - Real Property - Temporary Restraining Order

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
55	09-17-2021 08:34 AM	Initiating Document - Notice of Appeal	Official		Notice of Appeal and Supreme Court Docketing Order Received. Appeal Docketed as SCT-CIV-2021-0044.	
54	09-16-2021 09:30 AM	Notice - Notice of Appearance	Official		Notice of Appearance	
53	08-18-2021 12:57 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
52	08-16-2021 12:53 PM	Order - Memorandum Opinion And Order	Official		Memorandum Opinion And Order Signed Ordered that Plaintiff's Motion for a Preliminary Injunction, filed May 7, 2021, is Granted.	Hon. Sigrid M. Tejo
51	08-02-2021 02:55 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
50	07-30-2021 02:36 PM	Brief - Respondent Brief	Official		Plaintiff's Post Hearing Brief	
49	07-30-2021 02:33 PM	Response - Opposition Received	Official		Defendant's Supplemental Brief in Opposition to Plaintiff's Motion for Preliminary Injunction Received	
48	07-29-2021 02:51 PM	Order - Order Signed	Official		Ordered that the Court will as Ms. Parlato to not observe the hearing of this matter even though Ms. Parlato is not involved in deciding the merits of the case and her summer internship ended on July 28, 2021. Signed	Hon. Sigrid M. Tejo
47	07-28-2021 01:39 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding by Clerk	
46	07-28-2021 01:36 PM	Hearing - Exhibit Listing Submitted At Hearing	Official		Exhibit Listing Submitted At Hearing	Jerome David Crain, Jr. On Behalf of JOHN KLEIN
45	07-27-2021 01:06 PM	Service - 21 Day Summons	Official		21 Day Summons Issued to Sharon Hupprich	
44	07-27-2021 01:05 PM	Service - Subpoena Received	Official		Subpoena Received	
43	07-27-2021 11:49 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding by Clerk	
42	07-27-2021 11:45 AM	Hearing - Exhibit Listing Submitted At Hearing	Official		Exhibit Listing Submitted At Hearing	
41	07-26-2021 04:57 PM	Notice - Notice of Filing	Official		Plaintiff 's Exhibit List	Matthew J. Duensing On Behalf

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2021-CV-00148	Judge	Hon. Sigrid M. Tejo
Case Title	MADLINE BASSIL v. JOHN KLEIN	Case Type	Civil - Real Property - Temporary Restraining Order

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
						of Madeline Bassil
40	07-26-2021 10:42 AM	Notice - Notice Of Service	Official		Notice of Service of Plaintiff's Rule 26 Initial Disclosures	Madeline Bassil Matthew J. Duensing, Esq.
38	07-23-2021 12:07 PM	Notice - Exhibit	Official		Exhibit	
37	07-23-2021 12:06 PM	Notice - Notice of Filing	Official		Plaintiff Exhibit List	
39	07-23-2021 12:11 PM	Notice - Witness List Received	Official		Plaintiff's Witness List	Matthew J. Duensing, Esq.
36	07-22-2021 09:00 AM	Notice - Proposed Order	Official		Proposed Order	Matthew J. Duensing, Esquire
35	07-22-2021 08:59 AM	Motion - Motion Received	Official		Motion to Impose an Ethical Wall with respect to Judicial Intern Marina Parlato	Matthew J. Duensing, Esquire
34	07-20-2021 11:23 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding by Clerk	
33	07-19-2021 03:41 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers	
32	07-19-2021 03:31 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order	
31	07-16-2021 03:28 PM	Notice - Notice of Filing	Official		Notice of Filing Supplemental Exhibits in Support of Plaintiff's Request for a site Visit by the Court	Matthew J. Duensing, Esq.
30	07-16-2021 12:25 PM	Notice - Notice to the Court	Official		Notice to the Court	Matthew J. Duensing, Esq.
29	07-14-2021 03:30 PM	Order - Order Signed	Official		Order Signed Ordered that the Motion is DENIED.	Hon. Sigrid M. Tejo
28	07-09-2021 09:10 AM	Service - Subpoena Issued	Official		Subpoena Issued to Don Herbert	
27	07-08-2021 10:34 AM	Service - Subpoena Received	Official		Subpoena to Appear and Testify at a Hearing in a Civil Action to Don Hebert	Matthew J Duensing, Esq.
26	06-24-2021 08:19 AM	Answer - Answer	Official		Answer To Counterclaim	
25	06-21-2021 04:08 PM	Response - Reply	Official		Reply To Defendant's Opposition To Plaintiff's Motion To Reconsider Denial Of Temporary Restraining Order	Matthew J. Duensing On Behalf of Madeline Bassil
24	06-21-2021 01:49 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
23	06-10-2021 01:45 PM	Order - Order Signed	Official		Ordered that this matter is scheduled for a Status Conference on Wednesday, July 20, 2021, at 10:00 a.m.	Hon. Sigrid M. Tejo

**Superior Court of the Virgin Islands
Docket Sheet**

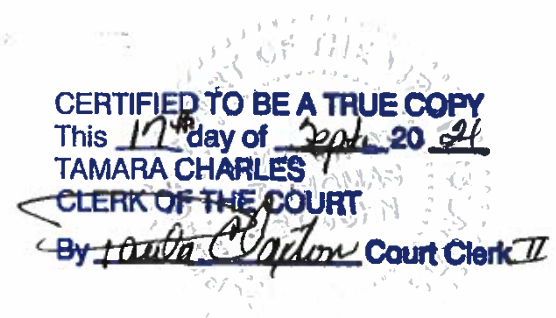
Case #	ST-2021-CV-00148	Judge	Hon. Sigrid M. Tejo
Case Title	MADELINE BASSIL v. JOHN KLEIN	Case Type	Civil - Real Property - Temporary Restraining Order

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Via Zoom Remote Access and it is Ordered that Plaintiff's application for a preliminary injunction shall come on for an Evidentiary Hearing on Tuesday, July 27, 2021, through Thursday, July 29, 2021, at 9:00 am.m via Zoom Remote Access.	
22	06-07-2021 11:52 AM	Answer - Answer and Counterclaim	Official		Answer and Counterclaim	J. David Crain, Esquire
21	06-07-2021 08:01 AM	Response - Opposition Received	Official		Opposition to Plaintiff's Motion to Reconsider Denial of Temporary Restraining Order	Jerome David Crain, Jr. On Behalf of JOHN KLEIN
20	06-02-2021 12:42 PM	Post Consideration - Record of Proceedings	Official		Record of Proceedings	
19	06-02-2021 08:23 AM	Service - Return of Service Received	Official		JOHN KLIEN WAS NOT FOUND FOR SERVICE	
18	05-29-2021 05:07 PM	Notice - Proposed Order	Official		Proposed Order	Matthew J. Duensing, Esq.
17	05-29-2021 05:03 PM	Motion - Motion Received	Official		Request for site visit by the Court	Matthew J. Duensing, Esq.
16	05-20-2021 05:02 PM	Notice - Notice of Filing	Official		Notice of Filing to Substitute Exhibits	Matthew J. Duensing, Esq.
15	05-20-2021 05:01 PM	Response - Response to Opposition	Official		Reply to Opposition to Plaintiff's Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction and Motion to Reconsider Denial of Temporary Restraining Order	Matthew J. Duensing, Esq.
14	05-19-2021 04:55 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers with Calendar for 6/2/21 Attached	
13	05-19-2021 04:36 PM	Service - Return of Service Issued	Official		Return of Service Issued to John Klein	
12	05-19-2021 04:36 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order	
11	05-14-2021 04:17 PM	Order - Order Signed	Official		Order Signed Ordered that Plaintiff's Motion for Temporary Restraining Order is DENIED; Ordered that this matter is scheduled for a Status Conference on Wednesday, June 2, 2021 at	Hon. Sigrid M. Tejo

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2021-CV-00148	Judge	Hon. Sigrid M. Tejo
Case Title	MADELINE BASSIL v. JOHN KLEIN	Case Type	Civil - Real Property - Temporary Restraining Order

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					10:00 a.m. via Zoom for the purpose of scheduling an evidentiary hearing on the Plaintiff's Motion for a Preliminary Injunction.	
10	05-08-2021 06:21 PM	Motion - Opposition Motion	Official		Opposition to Plaintiff's Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction	Madeline Bassil J. David Crain, Esquire
9	05-05-2021 01:19 PM	Notice - Notice of Filing	Official		Notice of Filing Proof of Service	Matthew J. Duensing, Esq
8	04-30-2021 01:57 PM	Notice - Notice to the Court	Official		Defendant's Notice of Intent to Oppose Plaintiff's Emergency Motion for a Temporary Restraining Order	JOHN KLEIN J. David Crain, Esquire
7	04-30-2021 01:57 PM	Notice - Notice of Appearance	Official		Notice of Appearance	JOHN KLEIN J. David Crain, Esquire
6	04-26-2021 02:37 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers	
5	04-26-2021 01:50 PM	Service - 21 Day Summons	Official		21 Day Summons Issued	
4	04-26-2021 01:49 PM	Initiating Document - Docket Letter Processed	Official		Docket Letter Processed	
3	04-26-2021 12:17 PM	Motion - Motion For Temporary Restraining Order Received	Official		Emergency Motion for a Temporary Restraining Order and A Preliminary Injunction	Madeline Bassil Matthew J. Duensing, Esq.
2	04-20-2021 12:33 PM	Financial - Payment Received	Official		Receipt #: 204383 Payor: Robin Paulina Seila, Amount: \$75.00	
1	04-20-2021 12:33 PM	Initiating Document - Verified Complaint	Official		Verified Complaint	Matthew] Duensing, Esq



CERTIFIED TO BE A TRUE COPY
 This 17th day of Sept 2021
TAMARA CHARLES
CLERK OF THE COURT
 By Tamara Charles Court Clerk II

FILED

April 20, 2021

ST-2021-CV-00148

TAMARA CHARLES
CLERK OF THE COURT

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

MADELINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-_____

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

VERIFIED COMPLAINT

Plaintiff Madeline A. Bassil (Plaintiff) files her Complaint against Defendant John Klein (Defendant) and states as follows:

INTRODUCTION

1. Madeline A. Bassil is a citizen of the United States, a resident of New York and the owner of real property located on St. Thomas, United States Virgin Islands.
2. John Klein is a citizen of the United States and the owner of real property located on St. Thomas, United States Virgin Islands, and upon information and belief, a resident of the U.S. Virgin Islands.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this lawsuit pursuant to 4 V.I.C. §76(a).
4. In the event any interested person is located outside this territory, this Court retains jurisdiction over this lawsuit pursuant to 5 V.I.C. § 4903(a)(5).
5. Venue is proper in the Division of St. Thomas pursuant to 4 V.I.C. § 78(a) because this action concerns real property located on St. Thomas, U.S. Virgin Islands.

PARTIES

6. Plaintiff is the owner of Parcel No. 2D-12 Remainder Estate Nazareth (Parcel 2D-12), which she has owned since 2002 with Terry Anderson and solely owned since 2006. **Exhibit A-1 and A-2.**
7. Defendant is the owner of Parcel No. 2D-11 Estate Nazareth (Parcel 2D-11), which directly abuts Parcel 2D-12 to the south. Defendant purchased his property in 2004 and upon information and belief did not complete construction of a residence on Parcel No. 2D-11 Estate Nazareth until 2008, fewer than 13 years ago. **Exhibit B.** Even assuming arguendo that Defendant used a path during that time period, it was not for sufficient time and was not continuous, open or notorious until he recently cut the bush and paths on Plaintiff's property, thereby putting Plaintiff on notice of his trespass and damage to her property.

BACKGROUND

8. Defendant designed and built a home on Parcel 2D-11 that intentionally and willfully encroached upon Plaintiff's property, without Plaintiff's permission. The MapGeo screenshot below shows the outline of Defendant's original Parcel's boundaries and the encroachments onto Plaintiff's parcel.



9. With respect to Defendant's structural encroachments on Plaintiff's Parcel, the parties were able to reach a settlement by which Defendant purchased part of Plaintiff's Parcel, thereby decreasing the size of Plaintiff's original Parcel.

THE DISPUTE

10. Upon information and belief, sometime in 2020, Defendant began criminally trespassing, in violation of 14 V.I.C. §§ 1741 and 1742, on Plaintiff's Parcel by illegally cutting brush, vegetation and trails across Plaintiff's Parcel so that he could attain beach access to Secret Harbor Beach.
11. Plaintiff first became aware of Defendant's unlawful trespass on January 21, 2021, when she was advised by her real estate agent, and confirmed by an as-built survey by Brian Moseley & Associates that showed that bush, vegetation, trails and steps had been cut through and across her Parcel and over Parcel No. 2D-13 Estate Nazareth to reach the Secret Harbor beach.
- Exhibit C.**

12. On or about February 11, 2021, Defendant was served with a Cease-and-Desist Letter from Plaintiff's attorney urging Defendant to cease and desist all activity on Plaintiff's Parcel.
- Exhibit D.** The photo below clearly shows the trails that Defendant has cut across Plaintiff's Parcel.



13. In response to the letter, Defendant's counsel purported that Defendant is not required to cease and desist any activity on Plaintiff's Parcel because he has acquired rights to it by adverse possession.

14. Defendant does not meet the fifteen-year statutory requirement to acquire property rights by adverse possession and has failed to meet the legal requirements for adverse possession of a prescriptive easement, including without limitation, openly, continuously, notoriously, adversely and under color of title, all of which Defendant lacks.
15. Plaintiff, Plaintiff's sister, and Plaintiff's real estate agent, Lisa Curreri attempted to walk Plaintiff's Parcel in April of 2015, but they were unable to because the bush was so dense. Thus, in April of 2015, there were no steps or trails cut on Plaintiff's Parcel.
16. The photo below, taken on or about November 11, 2015, does not show any additional trespass or encroachment beyond Defendant's initial home construction. As of November of 2015, Defendant had not taken any action to cut trails, paths, or steps across Plaintiff's Parcel, as shown below.



17. Defendant not only trespasses on Plaintiff's Parcel, but he also encourages others to do so by advertising that his home has "a private path to a gorgeous white sand beach," as shown below from the AirBnB listing. **Exhibit E.**

Wake up to stunning views of Secret Harbor beach. Sit on the balcony overlooking coral reefs. Watch tropical fish and sea turtles swim by while you enjoy the cooling breeze. This studio is in a gated estate with a private path to a gorgeous white sand beach. There is a full kitchen with all the essentials to prepare your meals. Or, drive 5 minutes to Red Hook where dozens of dining options are available. Our staff is always available to assist you with your travel planning.

18. In addition to promoting trespassing across Plaintiff's Parcel, the AirBnB reviews further encourage additional trespassing, as shown below.

We had a wonderful stay at John's villa. It overlooks Secret Harbor and boasts amazing views private access to the beach and personal hospitality. John was always so responsive and easy to communicate with. The place is immaculate and when we needed some laundry done, it was done by their stage manager in a couple of hours. We also took a half day boating tour to Christmas Bay with their private captain, Jeff. So fun! Over all we had a truly wonderful stay at the great location minutes outside of Red Hook (lots of great restaurants). Thank you, John! I would highly recommend this place.



Diva
February 2021

Gorgeous studio with a gorgeous view- unmatched really. You wakeup to the sound of the waves, and slowly see the water turn clear as the sun comes up. And at the end of the day, you get to watch the sun fade into the mountains across the bay for a killer sunset. If you want to watch the sunset from the beach, just follow the private path down to the Secret Harbor and voila - you're there. John is an amazing host. Always around to help and answer questions, give recommendations. Do yourself a favor and stay at this beautiful studio. Will be returning as soon as I can.

19. Additionally, this photo was taken on or about March 23, 2021, which shows a presumed renter from Defendant actively trespassing on Plaintiff's Parcel.



20. As a result of Defendant's actions, Plaintiff's use and enjoyment of her Parcel has been encumbered and the Plaintiff has been damaged by Defendant's actions.
21. As a result of Defendant's actions, Plaintiff cannot provide clear title for the sale of her Parcel.
22. Plaintiff was approached by two potential buyers for her Parcel, but she was forced to postpone negotiations with them and to remove her listing from the Multiple Listing Service (MLS).
23. To protect her real property interest, Plaintiff has had to hire a firm to build a fence around her property to protect it from trespassers.
24. Upon information and belief, Defendant has wrongfully intimidated, harassed, and threatened the firm Plaintiff hired to build the fence.

COUNT I – INJUNCTIVE RELIEF (in the alternative Treble Damages for TRESPASS)

25. Each of the foregoing allegations are incorporated as though fully set forth herein.
26. Defendant has been unlawfully trespassing on Plaintiff's Parcel by traversing Plaintiff's Parcel, cutting trails, and hiring workers to cut brush, paths, and steps on Plaintiff's Parcel.
27. The removal of items naturally occurring on Plaintiff's Parcel, such as brush, trees, and shrubbery, has deprived Plaintiff of the use and enjoyment of her Parcel.
28. Defendant actively advertises and encourages others to unlawfully trespass on Plaintiff's Parcel.
29. As a result of Defendant's actions, the employees of a fencing company have been intimidated, harassed, and threatened, and Plaintiff has been forced to remove her Parcel from the MLS.
30. The harm caused by Defendant is irreparable and warrants injunctive relief, since there is no alternate remedy that would be adequate.
31. Plaintiff is entitled to the injunctive relief sought based on her private interest in protecting her personal use and enjoyment of her Parcel.
32. Plaintiff is also entitled to injunctive relief based on the public interest factors which favor allowing Plaintiff to protect her real property interests based on the inherent uniqueness of real property and to protect workers hired by persons wishing to protect their real property interests.
33. Public interest requires the Court to grant injunctive relief to prevent irreparable harm to the workers hired by Plaintiff to build her fence and to install "no trespassing" signs on her Parcel.
34. Public interest warrants the protection against intimidation, harassment, and threatening tactics used by Defendant against the persons hired to install the fence on Plaintiff's Parcel.

35. Thus, Plaintiff is entitled to a temporary restraining order, a preliminary injunction, and a permanent injunction to ensure that her real property rights are protected and the personal safety of the persons she hires to protect those property rights are also protected from any actions Defendant may wrongfully take against them.
36. In the alternative to injunctive relief, Plaintiff is entitled to damages for Defendant's Trespass on her Parcel.
37. Defendant has willfully and intentionally entered onto Plaintiff's Parcel without her permission.
38. Defendant refused to obey Plaintiff's cease and desist letter, falsely claiming that he has rights to Plaintiff's Parcel.
39. Defendant not only refuses to stop trespassing on Plaintiff's Parcel, he also encourages others to continue to trespass on Plaintiff's Parcel by advertising on AirBnB and accepting reviews that encourage further illegal use of the paths Defendant cut across Plaintiff's Parcel.
40. Defendant has been criminally trespassing, in violation of 14 V.I.C. §§ 1741 and 1742, on Plaintiff's Parcel by illegally cutting brush, vegetation and trails across Plaintiff's Parcel, and as such, pursuant to 28 V.I.C. §336(a), Plaintiff is entitled to treble damages against Defendant.

COUNT II – DECLARATORY JUDGMENT

41. Each of the foregoing allegations are incorporated as though fully set forth herein.
42. Plaintiff brings this claim for a declaratory judgment pursuant to 5 V.I.C. §§ 1261-1272.
43. The Court has the power to grant a declaratory judgment under 5 V.I.C. § 1261, which gives the Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."

44. The declaratory judgment provisions of 5 V.I.C. § 1261–63 are “to be liberally construed and administered.” 5 V.I.C. § 1270.
45. The declaratory judgment provisions of Rule 57 of the Virgin Islands Rules of Civil Procedure allow the court to order a speedy hearing of a declaratory judgment action.
46. This action is ripe for a declaratory judgment because an actual controversy exists between Plaintiff and Defendant as to whether Defendant has met the statutory requirements to gain access to Plaintiff’s Parcel via adverse possession.
47. Plaintiff has never allowed Defendant to access any portion of her Parcel.
48. Defendant’s actions on Plaintiff’s Parcel were all done without Plaintiff’s permission.
49. Defendant only recently cut bush, vegetation and the paths across Plaintiff’s Parcel; thus, he cannot prove that he has maintained those paths for fifteen years.
50. Defendant’s actions have improperly and unlawfully caused a cloud on the title to exist on Plaintiff’s Parcel, which prevents her from being able to sell her Parcel.
51. Plaintiff is entitled to declaratory judgment to quiet title to grant her clear title to her Parcel.
52. As a result of Defendant’s actions, Plaintiff has suffered damages including, diminution of value of Plaintiff’s Parcel and out-of-pocket expenses for signs and fences to discourage people from trespassing on her Parcel.

COUNT III – SLANDER OF TITLE

53. Each of the foregoing allegations are incorporated as though fully set forth herein.
54. Defendant improperly and unlawfully cut bush, vegetation and paths across Plaintiff’s Parcel.
55. Defendant knew or should have known that it did not have permission to access Plaintiff’s Parcel in any way whatsoever.

56. By cutting the bush, vegetation and paths across Plaintiff's Parcel, Defendant could foresee that his actions would create a cloud of title on Plaintiff's ownership of her Parcel.
57. Defendant's unlawful actions have prevented her from the use and enjoyment of her Parcel.
58. As a result of Defendant's actions, Plaintiff has suffered damages including, diminution of value of Plaintiff's Property and out-of-pocket expenses for signs and fences to discourage people from trespassing on her Parcel.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

59. Each of the foregoing allegations are incorporated as though fully set forth herein.
60. Defendant has been intentionally trespassing on Plaintiff's Parcel by cutting bush, vegetation, and paths across Plaintiff's Parcel.
61. Defendant's brazen actions of cutting bush, vegetation, and paths across Plaintiff's Parcel are indeed extreme and outrageous.
62. Defendant's additional conduct of advertising his AirBnB rental with having "beach access" across Plaintiff's Parcel and encouraging his renters to continue to trespass across Plaintiff's Parcel is further evidence of his extreme and outrageous conduct.
63. Defendant has wrongfully intimidated, harassed, and threatened the firm Plaintiff hired to build a fence to protect her Parcel from trespassers, which is further evidence of his extreme and outrageous conduct.
64. Defendant's actions are so extreme and outrageous that they go beyond all possible bounds of decency and they are intolerable in a civilized society.
65. Defendant knew or should have known that taking such extreme and outrageous actions regarding Plaintiff's Parcel were likely to cause Plaintiff emotional distress.

66. As a direct result of Defendant's extreme and outrageous conduct, Plaintiff is severely stressed, and she is unable to sleep at night.

67. Plaintiff ruminates about her situation caused by Defendant and it is causing her severe emotional distress.

68. As a result of the emotional distress caused by Defendant's actions, Plaintiff is entitled to damages for suffering from this emotional injury.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the court enter judgment in her favor and against Defendant as follows:

(a) Granting a Temporary Restraining Order to prevent Defendant and all of his agents and Airbnb or similar renters from trespassing on any portion of Plaintiff's Parcel No. 2D-12 Remainder Estate Nazareth;

(b) Granting a Temporary Restraining Order to prevent Defendant from harassing, intimidating, threatening, and harming all workers constructing a fence or installing "no trespassing" signs on Plaintiff's Parcel No. 2D-12 Remainder Estate Nazareth at the request of Plaintiff or Plaintiff's agents;

(c) Granting a Preliminary Injunction to prevent Defendant and all of his agents and Airbnb or similar renters from trespassing on any portion of Plaintiff's Parcel No. 2D-12 Remainder Estate Nazareth;

(d) Granting a Permanent Injunction to prevent Defendant and all of his agents and Airbnb or similar renters from trespassing on any portion of Plaintiff's Parcel No. 2D-12 Remainder Estate Nazareth;

(e) In the alternative to injunctive relief, awarding treble damages to Plaintiff for Defendant's Trespass onto Plaintiff's Parcel;

(f) Declaring Defendant's claimed adverse possession of Plaintiff's Parcel No. 2D-12 Remainder Estate Nazareth to be null, void *ab initio*, invalid and of no legal force or effect whatsoever as to Plaintiff's Property;

(g) Awarding damages to Plaintiff as they should appear at trial related to Defendant's slander of title to Plaintiff's Parcel;

(h) Awarding damages to Plaintiff for Defendant's Intentional Infliction of Emotional Distress;

(i) All legal fees and costs, including attorneys' fees, incurred by Plaintiff in connection with this proceeding; and

(j) Awarding to Plaintiff such other and further relief as is just and proper.

Dated: April 16, 2021

By:



Madeline A. Bassil

LAW OFFICES OF DUENSING & CASNER

Dated: April 16, 2021

By:

/s/ Matthew J. Duensing
Matthew J. Duensing, Esq. (Bar No. 64)
Joseph D. Sauerwein, Esq. (Bar No. R2030)
Robin P. Seila, Esq. (Bar No. R2043)
9800 Buccaneer Mall, Building 2, Suite 9
St. Thomas, U.S. Virgin Islands 00802
(340) 774-6011 (telephone)
(340) 776-8520 (facsimile)
mduensing@vilawyers.com
jsauerwein@vilawyers.com
rseila@vilawyers.com

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FILED

April 20, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

WLB
WLB
4/12/02

04/12/2021 09:48:32 AM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILMA U. HART SMITH
RECORDER OF DEEDS

WLB
4/12/02

WARRANTY DEED

INDENTURE made this 11 day of March, 2002, by and between HANS R. BLOINK and MARILYN H. BLOINK, 690 Johnston Dr., Watchung, NJ 07060 ("Grantors") and TERRY A. ANDERSON and MADELEINE BASSIL, 19197 River Road, Athens, OH 45701-9480 ("Grantees");

WITNESSETH:

That the Grantors, in consideration of One Hundred Thirty Five Thousand Dollars (\$135,000.00) and other sufficient consideration paid by the Grantees, do hereby give, grant, sell and convey unto the said Grantees, who are husband and wife, as Tenants by the Entirety with full right of survivorship, in fee simple absolute, all right, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 2D-12 Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, U.S. Virgin Islands
consisting of 0.57 U.S. Acre, more or less,
as shown on PWD # A9-24-T64,
(hereinafter referred to as the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantors, their heirs, successors and assigns, in and to the premises herein granted.

TO HAVE AND TO HOLD the premises herein granted unto Grantees, as Tenants by the Entirety, the heirs and assigns of the survivor of them, in fee simple absolute forever.

SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

EXCEPT AS HEREINABOVE MENTIONED, GRANTORS COVENANT that they are seized of the premises in fee simple and have good right to convey the same; and that the Grantees and their heirs and assigns, shall quietly enjoy said premises; and that said premises are free from encumbrances; and that they will execute or procure any further necessary assurances of title to said premises; and will forever warrant and defend the title to said premises.



Exhibit A-1

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801
-----0-----
DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMEMDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR HANS R. & MARILYN H. BLOINK

#2D-12 Nazareth,
Red Hook Quarter (PARCEL NO. 1-07704-0147-00

_____).
TAXES RESEARCHED UP TO AND INCLUDING 2000.

RESEARCHED BY:	<u><i>Conchita Benjamin</i></u> Conchita Benjamin
TITLE:	<u>Chief, Enforcement</u>
DATE:	<u>January 28, 2002</u>
VERIFIED BY:	<u><i>Ianthe M. deAlomal</i></u> Ianthe M. deAlomal
TITLE:	<u>Teller II</u>
DATE:	<u>January 28, 2002</u>
COLLECTOR NO.	<u>8501</u>

4/12/2002 09:48:32 AM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILMA O. HART SMITH
RECORDER OF DEEDS

FILED

April 20, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

QUIT-CLAIM DEED

INDENTURE made this 18th day of April, 2006, by and between TERRY A. ANDERSON, 19197 River Road, Athens, OH 45701 ("Grantor") and MADELEINE A. BASSIL, 19191 River Road, Athens, OH 45701 ("Grantee");

WITNESSETH:

That the Grantor, in consideration of Ten Dollars (\$10.00) and other sufficient consideration paid by the Grantee, does hereby quit-claim, give, grant, sell and convey unto the said Grantee, her heirs, successors and assigns, in fee simple absolute, all rights, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 1-07704-0147-00, 2D-12 Estate Nazareth No. 1 Red Hook Quarter St. Thomas, U.S. Virgin Islands consisting of 0.57 U.S. Acre, more or less, As shown on PWD # A9-24-T64, (hereinafter referred to as the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantor, his heirs, successors and assigns, in and to the premises herein granted.

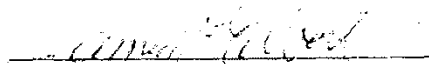
SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

TO HAVE AND TO HOLD the Property herein granted unto Grantee, the heirs, successors and assigns of the Grantee, in fee simple absolute forever.

EXCEPT AS HEREINABOVE MENTIONED, GRANTOR COVENANTS that he is seized of the premises in fee simple and has good right to convey his interest obtained through warranty deed dated on or about March 11, 2002 and have good right to convey the same and that the Grantee and her heirs and assigns shall quietly enjoy said premises and that said premises are free from encumbrances and that they will execute or procure any further necessary assurances of title to said premises and will forever warrant and defend the title to said premises.

IN WITNESS WHEREOF, Grantor has executed this deed this date first above written.

WITNESSES: (TWO REQUIRED)



Witness #1



Witness #2



TERRY A. ANDERSON

Doc# 21 5005109

Exhibit A-2

ACKNOWLEDGEMENT

STATE OF OHIO)
) ss:
COUNTY OF ATHENS)

On this 18th day of April, 2006, before me the undersigned officer, personally appeared TERRY A. ANDERSON, to me known (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.


NOTARY PUBLIC

For recording purposes, the value of this Property does not exceed \$124,096.00. The conveyance is exempt from stamp taxes based upon the attached Affidavit.

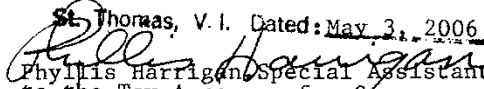
ATTEST:

It is hereby certified that the above mentioned property/s which, according to QUITCLAIM DEED dated April 18, 2006 belongs to: MADELEINE A. BASSIL (GRANTEE)

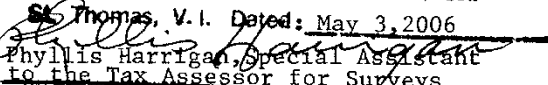
has not, according to the Records of this office, undergone any changes as to boundaries and area.

Cadastral Survey/Tax Assessor Offices

St. Thomas, V.I. Dated: May 3, 2006


Phyllis Harrigan, Special Assistant to the Tax Assessor for Surveys
Office of the Lieutenant Governor

NOTED IN THE CADASTRAL RECORDS
FOR COUNTRY/TOWN PROPERTY, BOOK FOR
ESTATE NAZARETH No. 1 RED HOOK QUARTER
ST. THOMAS, U.S VIRGIN ISLANDS

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: May 3, 2006

Phyllis Harrigan, Special Assistant
to the Tax Assessor for Surveys
Office of the Lieutenant Governor

AFFIDAVIT

STATE OF OHIO)
)ss:
COUNTY OF ATHENS)

I, TERRY A. ANDERSON, after first being duly sworn, hereby depose and state the following:

1. I am the Grantor referred to in the foregoing Quitclaim Deed. I am an adult person and have personal knowledge of the facts recited herein and am under no disability.
2. The Grantee in the foregoing Quitclaim Deed is my wife, MADELEINE A. BASSIL.
3. TERRY A. ANDERSON and MADELEINE A. BASSIL are the sole owners of the Property described in the Quitclaim Deed pursuant to the Warranty Deed of March 11, 2002 attached as Exhibit A and I hereby certify that no other persons have any ownership interest therein. I further certify that this is an intrafamily transfer.
4. Consequently, the foregoing transfer is exempt from stamp taxes pursuant to 33 V.I.C. Section 128(8) because it involves a conveyance between husband and wife.
5. This is a voluntary conveyance and act of my own free will.

FURTHER AFFIANT SAYETH NOT.



TERRY A. ANDERSON

Subscribed and sworn to before me this 18th day of April, 2006.



NOTARY PUBLIC

Thomas D. Little
57

FILED

April 20, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

Book:
Pages:
Doc# 2004004096
Filed & Recorded
05/20/2004 9:25AM
WILMA D. HART SMITH
RECORDER OF DEEDS
ST THOMAS/ST JOHN
RECORDING FEE \$ 407.00
DEED DOC STAMP 2.5 \$ 9,875.00
PER PAGE FEE \$ 3.00

WARRANTY DEED

INDENTURE made this 22nd day of April, 2004, by and between DAN ALAN DITMORE, TRUSTEE of the SADERS REALTY TRUST ("Grantor"), and JOHN M. KLEIN, 6501 Red Hook Plaza, Suite 201, St. Thomas, VI 00802 ("Grantee");

W I T N E S S E T H:

That the Grantor, in consideration of Three Hundred Ninety Five Thousand Dollars (\$395,000.00) and other sufficient consideration paid by the Grantee, does hereby give, grant, sell and convey unto the said Grantee, in fee simple absolute, all right, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 2D-11 Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, Virgin Islands
consisting of 0.64 acre, more or less
as shown on PWD No. A9-24-T64
(the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantor, his heirs, successors and assigns, in and to the premises herein granted.

SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

TO HAVE AND TO HOLD the premises herein granted unto Grantee, his heirs, successors and assigns, in fee simple absolute forever.

EXCEPT AS HEREINABOVE MENTIONED, GRANTOR COVENANTS that he is seized of the premises in fee simple and has good right to convey the same; and that the Grantee and his heirs, successors and assigns, shall quietly enjoy said premises; and that said premises are free from encumbrances;

Doc# 2004004096

(7)

Exhibit B

**GOVERNMENT OF
 THE VIRGIN ISLANDS OF THE UNITED STATES
 CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801
 -----0-----
 DEPARTMENT OF FINANCE
 TREASURY DIVISION**

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMEMDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR DITMORE, DAN ALAN/TRUSTEE

Nazareth #2D-11,
~~Red Hook Quarter~~ (PARCEL NO.) 1-07704-0148-00

_____).
 TAXES RESEARCHED UP TO AND INCLUDING 2002

RESEARCHED BY:


Ira Christopher

TITLE:

Enforcement Officer II

DATE:

May 03, 2004

VERIFIED BY:


Ianthe M. De Alomal

TITLE:

Chief, Revenue Collection

DATE:

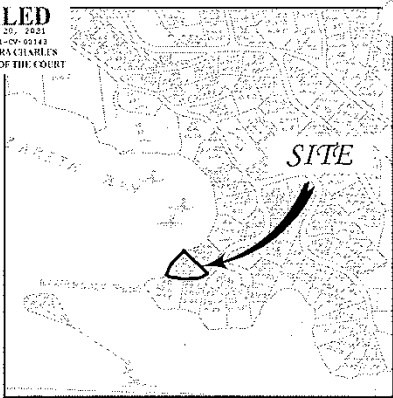
May 03, 2004

COLLECTOR NO.

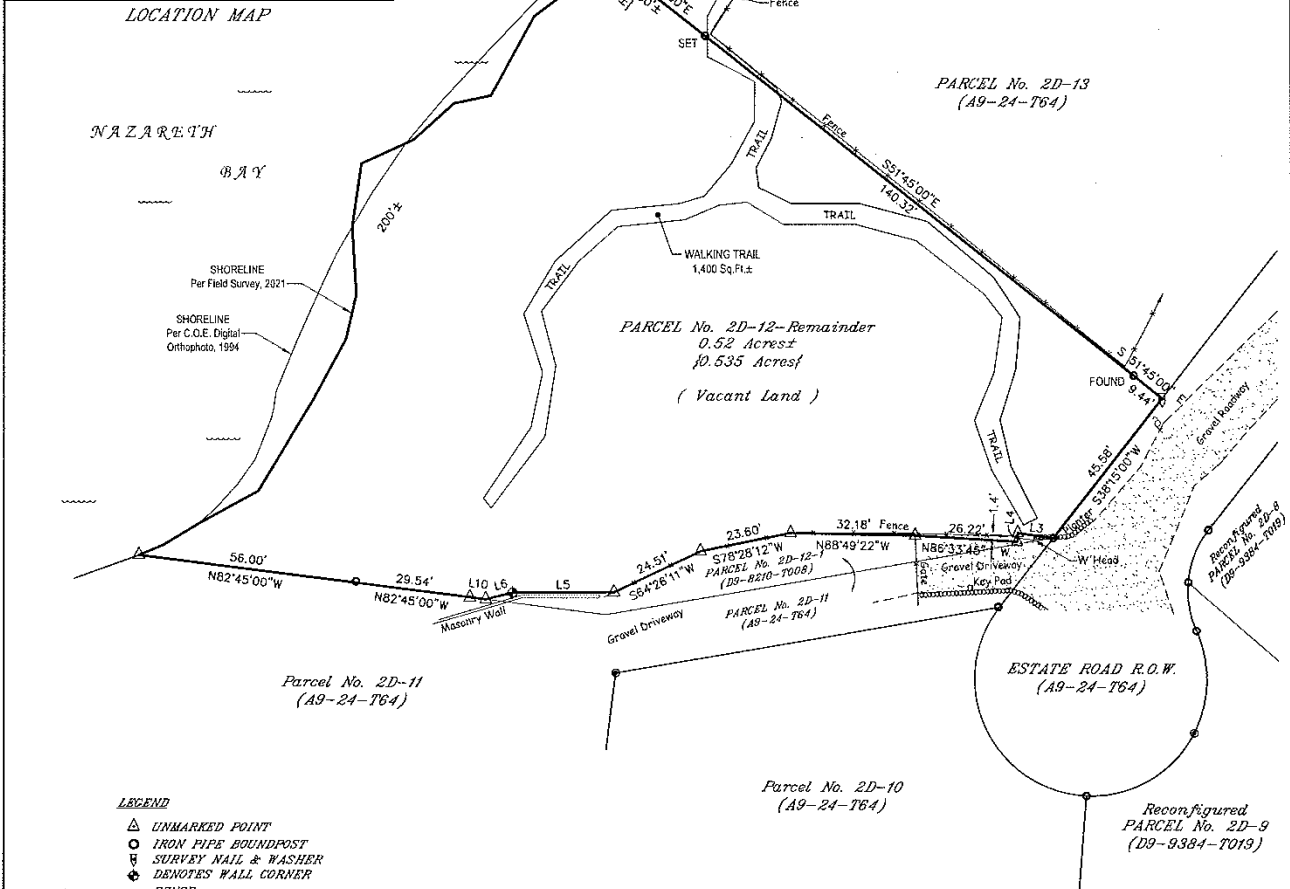
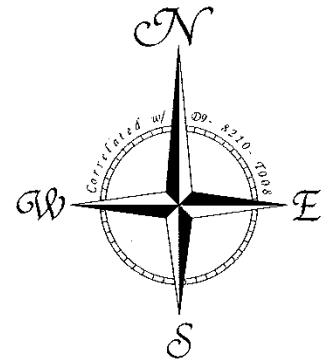
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Doc# 2004004096

FILED
April 26, 2021
21-2821-CV-03143
TAMARA CHARLES
CLERK OF THE COURT



LOCATION MAP



LEGEND

- △ UNMARKED POINT
- IRON PIPE BOUNDPOST
- ⊕ SURVEY NAIL & WASHER
- ⊕ DENOTES WALL CORNER
- FENCE

REFERENCE

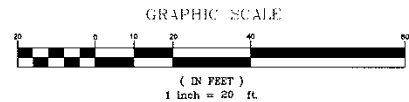
D9-8210-7008

ZONING

R-1

NOTE:

DATA IN BRACKETS (xxx) PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.



This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021

BRIAN MOSELEY AND ASSOCIATES, INC.

Ryan C. Wischart
Ryan C. Wischart, PLS



UPDATED SURVEY: 01-19-21
ORIGINAL SURVEY: 04-08-02

Brian Moseley Associates, Inc.
Land Surveyors & Consultants
4003 RAPHUNE HILL ROAD
SUITE 606
ST. THOMAS, VI 00802
PHONE (340) 774-5310
FAX (340) 776-4090

ALTA / NSPS Land Title Survey of
Parcel No. 2D-12-Remainder
Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, U.S. Virgin Islands

SURVEY: A. G. R.	DRAWN: D. J. S.	DATE: 01-27-2021	BWG No: 4506-4
CALC: R. C. H.	SCALE: 1" = 20'		

Exhibit C

FILED

April 20, 2021
ST-2021-CV-00148

TAMARA CHARLES **ISING & CASNER**
CLERK OF THE COURT

ATTORNEYS AT LAW

9800 BUCCANIER MALL
BUILDING 2, SUITE 9
P.O. BOX 6785
ST. THOMAS, U.S.V.I. 00804
TELEPHONE 340-774-6011 EXT. 102
FACSIMILE 340-776-8520
WEBSITE: www.vilawyers.com
E-MAIL: jcasner@vilawyers.com

MATTHEW J. DUBENSING, P. C.

OF COUNSEL
A. JAMES CASNER III, P. C.
MICHAEL FITZSIMMONS, P. C.

ASSOCIATES
JOSEPH D. SAUERWEIN
ROBIN P. SHELA

February 15, 2021

VIA PROCESS SERVER

Mr. John Klein
Parcel No. 2D-11 Estate Nazareth
St. Thomas, VI 00802

Re: **NOTICE TO CEASE AND DESIST ALL ACTIVITY on 2D-12-Remainder Estate
Nazareth St. Thomas VI 00802**

Dear Mr. Klein:

This firm represents your abutting property owner, Ms. Madeleine Bassil, who is the owner of Parcel No. 2D-12-Remainder Estate Nazareth (the "Parcel"). It has recently come to Ms. Bassil's attention that you may have been criminally trespassing, in violation of 14 V.I.C. §§ 1741 and 1742,¹ on Ms. Bassil's Parcel. In the Virgin Islands, it is unlawful to enter another's property, including the land of another, without permission and consent of the owner.

¹ 14 V.I.C. § 1741(a) states: "Whoever enters upon the land of another without the consent of the owner or of the person in charge thereof, shall be fined not more than \$50 or imprisoned not more than 30 days, or both."

14 V.I.C. § 1742 states: "Whoever willfully commits any trespass by—

- (1) cutting down, destroying or injuring any kind of wood or timber growing upon the lands of another or upon public lands;
- (2) carrying away any kind of wood or timber lying on such lands;
- (3) maliciously injuring or destroying any standing crop, fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code;
- (4) digging, taking or carrying away from any real estate, without the license of the owner or legal occupant thereof, any earth, soil or stone;
- (5) digging, taking or carrying away any earth, soil or stone from any land of the Government of the Virgin Islands, recognized or established as a street, road, alley, avenue or park, without the license of the proper authorities, or;
- (6) putting up, affixing, fastening, printing or painting upon any property belonging to the Government of the Virgin Islands, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both."

Exhibit D

Ms. Bassil has not given you permission to enter her Parcel or to do anything to her Parcel. It is clear from the as-built survey, dated January 27, 2021 (copy attached), that trails and steps have been cut through and across Ms. Bassil's Parcel. These trails were recently discovered during an inspection of the Parcel and are not shown on the survey dated September 15, 2008. Based on information and belief, you or your agents have caused the willful cutting down, destruction, and injury to wood or timber on Ms. Bassil's land, which is a clear violation of 14 V.I.C. § 1742.

You are hereby ORDERED to cease and desist all activity on the Parcel. You do NOT have Ms. Bassil's permission or consent to do anything on the Parcel, including, without limitation, using the improperly created paths within the Parcel to access the Secret Harbor beach area.

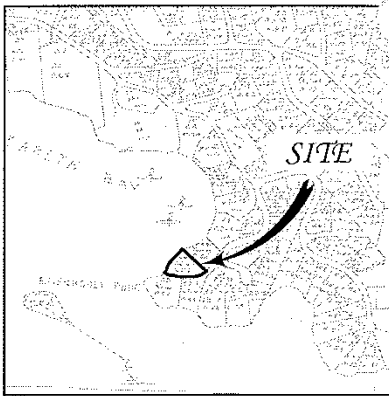
This is your formal written warning to cease and desist all activity on Ms. Basil's Parcel. You may not enter her Parcel for any reason whatsoever. A copy of this letter has been forwarded to the U.S.V.I. Department of Justice. If you do not cease and desist all activity IMMEDIATELY, you will be subject to charges of criminal trespass, including fines, and possible imprisonment, and we will seek all costs and attorney's fees related to your criminal trespass prosecution and any resulting civil litigation.

As you are aware, this is the second time you have improperly trespassed on Ms. Bassil's property without permission or any right to do so. If you are represented by legal counsel, please have your attorney contact the undersigned if you have any questions.

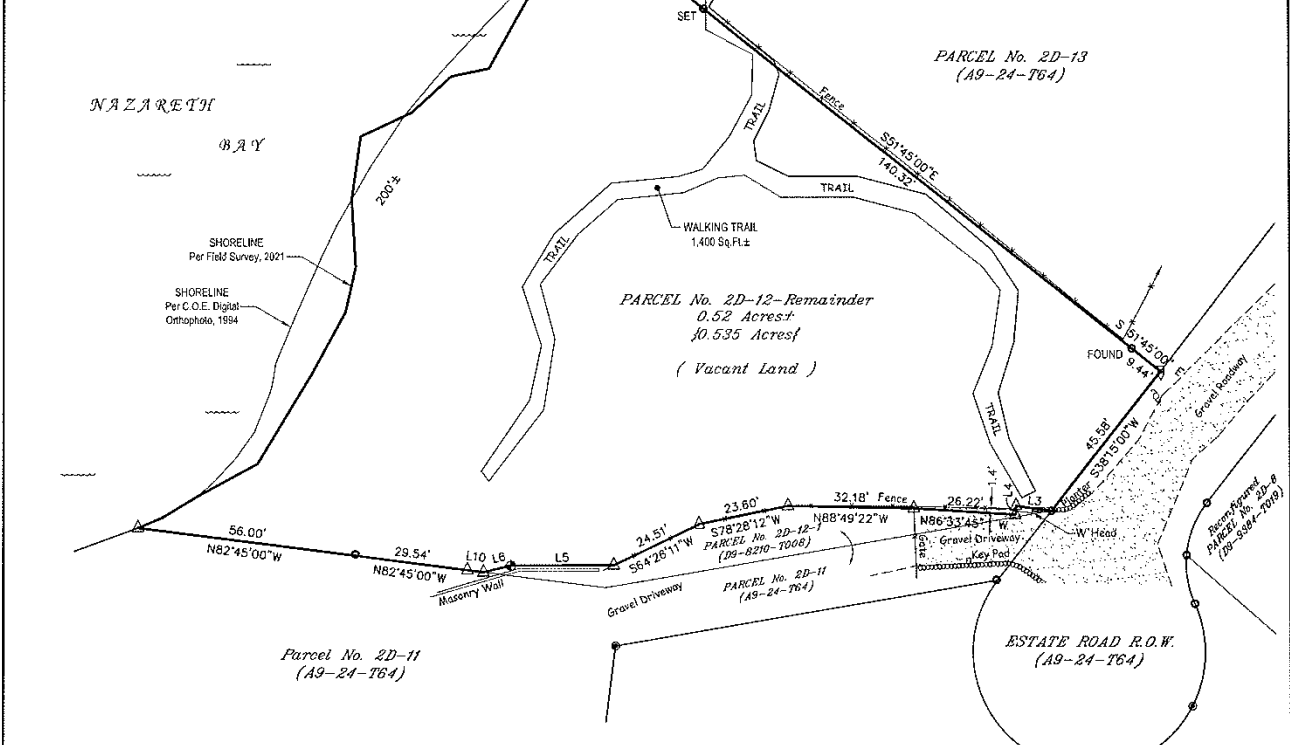
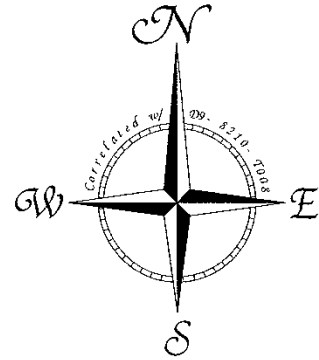
Sincerely,
DUENSING & CASNER

By: 
Name: A. James Casner, Esq.

cc: Madeleine Bassil



LOCATION MAP



LEGEND

- △ UNMARKED POINT
- IRON PIPES BOUNDPOST
- ⊕ SURVEY NAIL & WASHER
- ◆ DENOTES WALL CORNER
- FENCE

REFERENCE

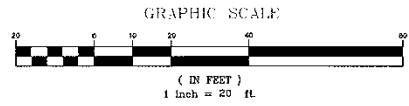
D9-8210-7008

ZONING

R-1

NOTE:

DATA IN BRACKETS (xxx) PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.

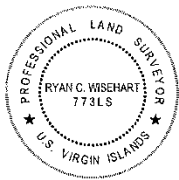


This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021

BRIAN MOSELEY AND ASSOCIATES, INC.

Ryan C. Wischert
 Ryan C. Wischert, PLS



UPDATED SURVEY: 01-19-21
 ORIGINAL SURVEY: 04-09-02

	Brian Moseley Associates, Inc. Land Surveyors & Consultants		4003 RAPHAINE HILL ROAD SUITE 506 ST. THOMAS, VI 00802 PHONE (340) 774-5310 FAX (340) 776-4090	
	ALTA / NSPS Land Title Survey of Parcel No. 2D-12-Remainder Estate Nazareth No. 1 Red Hook Quarter St. Thomas, U.S. Virgin Islands			
SURVEY: A. G. B. CALC: R. C. W.	DRAWN: D. J. S. SCALE: 1" = 20'	DATE: 01-27-2021	DWG No.: 4506-4	

AFFIDAVIT OF SERVICE

Received on February 17, 2021 by Renix Charles, a copy of a letter dated February 15, 2021 (re: Notice to Cease and Desist All Activity on 2D-12 Remainder Estate Nazareth, St. Thomas, VI 00802) to be served on John Klein, Parcel No. 2D-11 Estate Nazareth, St. Thomas, USVI 00804.

I, Renix Charles being duly sworn, depose and state that I am a citizen of the United States, resident of the U.S. Virgin Islands, over 18 years of age. I am not a party in the above captioned matter, not related to any of the parties herein; that on the 17th day of February, 2021 at 4:30 p.m, executed service by delivering a copy of the document on John Klein, 2D-11 Estate Nazareth, St. Thomas, Virgin Islands in accordance with United States Virgin Islands statutes in the manner marked below:

(x) Personal Service:

Military Status- () Yes () No based upon inquiry of the party served, defendant is not in the military service of the United States or of the state in any capacity whatsoever.

Married- () Yes () No based upon inquiry of the party served, defendant is not married.

John Klein responded to service in a normal manner and did not appear to be mentally disabled or have diminished capacity to understand what was happening.

Age: 55 Sex: M Race: White Height 5'9 Weight 130 Hair Grey Glasses: Y

SUBSCRIBED AND SWORN TO BEFORE ME THIS 05 DAY OF FEBRUARY 2021.

Nathalie Roumeau
Nathalie Roumeau
Notary Public (NP-142-18)
My Commission Expires 7/18/2022

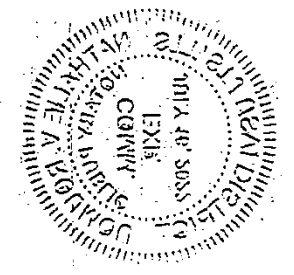
Renix Charles
Renix Charles, Process Server

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Faint, illegible text in the upper right quadrant of the page.

Handwritten signature or text in the lower left quadrant, possibly including the word "Dona".

Handwritten signature or text in the lower right quadrant, possibly including the word "Dona".



FILED

April 20, 2021

ST-2021-CV-00148

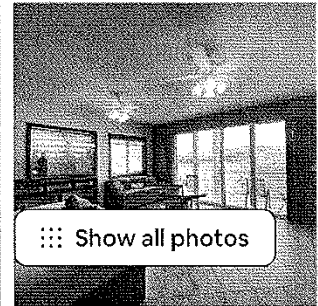
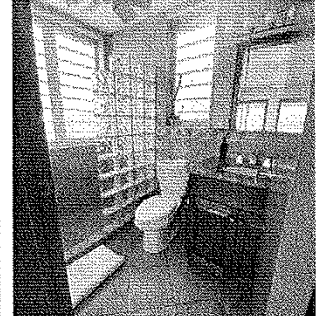
TAMARA CHARLES

CLERK OF THE COURT

th stunning views of Secret Harbor beach

· East End, St. Thomas, U.S. Virgin Islands

[Share](#) [Save](#)



Entire apartment hosted by Lucy

2 guests · Studio · 1 bath



Entire home

You'll have the apartment to yourself.



Enhanced Clean

This host committed to Airbnb's 5-step enhanced cleaning process. [Learn more](#)



Great check-in experience

100% of recent guests gave the check-in process a 5-star rating.



Free cancellation for 48 hours











After that, cancel before 3:00 PM on Oct 1 and get a 50% refund, minus the service fee. [Get details](#)

Exhibit E

Wake up to stunning views of Secret Harbor beach. Sit on the balcony overlooking coral reefs. Watch tropical fish and sea turtles swim by while you enjoy the cooling breeze. This studio is in a gated estate with a private path to a gorgeous white sand beach. There is a full kitchen with all the essentials to prepare your meals. Or, drive 5 minutes to Red Hook where dozens of dining options are available. Our staff is always available to assist you with your travel planning.

Contact host

Amenities

- Kitchen 
- Wifi 
- Free parking on premises 
- Air conditioning 
- Iron 
- Hair dryer 
- TV 
- Essentials 
- Carbon monoxide alarm 
- Smoke alarm 

Show all 14 amenities

\$299 / night


★ 5.0 (4 reviews)

CHECK-IN 10/8/2021	CHECKOUT 10/15/2021
GUESTS 1 guest	▼

Reserve

You won't be charged yet

<u>\$299 x 7 nights</u>	\$2,093
<u>Cleaning fee</u>	\$150
<u>Service fee</u>	\$0
<u>Occupancy taxes and fees</u>	\$280
Total	\$2,523

 [Report this listing](#)

★ 5.0 (4 reviews)

Cleanliness	5.0
Accuracy	5.0
Communication	5.0
Location	4.5
Check-in	5.0
Value	5.0



Gareth
March 2021

This may be hard to believe but the pictures listed on the site are nowhere near as beautiful as what we saw when we arrived and while we stayed. Five stars through and through. Please. Stay. Here. Worth. Every. Dollar.



Janae
March 2021

Great place to look down on paradise

Bethany
March 2021

We had a wonderful stay at John's villa. It overlooks Secret Harbor and boasts amazing views, private access to the beach, and personal hospitality. John was always so responsive and easy to communicate with. The place is immaculate and when we needed some laundry done, it was done by their stage manager in a couple of hours. We also took a half day boating tour to Christmas Bay with their private captain, Jeff. So fun! Over all we had a truly wonderful stay at the great location minutes outside of Red Hook (lots of great restaurants). Thank you, John! I would highly recommend this place.

Diva
February 2021

Gorgeous studio with a gorgeous view- unmatched really. You wakeup to the sound of the waves, and https://www.airbnb.com/rooms/47988716?check_in=2021-10-08&check_out=2021-10-15&s=67&unique_share_id=3d436fec-da53-4d6f-b6c0-a8a81d8... 3/7

3/26/2021

Studio with stunning views of Secret Harbor beach - Apartments for Rent in East End, St. Thomas, U.S. Virgin Islands

slowly see the water turn clear as the sun comes up. And at the end of the day, you get to watch the sun fade into the mountains across the bay for a killer sunset. If you want to watch the sunset from the beach, just follow the private path down to the Secret Harbor and voila - you're there. John is an amazing host. Always around to help and answer questions, give recommendations. Do yourself a favor and stay at this beautiful studio. Will be returning as soon as I can.

Show all 4 reviews

Location

East End, St. Thomas, U.S. Virgin Islands

Hosted by Lucy

Joined in October 2019

★ 8 Reviews

🛡️ Identity verified

Response rate: 100%

Response time: within a few hours

https://www.airbnb.com/rooms/47988716?check_in=2021-10-08&check_out=2021-10-15&s=67&unique_share_id=3d436fec-da53-4d6f-b6c0-a8a81d8... 4/7

3/26/2021

Studio with stunning views of Secret Harbor beach - Apartments for Rent in East End, St. Thomas, U.S. Virgin Islands

Contact host

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.



Things to know

House rules

- 🕒 Check-in: After 3:00 PM
- 🕒 Checkout: 10:00 AM

Health & safety

- ✦ Committed to Airbnb's enhanced cleaning process. [Learn more](#)
- 🧼 Airbnb's social-distancing and other COVID-19-related guidelines apply
- 🚫 Carbon monoxide alarm not reported [Learn more](#)
- 🚫 Smoke alarm not reported [Learn more](#)

Cancellation policy

Free cancellation for 48 hours

After that, cancel before 3:00 PM on Oct 1 and get a 50% refund, minus the service fee.

[More details](#) >

Explore other options in and around East End

More places to stay in East End:

Houses · Bed and breakfasts · Lofts · Villas · Condominiums

Dorado

Palmas del Mar

https://www.airbnb.com/rooms/47988716?check_in=2021-10-08&check_out=2021-10-15&s=67&unique_share_id=3d436fec-da53-4d6f-b6c0-a8a81d8... 5/7

3/26/2021

Studio with stunning views of Secret Harbor beach - Apartments for Rent in El Estero End, St. Thomas, U.S. Virgin Islands

Río Grande

Fajardo

Culebra

Vieques

Luquillo

Saint Croix

Vega Baja

Patillas

Punta Cana

San Juan

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https://www.airbnb.com/rooms/47988716?check_in=2021-10-08&check_out=2021-10-15&s=67&unique_share_id=3d436fec-da53-4d6f-b6c0-a8a81d8... 6/7

HOST

- Host your home
- Host an Online Experience
- Host an Experience
- Responsible hosting
- Resource Center
- Community Center

SUPPORT

- Our COVID-19 Response
- Help Center
- Cancellation options
- Neighborhood Support
- Trust & Safety

 [English \(US\)](#) \$ [USD](#)

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FILED

April 26, 2021

ST-2021-CV-00148

TAMARA CHARLES
CLERK OF THE COURT

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

MADELINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

**EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

Plaintiff, Madeline A. Bassil, through undersigned counsel, Duensing & Casner, hereby moves pursuant to V.I. R. Civ. P. 65 for a temporary restraining order (TRO) and preliminary injunction against John Klein. As supported by the Verified Complaint, a TRO, and Preliminary Injunction are necessary to prevent further injury to Plaintiff's Parcel and to protect the fencing firm hired by Plaintiff to protect her Parcel.

Background

Plaintiff has been the owner of Parcel No. 2D-12 Remainder Estate Nazareth, St. Thomas, U.S. Virgin Islands (Parcel 2D-12 or Plaintiff's Parcel) since 2002. She first owned the parcel jointly with Terry Anderson **Exhibit A-1**. Since 2006, Plaintiff has been the sole owner of Parcel 2D-12. **Exhibit A-2**. Plaintiff lives in New York, and she visits her Parcel on St. Thomas from time to time.

Defendant is the owner of Parcel No. 2D-11 Estate Nazareth St. Thomas, U.S. Virgin Islands (Parcel 2D-11 or Defendant's Parcel). **Exhibit B**. Defendant purchased Parcel 2D-11 in 2004. Defendant constructed his home on Parcel 2D-11 and willfully encroached upon Plaintiff's

Parcel, without her permission. Plaintiff and Defendant were able to agree to a settlement whereby Defendant purchased the portion of Plaintiff's Parcel on which he had constructed his structural encroachments.

On or about January 21, 2021, Plaintiff was advised by her real estate agent that trails, paths, bush, vegetation, and steps had been built across her Parcel and over onto Parcel No. 2D-13 Estate Nazareth to reach the Secret Harbor beach from Defendant's Parcel. Plaintiff confirmed that trails, paths, bush, vegetation, and steps had been cut across her Parcel by an as-built survey by Brian Moseley & Associates. **Exhibit C.** Plaintiff also confirmed Defendant's trespass by taking drone photos, as shown below:



On or about February 11, 2021, Plaintiff's attorney served Defendant with a Cease-and-Desist Letter urging Defendant to cease and desist all activity on Plaintiff's Parcel. **Exhibit D.** In response to the letter, Defendant's counsel purported that Defendant is not required to cease and desist any activity on Plaintiff's Parcel because he has acquired rights to it by adverse possession. Plaintiff visited her Parcel in April of 2015, when she attempted to walk her Parcel with her sister and her real estate agent. They were unable to walk her Parcel because the bush and vegetation were so dense, proving that Defendant's paths and trails had not yet been cut. Plaintiff also has a photo of her Parcel, taken by drone, from November 2015, which shows dense vegetation on her Parcel and no evidence of any trails, paths, or steps cut across her Parcel, as shown below:



Defendant has failed to meet the legal requirements for adverse possession of a prescriptive easement because Defendant's paths and trails and cutting of bush, vegetation, and steps across Plaintiff's Parcel has not been open, notorious, adverse, under color of title, or continuous for fifteen years.¹ Defendant clearly does not meet the fifteen-year statutory requirement to acquire property rights by adverse possession.

Defendant continues to not only trespass on Plaintiff's Parcel, but he also encourages others to do so by advertising that his home has a "private path to a gorgeous white sand beach" on his AirBnB listing. Additionally, the reviews of his AirBnB listing further boast about the "private access to the beach" and the "private path down to the Secret Harbor." On or about March 23, 2021, Plaintiff was advised that presumed renter was photographed actively trespassing on her Parcel, as shown below:



¹ "The uninterrupted, exclusive, actual, physical adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the Government." 28 V.I.C. § 11.

Defendant has been and continues to criminally trespass, in violation of 14 V.I.C. §§ 1741 and 1742, on Plaintiff's parcel by illegally cutting brush, vegetation and trails across Plaintiff's Parcel.

Legal Standard

When determining whether to issue a TRO or preliminary injunction, the trial court considers:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the preliminary relief will be in the public interest.

Sam's Food Distribs., Inc. v. NNA&O, LLC, 2020 V.I. Supreme LEXIS 17, at *9 (June 9, 2020) (citing *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 550 (V.I. 2015)).

DISCUSSION

A. Plaintiff is likely to succeed on the merits.

Pursuant to 28 V.I.C. § 11, “The uninterrupted, exclusive, actual, physical adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the Government.” Defendant has been criminally trespassing on Plaintiff's parcel for fewer than fifteen years. Plaintiff can prove that in November of 2015, Defendant had not yet begun to cut paths, trails, vegetation, bush, or steps across Plaintiff's Parcel. Plaintiff believes Defendant began to trespass in 2020. Defendant has clearly cut trails and steps to Secret Harbor Beach that are used by him

and his AirBnB renters. Defendant's actions are in clear violation of 14 V.I.C. § 1741(a)² and 14 V.I.C. § 1742³ because Plaintiff has never given Defendant permission to enter onto her Parcel for any purpose. As such, Plaintiff is entitled to declaratory judgment and an Order from the Court declaring that Defendant's claimed adverse possession on Plaintiff's Parcel No. 2D-12 Remainder Estate Nazareth to be null, void *ab initio*, invalid, and of no legal force or effect whatsoever as to Plaintiff's Property. Further, Plaintiff is likely to succeed on the merits of all counts set forth in her Complaint.

B. Plaintiff will be irreparably injured if the injunction is denied.

Defendant's continued trespass poses the potential for irreparable harm to Plaintiff. Defendant's initial trespass, by willfully planning and constructing his home on part of Plaintiff's Parcel, has already caused Plaintiff irreparable harm by forcing her into a position in which she was forced to sell the affected portion of her Parcel to Defendant. Defendant's actions now indicate that he again wishes to cause irreparable harm to Plaintiff. Defendant is intentionally

² "Whoever enters upon the land of another without the consent of the owner or of the person in charge thereof, shall be fined not more than \$50 or imprisoned not more than 30 days, or both."

³ "Whoever willfully commits any trespass by—

- (1) cutting down, destroying or injuring any kind of wood or timber growing upon the lands of another or upon public lands;
- (2) carrying away any kind of wood or timber lying on such lands;
- (3) maliciously injuring or destroying any standing crop, fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code;
- (4) digging, taking or carrying away from any real estate, without the license of the owner or legal occupant thereof, any earth, soil or stone;
- (5) digging, taking or carrying away any earth, soil or stone from any land of the Government of the Virgin Islands, recognized or established as a street, road, alley, avenue or park, without the license of the proper authorities, or;
- (6) putting up, affixing, fastening, printing or painting upon any property belonging to the Government of the Virgin Islands, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both."

trespassing onto Plaintiff's Parcel and causing and encouraging others to continue to trespass by way of his AirBnB listing.

As a direct result of Defendant's conduct, Plaintiff has already been forced to remove her Parcel from the Multiple Listings Service (MLS) because she knows she cannot provide clear title for the sale of her Parcel due to Defendant's trespassing. Plaintiff's real estate agent has also been approached by two potential buyers for her land, but since she cannot provide clear title, she has been forced to postpone negotiations with them.

Additionally, Plaintiff has hired a firm to build a fence around her property, but upon information from her real estate agent, Plaintiff was informed that Defendant has intimidated the firm. Plaintiff is concerned for the safety and welfare of the firm she has hired to build the fence. All of these stresses are causing Plaintiff to suffer from emotional distress.

C. The harm to Plaintiff and the fence building firm outweighs any harm experienced by Defendant.

Defendant's actions are in clear violation of 14 V.I.C. § 1741(a) and 14 V.I.C. § 1742. Plaintiff has experienced and is continuing to experience harm because of Defendant's actions. The harm has now also spread to the firm Plaintiff hired to protect her real property interests because Defendant has been intimidating the workers of that firm. Defendant will not be harmed by being ordered to stop his illegal trespassing across Plaintiff's Parcel. Defendant will no longer be able to advertise that he has direct beach access to Secret Beach Harbor, but that statement never should have been made on AirBnb's website because Defendant never had rightful access to advertise that renters could access a "private path to the beach." Plaintiff and the firm building the fence face significant harm, including possible bodily injury and loss of life, whereas

Defendant will not be able to advertise that he has direct beach access from the AirBnb. As such, the balancing of harm weighs heavily in Plaintiff's favor.

D. Public interest supports issuing of the temporary restraining order.

It is in the public's interests to enforce civil penalties for 14 V.I.C. § 1741(a) and 14 V.I.C. § 1742. Real estate sales contribute to a significant portion of the economy of the Virgin Islands. Many people, Virgin Islanders and non-Virgin Islanders, who own real property in the Virgin Islands do not live in the Virgin Islands on a full-time basis. A failure of enforcement civil penalties for illegal trespassing is not in the public's best interests. Protecting the real property rights of real property owners is in the public's best interest, especially in cases, such as here, where Plaintiff has been vigilant, and has actively hired a firm to build a fence, which has only been met with resistance and intimidation by the Defendant. Allowing persons to intimidate their way into gaining adverse possession rights would not set a precedent that is in the public's best interests.

CONCLUSION

Defendant has violated 14 V.I.C. § 1741(a) and 14 V.I.C. § 1742 by trespassing on Plaintiff's Parcel without her permission. Plaintiff's Cease-and Desist letter was met with resistance and a false claim that Defendant has acquired rights to Plaintiff's Parcel via adverse possession. Plaintiff will clearly succeed on the merits of her claim to disprove that Defendant has any rights to her Parcel because she can show that as recently as November 2015, no path openly existed over Plaintiff's Parcel. Thus, Defendant has not been openly, notoriously, adversely, continuously, or under color of title for the required fifteen years to successfully prove he has adverse possession rights.

FILED

April 26, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

006
4/2/02

04. 2021 09:46:32 AM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILMA O. HART SMITH
RECORDER IN DEEDS

WTH
4/2/02

WARRANTY DEED

INDENTURE made this 11 day of March, 2002, by and between HANS R. BLOINK and MARILYN H. BLOINK, 690 Johnston Dr., Watchung, NJ 07060 ("Grantors") and TERRY A. ANDERSON and MADELEINE BASSIL, 19197 River Road, Athens, OH 45701-9480 ("Grantees");

W I T N E S S E T H:

That the Grantors, in consideration of One Hundred Thirty Five Thousand Dollars (\$135,000.00) and other sufficient consideration paid by the Grantees, do hereby give, grant, sell and convey unto the said Grantees, who are husband and wife, as Tenants by the Entirety with full right of survivorship, in fee simple absolute, all right, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 2D-12 Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, U.S. Virgin Islands
consisting of 0.57 U.S. Acre, more or less,
as shown on PWD # A9-24-T64,
(hereinafter referred to as the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantors, their heirs, successors and assigns, in and to the premises herein granted.

TO HAVE AND TO HOLD the premises herein granted unto Grantees, as Tenants by the Entirety, the heirs and assigns of the survivor of them, in fee simple absolute forever.

SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

EXCEPT AS HEREINABOVE MENTIONED, GRANTORS COVENANT that they are seized of the premises in fee simple and have good right to convey the same; and that the Grantees and their heirs and assigns, shall quietly enjoy said premises; and that said premises are free from encumbrances; and that they will execute or procure any further necessary assurances of title to said premises; and will forever warrant and defend the title to said premises.



Exhibit A-1

IN WITNESS WHEREOF, Grantors have executed this deed
the date first above written.

WITNESSES AS TO BOTH:

04/12/2002 09:48:32 AM
Filed & Recorded in
Official Records of
St. Thomas/St. John
WILMA U. BARK SMITH
RECLERK OF DEEDS

[Signature]
MICHAEL VENTURA
ATTORNEY AT LAW
STATE OF NEW JERSEY

Hans R Bloink
HANS R. BLOINK

Marilyn H Bloink
MARILYN H. BLOINK

*This Deed was received in
the U.S. Virgin Islands on
March 19, 2002.*

David S. Nichols

ACKNOWLEDGMENTS

STATE OF NEW JERSEY)
COUNTY OF Union) SS:

On this 11th day of March, 2002, before me the
undersigned officer, personally appeared HANS R. BLOINK and
MARILYN H. BLOINK, to me known (or satisfactorily proven) to
be the persons whose names are subscribed to the within
instrument, and acknowledged that they executed the same for
the purposes therein contained.

Mallie Scheiderman
NOTARY PUBLIC

MALLIE SCHEIDERMAN
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 22, 2004

NOTED IN THE CADASTRAL RECORDS
FOR COUNTRY/TOWN PROPERTY, BOOK FOR
ESTATE NAZARETH, NO. 1 RED HOOK QUARTER
ST. THOMAS, VIRGIN ISLANDS.

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: April 3, 2002
Phyllis Harrigan, Special Assistant to the
Tax Assessor for Surveys
Office of the Lieutenant Governor

ATTEST:
It is hereby certified that the above
mentioned property/s which, according
to WARRANTY DEED dated March 11, 2002
belongs to: TERRY A. ANDERSON and
MADELEINE BASSIL (Husband and Wife) GRANTEES.
has not, according to the Records of
this office, undergone any changes as to
boundaries and area.
Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: April 3, 2002
Phyllis Harrigan, Special Assistant to the
Tax Assessor for Surveys
Office of the Lieutenant Governor

Doc# 2002001779

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801
-----0-----
DEPARTMENT OF FINANCE
TREASURY DIVISION

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMEMDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR HANS R. & MARILYN H. BLOINK

#2D-12 Nazareth,
Red Hook Quarter (PARCEL NO. 1-07704-0147-00)

TAXES RESEARCHED UP TO AND INCLUDING 2000.

RESEARCHED BY: *Conchita Benjamin*
Conchita Benjamin

TITLE: Chief, Enforcement

DATE: January 28, 2002

VERIFIED BY: *Ianthe M. deAlomal*
Ianthe M. deAlomal

TITLE: Teller II

DATE: January 28, 2002

COLLECTOR NO. 8501

04/12/2002 09:48:32 AM
Filed & Recorded in
Official Records of
ST THOMAS/ST JOHN
WILHELM O. HART SMITH
RECORDER OF DEEDS

FILED

April 26, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

QUIT-CLAIM DEED

INDENTURE made this 18th day of April, 2006, by and between TERRY A. ANDERSON, 19197 River Road, Athens, OH 45701 ("Grantor") and MADELEINE A. BASSIL, 19191 River Road, Athens, OH 45701 ("Grantee");

WITNESSETH:

That the Grantor, in consideration of Ten Dollars (\$10.00) and other sufficient consideration paid by the Grantee, does hereby quit-claim, give, grant, sell and convey unto the said Grantee, her heirs, successors and assigns, in fee simple absolute, all rights, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 1-07704-0147-00, 2D-12 Estate Nazareth No. 1 Red Hook Quarter St. Thomas, U.S. Virgin Islands consisting of 0.57 U.S. Acre, more or less, As shown on PWD # A9-24-T64, (hereinafter referred to as the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantor, his heirs, successors and assigns, in and to the premises herein granted.

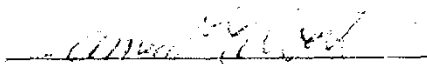
SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

TO HAVE AND TO HOLD the Property herein granted unto Grantee, the heirs, successors and assigns of the Grantee, in fee simple absolute forever.

EXCEPT AS HEREINABOVE MENTIONED, GRANTOR COVENANTS that he is seized of the premises in fee simple and has good right to convey his interest obtained through warranty deed dated on or about March 11, 2002 and have good right to convey the same and that the Grantee and her heirs and assigns shall quietly enjoy said premises and that said premises are free from encumbrances and that they will execute or procure any further necessary assurances of title to said premises and will forever warrant and defend the title to said premises.

IN WITNESS WHEREOF, Grantor has executed this deed this date first above written.

WITNESSES: (TWO REQUIRED)



Witness #1



Witness #2



TERRY A. ANDERSON

Doc# 21 2005109

Exhibit A-2

ACKNOWLEDGEMENT

STATE OF OHIO)
) ss:
COUNTY OF ATHENS)

On this 18th day of April, 2006, before me the undersigned officer, personally appeared TERRY A. ANDERSON, to me known (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.


NOTARY PUBLIC

For recording purposes, the value of this Property does not exceed \$124,096.00. The conveyance is exempt from stamp taxes based upon the attached Affidavit.

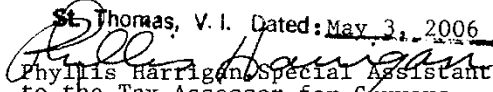
ATTEST:

It is hereby certified that the above mentioned property/s which, according to QUITCLAIM DEED dated April 18, 2006 belongs to: MADELEINE A. BASSIL
(GRANTEE)

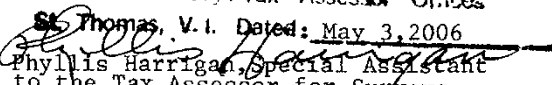
has not, according to the Records of this office, undergone any changes as to boundaries and area.

Cadastral Survey/Tax Assessor Offices

St. Thomas, V.I. Dated: May 3, 2006


Phyllis Harrigan, Special Assistant to the Tax Assessor for Surveys
Office of the Lieutenant Governor

NOTED IN THE CADASTRAL RECORDS
FOR COUNTRY/TOWN PROPERTY, BOOK FOR
ESTATE NAZARETH No. 1 RED HOOK QUARTER
ST. THOMAS, U.S VIRGIN ISLANDS

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: May 3, 2006

Phyllis Harrigan, Special Assistant to the Tax Assessor for Surveys
Office of the Lieutenant Governor

AFFIDAVIT

STATE OF OHIO)
)ss:
COUNTY OF ATHENS)

I, TERRY A. ANDERSON, after first being duly sworn, hereby depose and state the following:

1. I am the Grantor referred to in the foregoing Quitclaim Deed. I am an adult person and have personal knowledge of the facts recited herein and am under no disability.
2. The Grantee in the foregoing Quitclaim Deed is my wife, MADELEINE A. BASSIL.
3. TERRY A. ANDERSON and MADELEINE A. BASSIL are the sole owners of the Property described in the Quitclaim Deed pursuant to the Warranty Deed of March 11, 2002 attached as Exhibit A and I hereby certify that no other persons have any ownership interest therein. I further certify that this is an intrafamily transfer.
4. Consequently, the foregoing transfer is exempt from stamp taxes pursuant to 33 V.I.C. Section 128(8) because it involves a conveyance between husband and wife.
5. This is a voluntary conveyance and act of my own free will.

FURTHER AFFIANT SAYETH NOT.


TERRY A. ANDERSON

Subscribed and sworn to before me this 18th day of April, 2006.


NOTARY PUBLIC

Thomas D. Little
57

FILED
April 26, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

Book:
Pages:
Doc# 2004004096
Filed & Recorded
05/28/2004 9:25AM
WILMA O. HART SMITH
RECORDER OF DEEDS
ST THOMAS/ST JOHN
RECORDING FEE \$ 487.00
DEED DOC STAMP 2.5 \$ 9,875.00
PER PAGE FEE \$ 3.00

WARRANTY DEED

INDENTURE made this 22nd day of April, 2004, by and between DAN ALAN DITMORE, TRUSTEE of the SADERS REALTY TRUST ("Grantor"), and JOHN M. KLEIN, 6501 Red Hook Plaza, Suite 201, St. Thomas, VI 00802 ("Grantee");

W I T N E S S E T H:

That the Grantor, in consideration of Three Hundred Ninety Five Thousand Dollars (\$395,000.00) and other sufficient consideration paid by the Grantee, does hereby give, grant, sell and convey unto the said Grantee, in fee simple absolute, all right, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 2D-11 Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, Virgin Islands
consisting of 0.64 acre, more or less
as shown on PWD No. A9-24-T64
(the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantor, his heirs, successors and assigns, in and to the premises herein granted.

SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

TO HAVE AND TO HOLD the premises herein granted unto Grantee, his heirs, successors and assigns, in fee simple absolute forever.

EXCEPT AS HEREINABOVE MENTIONED, GRANTOR COVENANTS that he is seized of the premises in fee simple and has good right to convey the same; and that the Grantee and his heirs, successors and assigns, shall quietly enjoy said premises; and that said premises are free from encumbrances;

(7)

Exhibit B

Doc# 2004004096

**GOVERNMENT OF
 THE VIRGIN ISLANDS OF THE UNITED STATES
 CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801
 -----0-----
 DEPARTMENT OF FINANCE
 TREASURY DIVISION**

TO: THE RECORDER OF DEEDS

FROM: THE TREASURY DIVISION

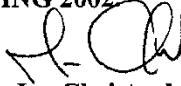
IN ACCORDANCE WITH Title 28, SECTION 121 AS AMEMDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR DITMORE, DAN ALAN/TRUSTEE

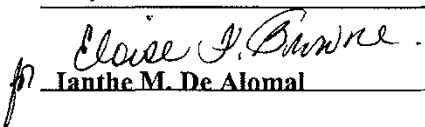
Nazareth #2D-11,
~~Red Hook Quarter~~ (PARCEL NO.) 1-07704-0148-00

_____).
TAXES RESEARCHED UP TO AND INCLUDING 2002

RESEARCHED BY: 
Ira Christopher

TITLE: Enforcement Officer II

DATE: May 03, 2004

VERIFIED BY: 
Janthe M. De Alomal

TITLE: Chief, Revenue Collection

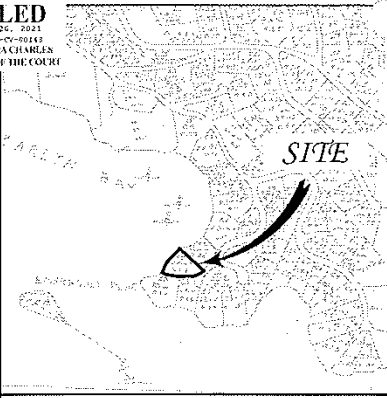
DATE: May 03, 2004

COLLECTOR NO. 8501

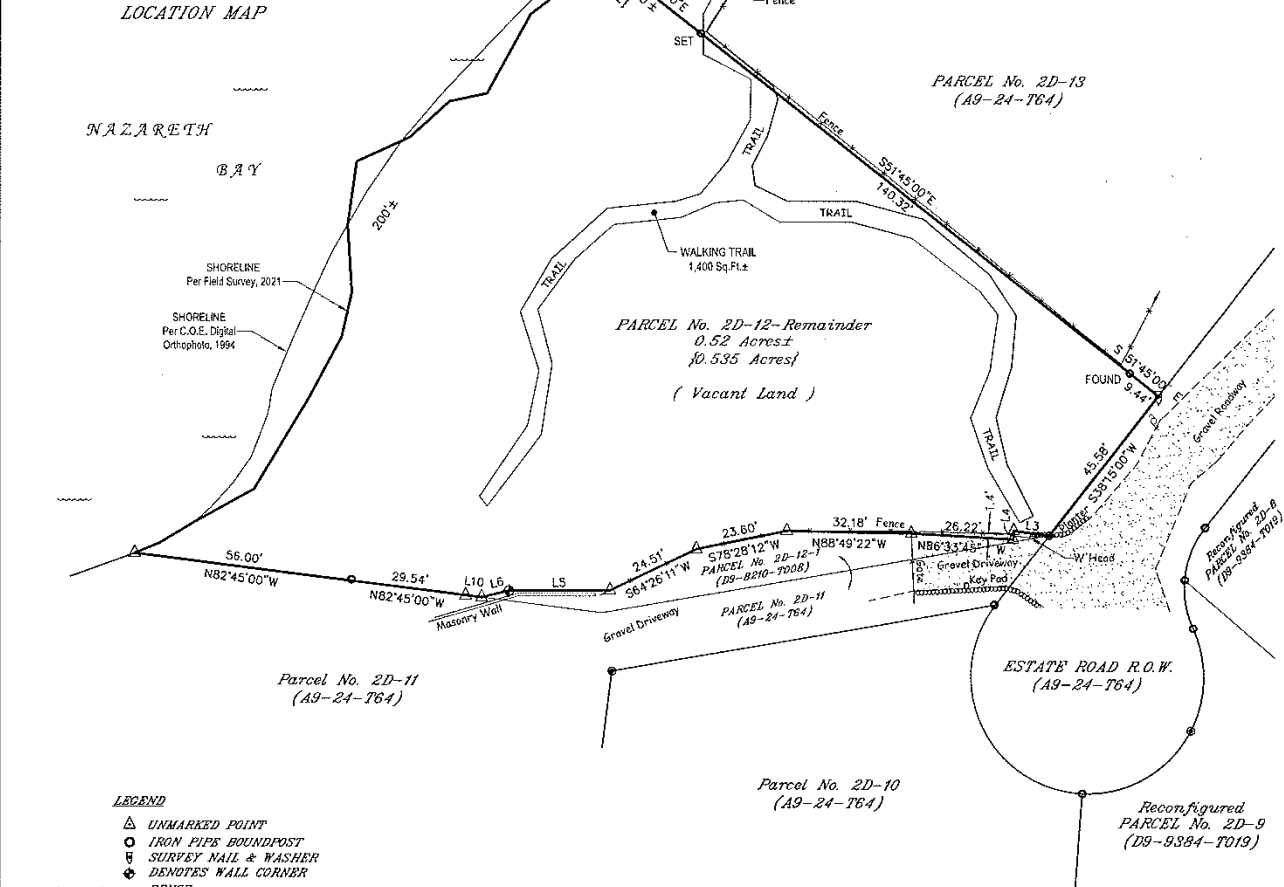
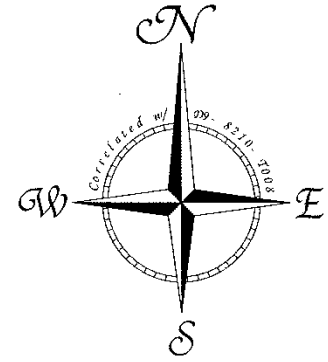
Doc# 2004004096

FILED
April 26, 2021

ST-2021-07-00143
TAVARA CHARLES
CLERK OF THE COURT



LOCATION MAP



LEGEND

- △ UNMARKED POINT
- IRON PIPES BOUNDPOST
- ⊕ SURVEY NAIL & WASHER
- ◆ DENOTES WALL CORNER
- FENCE

REFERENCE

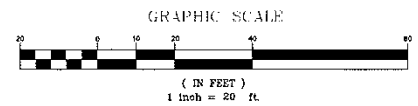
DB-8210-7008

ZONING

R-1

NOTE:

DATA IN BRACKETS (xxx) PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.



This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021

BRIAN MOSELEY AND ASSOCIATES, INC.

Ryan C. Wischart
Ryan C. Wischart, PLS



UPDATED SURVEY: 01-19-21
ORIGINAL SURVEY: 04-09-82

BM Brian Moseley Associates, Inc.
Land Surveyors & Consultants
4003 RAPHUNE HILL ROAD SUITE 605
ST. THOMAS, VI 00802
PHONE (340) 774-5310
FAX (340) 776-4090

ALTA / NSPS Land Title Survey of
Parcel No. 2D-12-Remainder
Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, U.S. Virgin Islands

SURVEY: A. G. B.	DRAWN: D. J. S.	DATE: 01-27-2021	DWGNO: 4506-4
CALC: R. C. W.	SCALE: 1" = 20'		

FILED

April 26, 2021

ST-2021-CV-00148

TAMARA CHARLES **ISING & CASNER**
CLERK OF THE COURT

ATTORNEYS AT LAW

9800 BUCCANIER MALL
BUILDING 2, SUITE 9
P.O. BOX 6785
ST. THOMAS, U.S.V.I. 00804
TELEPHONE 340-774-6011 EXT. 102
FACSIMILE 340-776-8520
WEBSITE: www.vilawyers.com
E-MAIL: jcasner@vilawyers.com

MATTHEW J. DURNING, P. C.

OF COUNSEL

A. JAMES CASNER III, P. C.

MICHAEL FITZSIMMONS, P. C.

ASSOCIATES

JOSEPH D. SAUERWEIN

ROBIN P. SHILA

February 15, 2021

VIA PROCESS SERVER

Mr. John Klein
Parcel No. 2D-11 Estate Nazareth
St. Thomas, VI 00802

Re: **NOTICE TO CEASE AND DESIST ALL ACTIVITY on 2D-12-Remainder Estate
Nazareth St. Thomas VI 00802**

Dear Mr. Klein:

This firm represents your abutting property owner, Ms. Madeleine Bassil, who is the owner of Parcel No. 2D-12-Remainder Estate Nazareth (the "Parcel"). It has recently come to Ms. Bassil's attention that you may have been criminally trespassing, in violation of 14 V.I.C. §§ 1741 and 1742,¹ on Ms. Bassil's Parcel. In the Virgin Islands, it is unlawful to enter another's property, including the land of another, without permission and consent of the owner.

¹ 14 V.I.C. § 1741(a) states: "Whoever enters upon the land of another without the consent of the owner or of the person in charge thereof, shall be fined not more than \$50 or imprisoned not more than 30 days, or both."

14 V.I.C. § 1742 states: "Whoever willfully commits any trespass by—

- (1) cutting down, destroying or injuring any kind of wood or timber growing upon the lands of another or upon public lands;
 - (2) carrying away any kind of wood or timber lying on such lands;
 - (3) maliciously injuring or destroying any standing crop, fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code;
 - (4) digging, taking or carrying away from any real estate, without the license of the owner or legal occupant thereof, any earth, soil or stone;
 - (5) digging, taking or carrying away any earth, soil or stone from any land of the Government of the Virgin Islands, recognized or established as a street, road, alley, avenue or park, without the license of the proper authorities, or;
 - (6) putting up, affixing, fastening, printing or painting upon any property belonging to the Government of the Virgin Islands, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto—
- shall be fined not more than \$200 or imprisoned not more than 1 year, or both."

Exhibit D

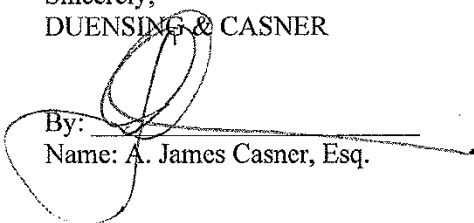
Ms. Bassil has not given you permission to enter her Parcel or to do anything to her Parcel. It is clear from the as-built survey, dated January 27, 2021 (copy attached), that trails and steps have been cut through and across Ms. Bassil's Parcel. These trails were recently discovered during an inspection of the Parcel and are not shown on the survey dated September 15, 2008. Based on information and belief, you or your agents have caused the willful cutting down, destruction, and injury to wood or timber on Ms. Bassil's land, which is a clear violation of 14 V.I.C. § 1742.

You are hereby ORDERED to cease and desist all activity on the Parcel. You do NOT have Ms. Bassil's permission or consent to do anything on the Parcel, including, without limitation, using the improperly created paths within the Parcel to access the Secret Harbor beach area.

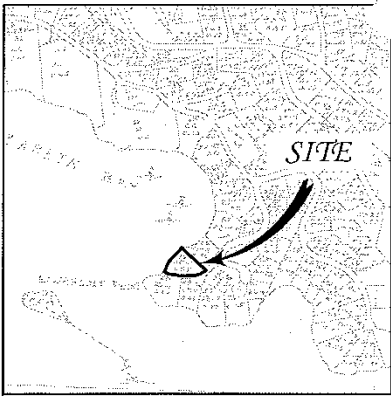
This is your formal written warning to cease and desist all activity on Ms. Basil's Parcel. You may not enter her Parcel for any reason whatsoever. A copy of this letter has been forwarded to the U.S.V.I. Department of Justice. If you do not cease and desist all activity IMMEDIATELY, you will be subject to charges of criminal trespass, including fines, and possible imprisonment, and we will seek all costs and attorney's fees related to your criminal trespass prosecution and any resulting civil litigation.

As you are aware, this is the second time you have improperly trespassed on Ms. Bassil's property without permission or any right to do so. If you are represented by legal counsel, please have your attorney contact the undersigned if you have any questions.

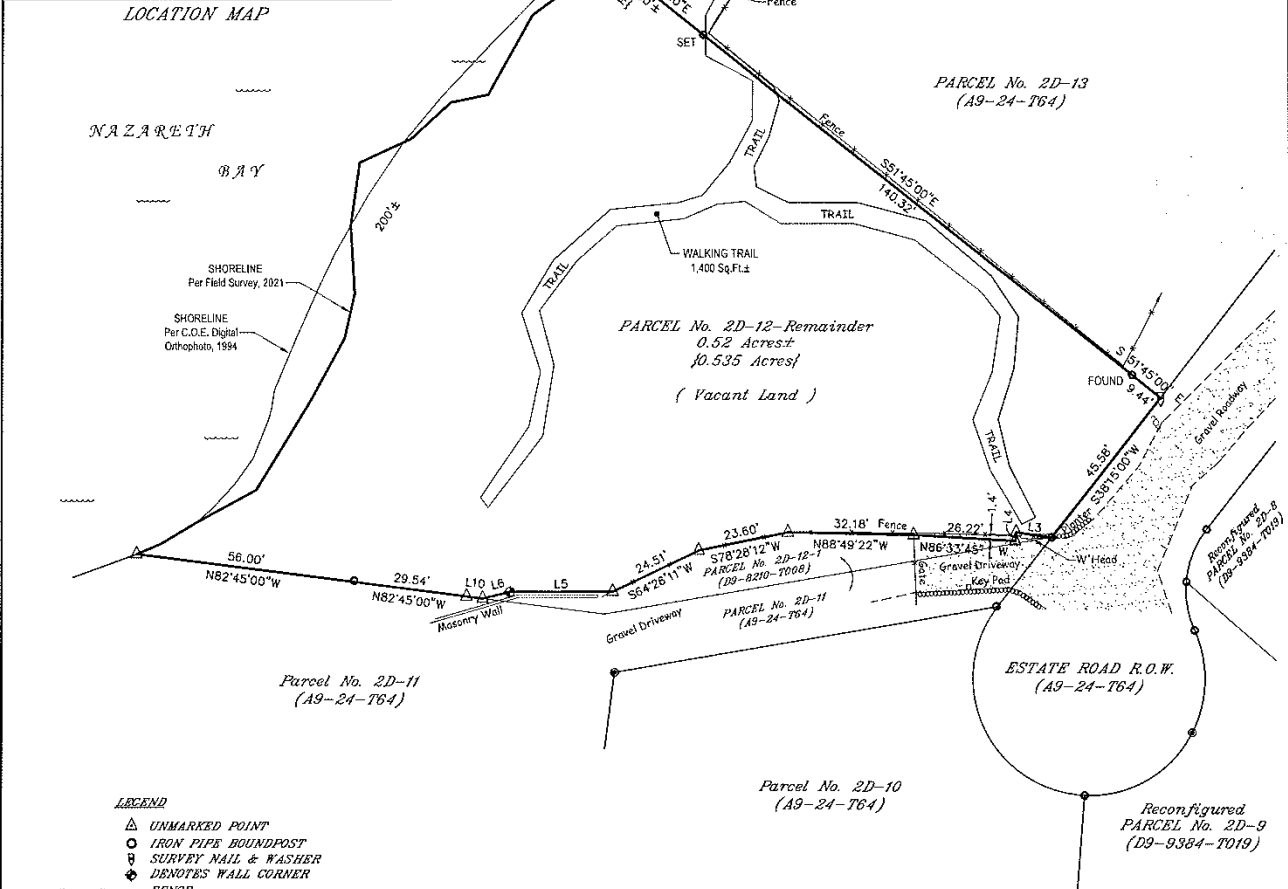
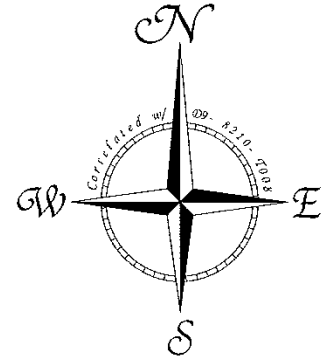
Sincerely,
DUENSING & CASNER

By: 
Name: A. James Casner, Esq.

cc: Madeleine Bassil



LOCATION MAP



LEGEND

- △ UNMARKED POINT
- IRON PIPE BOUNDPOST
- ⊕ SURVEY NAIL & WASHER
- ◆ DENOTES WALL CORNER
- FENCE

REFERENCE

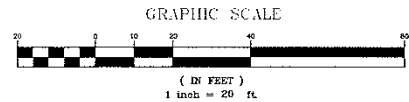
DB-8210-7008

ZONING

R-1

NOTE:

DATA IN BRACKETS (xxx) PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.



This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021

BRIAN MOSELEY AND ASSOCIATES, INC.

Ryan C. Wiseshart
 Ryan C. Wiseshart, PLS



UPDATED SURVEY: 01-19-21
 ORIGINAL SURVEY: 04-08-02

Brian Moseley Associates, Inc.
 Land Surveyors & Consultants
 4003 RAPHUNE HILL ROAD SUITE 606
 ST. THOMAS, VI 00802
 PHONE (340) 774-5310
 FAX (340) 776-4090

ALTA / NSPS Land Title Survey of
Parcel No. 2D-12-Remainder
 Estate Nazareth
 No. 1 Red Hook Quarter
 St. Thomas, U.S. Virgin Islands

SURVEY: A. G. B.	DRAWN: D. J. S.	DATE: 01-27-2021	DWG No.: 4506-4
CALC: R. C. W.	SCALE: 1" = 20'		

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

MADELINE A. BASSIL,

Plaintiff,

ST-2021-CV-148

v.

**ACTION FOR TEMPORARY
RESTRAINING ORDER,
INJUNCTIVE RELIEF,
TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE,
and, DAMAGES FOR SLANDER
OF TITLE and INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS**

JOHN KLEIN,

Defendant.

**OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION
FOR A TEMPORARY RESTRAINING ORDER
AND A PRELIMINARY INJUNCTION**

NOW COMES Defendant John Klein ("Defendant"), by counsel, and by and for his Opposition to Plaintiff's Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction. In support of said Opposition, Defendant states as follows:

PRELIMINARY STATEMENT

Plaintiff, a non-resident absentee owner of a vacant plat of land, asks this Court to take the extraordinary step of entering a temporary restraining order in a property dispute between neighboring property owners. Yet, Plaintiff failed to establish that she is likely to prevail on the merits of the case or that she will be irreparably harmed in the event the Court does not grant the requested relief. Importantly, this is not a case where the Court must act to preserve the status

quo, the stated goal of a temporary restraining order. Indeed, the opposite is true - rejecting Plaintiff's Motion will maintain the status quo between the parties.

The easiest way to understand that Plaintiff's Motion clearly does not meet the standard for or fit the mold of a case where a temporary restraining order is appropriate is by comparing it to other cases. This is not a case where one of the parties is facing imminent bodily injury, such a domestic violence situation. Plaintiff resides full-time in New York. This is not a case where Plaintiff's livelihood is at stake, such as the revocation of her medical or law license. This is simply a property dispute between two property owners and there is nothing about this case that calls for such a drastic remedy. The outcome of this case can and should be determined in the normal course – discovery and a jury trial, with an award of damages to one side or the other. Indeed, other than perceived leverage against the Defendant, there is no reason for Plaintiff to even be seeking this relief. As such, the Court should deny Plaintiff's request for a temporary restraining order and inform the parties that the case is to proceed in the normal course.

BACKGROUND

Defendant, a long-time resident and local business owner, has owned Parcel No. 2D-11 since 2004. Plaintiff, a non-resident absentee owner, has owned Parcel No. 2D-12 since 2002. The two parcels share a common border.

In 2004, when Defendant purchased Parcel No. 2D-11, a single trail or walking path started at his parcel and traversed through Plaintiff's parcel to near the beach. Defendant understands that path was created by the prior owners of Parcel No. 2D-10. Shortly after taking ownership of Parcel 2D-11, and during construction of the current residence on Parcel 2D-11 in 2005, Defendant constructed an additional trail or walking path that started at a different part of his parcel, met up with and joined the prior path or walking trail, and ended near the beach.

Throughout construction of the current residence in 2005, Defendant would regularly be on site to oversee construction and use the paths to access the public beach. Thereafter, Defendant continued to use the paths when he moved into the residence full-time.

Since taking ownership of Parcel 2D-11, Defendant has consistently maintained, improved, and used the trails and/or walking paths to access the public beach. Over the past 16 years, Defendant has continued to maintain and improve the paths, clearing brush, keeping the ground clear of debris, removing termite nests, installing a no trespassing sign, and ensuring that the paths resulted in safe entry onto the beach. Defendant intends to elicit evidence and testimony establishing that he has consistently maintained, improved, and used the trails since 2005 through testimony from himself, his daughter, friends, guests, former residents and/or employees of Secret Harbour, and neighbors. For example, at least three individuals will testify that Defendant, a service disabled veteran from the Vietnam era with a service dog, created the paths and trails in 2005, prior to the completion of construction on the residence, and has maintained and used the trails to access the public beach. The testimony will also establish that Defendant has not hidden the creation, maintenance, and use of the trails, and in fact, other residents and guests of Defendant's property have used the trails over the years. Indeed, as Plaintiff notes, Defendant openly advertises his ownership and use of the trails.

In contrast to Defendant's open, obvious, notorious, and consistent maintenance and use of the trails, Plaintiff is an absentee owner. She has never improved the property. She has never maintained the property. She has never had plans to build on the property. In fact, she has neglected the property, allowing termites, rats, and other vermin to take up residence at the property. She rarely, if ever, is even on island. Indeed, Plaintiff pays so little attention to her property that she claims to not even know about the existence of the path that pre-dated

Defendant's ownership of Parcel 2D-11, and despite years of maintenance and use, allegedly did not know about either path until informed by her agent earlier this year.

ARGUMENT

I. Legal Standard

A temporary restraining order is an emergency remedy which courts only use in the most desperate of situations. See *Yusuf v. Hamed*, 59 V.I. 841, 848 (2013) (“[A] preliminary injunction involves the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it.”) (internal citations omitted). This sort of “stop-gap procedural device,” however, should “never be awarded as of right and may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Hart v. Potter*, No. ST-18-CV-220, 2018 WL 2324386, at *2 (V.I. Super. Ct. May 7, 2018).

Therefore, this Court may, pursuant to Virgin Islands Rule of Civil Procedure 65(b), issue a temporary restraining order only if the Court finds that the following four factors weigh in Plaintiff's favor:

- (1) [W]hether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the requested relief;
- (3) whether granting injunctive relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the injunctive relief will be in the public interest.

Hart v. Potter, No. ST-18-CV-220, 2018 WL 2324386, at *2 (V.I. Super. Ct. May 7, 2018) (citing *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012)) (the “*Petrus*” factors).

Although the Court should consider these factors holistically, “the Supreme Court of the Virgin Islands has implied that a party's ability to show irreparable harm is the most significant factor for the Superior Court to consider when deciding whether to issue a temporary restraining order.” *Hart v. Potter*, No. ST-18-CV-220, 2018 WL 2324386, at *3 (V.I. Super. Ct. May 7,

2018). Irreparable harm, as further discussed below, only exists when money damages are insufficient to remedy the alleged harm. *See, e.g., Yusuf v. Hamed*, 59 V.I. 841, 854 (2013) (concluding that irreparable harm existed when one party interfered with another’s right to control their own business); *W. Indian Co. v. Gov’t of Virgin Islands*, 22 V.I. 358, 382, 643 F. Supp. 869, 882 (D.V.I. 1986) (stating that injunctive relief is appropriate where one party interferes with another party’s constitutional rights or is financially unable to compensate the other party with money damages), *aff’d*, 812 F.2d 134 (3d Cir. 1987); *Beberman v. U.S. Dep’t of State*, 2016 WL 1181684 at *3 (D.V.I. March 24, 2016) (quoting *Bieros v. Nicola*, 857 F. Supp. 445, 445 (E.D. Pa. 1994)) (For the purposes of meeting this burden, it is “not enough ‘for the harm to be serious or substantial, rather, it must be so peculiar in nature that money cannot compensate for the harm.’”).

II. Plaintiff Does Not Satisfy the Four *Petrus* Factors

This Court should deny Plaintiff’s Motion because Plaintiff falls woefully short of meeting her heavy burden of demonstrating that the *Petrus* factors weigh in her favor and warrant such an “extraordinary and drastic remedy.” *Yusuf v. Hamed*, 59 V.I. 841, 847 (2013).

A. Plaintiff has not demonstrated a sufficient probability of success on the merits.

For this factor, Plaintiff must introduce evidence invalidating each element of Defendant’s adverse possession of a portion of her property. *Yusuf v. Hamed*, 59 V.I. 841, 849 (2013) (The moving party “must introduce evidence supporting each element of his cause of action.”); *Punnett v. Carter*, 621 F.2d 578, 583 (3d Cir.1980) (“the burden is on the party seeking relief to make a prima facie case showing a reasonable probability that it will prevail on the merits”). However, Plaintiff has failed to introduce evidence invalidating any of the elements of Defendant’s adverse possession claim. A claim for adverse possession of land consists of five

elements, but Plaintiff only contests a single element: whether Defendant possessed the portion of Plaintiff's property for 15 years or more. *See* 28 V.I.C. § 11. Plaintiff concedes, by virtue of her silence, that Defendant can establish the other elements of an adverse possession claim. As such, Plaintiff fails to demonstrate that she has a significant probability of success on the merits.

Plaintiff's argument rests solely on two assertions: (1) she visited the property in 2015 and (2) a drone photograph purportedly from November 2015. Pl.'s Mot. at 3 and 5. However, both assertions are facially insufficient to invalidate, or to even call into question, Defendant's adverse possession. First, Plaintiff alleges she visited her parcel in April 2015, but she was unable to walk her parcel due to the existence of brush. Importantly, Plaintiff does not indicate that she walked the exterior of property, or that she even attempted to do so. The only plausible inference from Plaintiff's assertion is that she drove up to the property, saw brush, and left. If she had made any real attempt to inspect her property, she would have seen the paths, either from the public beach, which was plainly accessible to all, or from the south side of her property. Additionally, notably, Plaintiff has offered no evidence that she visited or inspected her property between 2002 and 2015. Second, the photograph lacks any real probative value. The drone photograph is from a distance and at a completely different angle, so it is not comparable to the more recent overhead drone photograph. The November 2015 drone photograph was also taken at the end of the wet season, so the vegetation was more lush than it was during the more recent overhead photograph. As such, the November 2015 photograph is not probative of the existence of the trails because it does not establish, one way or the other, the existence of trails.

The totality of the circumstances clearly weighs in Defendant's favor. Defendant has owned Parcel 2D-11 since 2004. Unlike Plaintiff, who rarely visits the island, let alone Parcel 2D-12, Defendant has used, maintained, and improved the trails and/or walking paths in question

continuously, and at least three individuals will offer testimony establishing that Defendant created and/or began using the trails more than fifteen years ago. The evidence will demonstrate that Defendant's daughter, friends, and many other witnesses recall Defendant using these trails repeatedly. Plaintiff asserts, upon information and belief, that Defendant did not start using the trails until 2020, but she has no evidence to support such an assertion, and, at trial, Defendant will introduce significant evidence to the contrary. Even before Defendant took possession of the residence on Parcel 2D-11, he regularly made site visits to oversee construction and use the trails to access the public beach. Plaintiff, comparatively, is an absentee owner that never visited or maintained her property, and her bald assertions about Defendant's use are insufficient to carry the day, particularly for the drastic remedy she seeks in this Motion.

Plaintiff has the burden of making a *prima facie* case for each element of her claim to demonstrate that this *Petrus* factor weighed in her favor. Instead, she offered nothing more than a mere scintilla of evidence as to a single piece of Defendant's claim. Such scant evidence does not establish that she has any chance, let alone any significant chance, of prevailing on the merits.

B. Plaintiff will not suffer irreparable harm if the Court denies her Motion.

In arguing the "most significant factor" of this analysis, Plaintiff neglects to cite any authority to support her position. See *Hart v. Potter*, No. ST-18-CV-220, 2018 WL 2324386, at *3 (V.I. Super. Ct. May 7, 2018). As it were, even a brief analysis of applicable case law illustrates that Plaintiff will not suffer irreparable harm if this Court denies the present Motion and allows this litigation to proceed naturally.

"Irreparable harm is certain and imminent harm for which a monetary award does not adequately compensate." *Yusuf v. Hamed*, 59 V.I. 841, 854 (2013). "A moving party will satisfy

this test if it can demonstrate that its monetary damages are either difficult to ascertain or are inadequate.” *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (2018). Courts have found irreparable harm when, for example, one party interferes with another’s constitutional rights, *W. Indian Co. v. Gov’t of Virgin Islands*, 22 V.I. 358, 382, 643 F. Supp. 869, 882 (D.V.I. 1986), *aff’d*, 812 F.2d 134 (3d Cir. 1987) and *Appleyard v. Governor Juan F. Luis Hosp. & Med. Ctr.*, No. SX-14-CV-282, 2014 WL 3767210, at *3 (V.I. Super. Ct. July 28, 2014), or the right to control their own business, *Yusuf v. Hamed*, 59 V.I. 841, 854 (2013). Calculable monetary harm only amounts to irreparable harm if a defendant is financially unable to compensate a plaintiff with money damages. *See W. Indian Co. v. Gov’t of Virgin Islands*, 22 V.I. 358, 382, 643 F. Supp. 869, 882 (D.V.I. 1986), *aff’d*, 812 F.2d 134 (3d Cir. 1987).

Importantly, irreparable harm only exists in cases where the potential harm is egregious and unquantifiable. For example, “[l]oss of control of reputation, loss of good will, and loss of trade are all established grounds for irreparable injury.” *Appleyard v. Governor Juan F. Luis Hosp. & Med. Ctr.*, No. SX-14-CV-282, 2014 WL 3767210, at *3 (V.I. Super. Ct. July 28, 2014). Thus, in *Appleyard*, 2014 WL 3767210, at *3, the Court found irreparable harm where the defendant hospital suspended the plaintiff without due process and, in doing so, compromised her constitutional rights and future ability to practice medicine in the Virgin Islands and elsewhere. Likewise, the Superior Court found that irreparable injury existed in a narrow instance where the threatened action would certainly have created a “patent danger” of “interfer[ing] with the rights of voters and caus[ing] them to be disenfranchised.” *Canegata v. Schoenbaum*, 64 V.I. 252, 265 (Super. Ct. 2016) (granting a temporary restraining order to prevent the defendant from using a similar political logo and spreading misinformation three

days before a primary election). In cases like the instant case, courts routinely deny requests for extraordinary relief because there is no irreparable harm. *See e.g., Smith v. Benjamin*, 30 V.I. 51 (Terr. Ct. 1994) (denying request for temporary restraining order and preliminary injunction for lack of irreparable harm in dispute over easement and property rights).

Comparatively, Plaintiff alleges that her “irreparable harm” consists of (1) removing her Parcel from listing services, for want of clear title; (2) unverified allegations that Defendant “intimidated” the firm she hired to build a fence around her land; and (3) the vague and otherwise unsupported contention that Plaintiff now suffers “emotional distress.” Pl.’s Mot. at 7. Even if the foregoing statements were true, Plaintiff nevertheless fails to demonstrate irreparable harm because monetary damages would adequately compensate her for each of these alleged injuries. Moreover, none of Plaintiff’s purported injuries come close to the type of immeasurable, egregious conduct which emergency injunctive relief is meant to prevent.

First, a temporary restraining order would not remedy Plaintiff’s contention that she had to remove her Parcel from listing services. Title to the Parcel is not clouded due Defendant’s legal possession to the trails he improved. Title to the Parcel is clouded because of the pending litigation that Plaintiff filed— which will continue whether or not this Court grants the present Motion. A temporary restraining order, which has a maximum lifespan of only fourteen days, would not address Plaintiff’s purported injuries. *See Virgin Islands R. Civ. Pro. 65(b)(2)*. Nor should it- failing to list a property which Plaintiff otherwise ignored for over a decade is certainly a far cry from widespread voter interference or everlasting professional injury. *See Canegata v. Schoenbaum*, 64 V.I. 252, 265 (Super. Ct. 2016); *Appleyard*, 2014 WL 3767210, at *3; *see also Smith*, 30 V.I. at 53 (finding that monetary damages were available when the main item of

alleged damage was an inability to continue construction of a residence due to a property dispute, so a temporary restraining order was inappropriate).

Second, Plaintiff's alleged emotional distress resulting from her inability to sell her property is not grounds for a temporary restraining order. Courts in the Virgin Islands routinely recognize that money damages, not temporary restraining orders, are the appropriate remedy for claims of emotional distress. *See, e.g., Stevens v. Louise*, No. SX-14-CV-456, 2016 WL 9454137, at *3 (V.I. Super. Ct. June 13, 2016) (discussing intentional and negligent infliction of emotional distress). Indeed, Plaintiff has made a claim for monetary damages in various counts in her Complaint. As such, it is clear that a temporary restraining order is not proper. Additionally, a temporary restraining order will not allow Plaintiff to sell her property, such that it will have no impact on Plaintiff's alleged emotional distress. *See Kohmetscher v. NextEra Energy Resources, LLC*, 2020 WL 5639950, at *7 (plaintiff landowners, who sued neighboring turbine farm due to loud noise and flashing light created by turbines, had not alleged irreparable harm when they claimed that turbines made them feel dizzy, nauseous, and unable to sleep). Moreover, Plaintiff offers no evidence, affidavits, medical records, or otherwise, supporting her claimed emotional distress.

Finally, Plaintiff has offered no evidence that a third party fencing company is in any imminent danger. Indeed, if it was, the fencing company should be asking for a temporary restraining order, not the Plaintiff. Plaintiff does not have standing to ask for a temporary restraining order for potential harm to a third party, and no such potential even exists. Moreover, Defendant has never threatened any bodily harm to anyone, let alone a fencing company, and to suggest otherwise is simply false.

Plaintiff's "evidence" is not evidence at all, but a series of bald assertions, which, even if true do not support a temporary restraining order. In the end, temporary restraining orders "involve the exercise of a very far-reaching power," and should "be applied only in the limited circumstances which clearly demand it." *Yusuf v. Hamed*, 59 V.I. 841, 848 (2013). The facts of this case certainly do not rise to the level necessary to invoke such an extraordinary and drastic remedy as a temporary restraining order.

C. Defendant will be prejudiced if the Court grants Plaintiff's Motion.

The goal of emergency injunctive relief is to "maintain the status quo" pending litigation—meaning that the non-moving party will not be unduly prejudiced if the Court grants the requested emergency relief. *Yusuf v. Hamed*, 59 V.I. 841, 856 (2013). This factor ensures that "[the non-moving party] is not deprived of the same legal rights to which he is entitled" while the temporary restraining order is effective. *Yusuf v. Hamed*, 59 V.I. 841, 856 (2013). In this case, Plaintiff asks the Court to upend the status quo of the past sixteen years and prevent Defendant from using the trails and walking paths which he has enjoyed, uninterrupted, ever since he bought Parcel 2D-11. In essence, Plaintiff asks the Court to "interfere[] with h[er] neighbor's access to [his] right of entry into [his] property." *Gov't of the Virgin Islands v. George*, No. CV 411/1996, 1996 WL 35048112, at *4 (Terr. V.I. Aug. 16, 1996). Here, the only party that is at risk of prejudice is Defendant. Plaintiff is an absentee owner of a vacant parcel. If Defendant continues to use his property it is of no moment to Plaintiff until such time as she possesses clear title. Defendant, however, operates a business. He advertises his ownership of the paths and relies upon the paths for his business. A temporary restraining order would clearly prejudice Defendant because he would no longer be able to effectively run his business or use the property to which he is entitled. So, not only can Plaintiff not establish irreparable harm, but

Defendant is the party that suffers irreparably if the Court were to grant Plaintiff's Motion. In other words, this is the exact opposite of the situation where a temporary restraining order is appropriate.

D. Injunctive relief is not in the public's interest.

Finally, the public interest prong of this analysis also weighs in Defendant's favor. "In considering the public interest, courts should seek to prevent the parties from halting specific acts presumptively benefiting the public until the merits can be reached and a determination made as to what justice requires." *Yusuf v. Hamed*, 59 V.I. 841, 858 (2013) (internal citations and alterations omitted). Thus, this interest weighs in favor of maintaining the current status quo - Defendant using his property, including the paths that he adversely possessed, to facilitate his business, which in turns boosts the local economy and tourist industry. *See Yusuf v. Hamed*, 59 V.I. 841, 858 (2013) (noting that "preventing the potential loss of business, jobs, and tax revenue in a community weighed in favor of granting a preliminary injunction."). Plaintiff asserts, without citation, that there is a public interest in enforcing property rights, but even if such were true, the Court should be enforcing Defendant's right to use the trails he now owns, not trying to save an absentee owner who has not improved, maintained, or looked over her property in close to two decades. Thus, even under Plaintiff's theory, this factor weighs in Defendant's favor, and against issuance of a temporary restraining order.

CONCLUSION

Plaintiff fails to clearly demonstrate that the balance of the *Petrus* factors weigh in her favor. For the foregoing reasons, Defendant respectfully asks that this Court deny Plaintiff's Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction and grant Defendant such further relief as the Court deems appropriate.

Respectfully submitted,

JOHN M. KLEIN

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Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record:

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on May 3, 2021 by process server Mr. Renix Charles. The Court finds that the Defendant has been provided with notice of the Complaint and Motion.

Plaintiff argues that she is entitled to a temporary restraining order and preliminary injunction enjoining Defendant “to prevent further injury to Plaintiff’s Parcel and to protect the fencing firm hired by Plaintiff to protect her property.”

In addition to the requirements of Rule 65(b), the Court must consider “four factors in deciding a motion for temporary restraining order and preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.” *VI Taxi Ass’n v. West Indian Co. Ltd.*, No. ST-16-CV-551, 2016 LEXIS 150, at *3 (V.I. Super. Sept. 28, 2016).

1. Plaintiff’s Reasonable Probability of Success on the Merits.

Plaintiff argues that “Defendant’s actions are a clear violation of 14 V.I.C. § 1741(a) and 14 V.I.C. §1742 because Plaintiff has never given Defendant permission to enter onto her Parcel for any purpose.” Then Plaintiff asserts a blank statement that “Plaintiff is likely to succeed on the merits of all counts set forth in her Complaint.” Plaintiff further seeks a civil penalty for the criminal trespass.

Plaintiff cites to success on the merits of a criminal violation, trespass, to which only the Virgin Islands Department of Justice has the authority to prosecute. Pursuant to Title 3, V.I.C. § 114(a)(2), the Attorney General shall have the following powers and duties: (2) to prosecute in the inferior courts all offenses against the laws of the Virgin Islands. The Court is not persuaded that Plaintiff has met this requirement and finds that Plaintiff should be prepared to address this issue at the hearing for preliminary injunction.

2. Likelihood of Irreparable Injury / Harm to Plaintiff

Plaintiff argues irreparable injury due to “defendant’s continued trespass poses the potential for irreparable harm to Plaintiff.” Plaintiff then cites that “Plaintiff has already been forced to remove her Parcel from the Multiple Listings Service (MLS) because she knows she cannot provide clear title for the sale of her Parcel due to Defendant’s trespass.” The Court, however, has not been provided with any supporting documentation to substantiate Plaintiff’s claim that “she knows” she cannot provide clear title.

For purposes of temporary or injunctive relief, Virgin Islands courts have defined irreparable injury or harm as harm that is “certain and imminent for which a monetary award does not adequately compensate.”² A moving party will satisfy the requirement for irreparable harm if

² *Yusuf v. Hamed*, 59 V.I. 841 at 853 (quoting *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003); see also *Merchants Commer. Bank v. Oceanside Vill.*, 2018 LEXIS 137, at *17 (V.I. Super. Ct. Dec. 19,

it can demonstrate that “its monetary damages are either difficult to ascertain or inadequate.”³ To show irreparable injury, the movant does not have to demonstrate that harm is inevitable or irreparable, but only show “threat of injury from impending action” and that “injury is imminent and that money damages would not fully repair the harm.”⁴ Additionally, when “the record indicates that a plaintiff’s loss is a matter of simple mathematical calculation,” a plaintiff fails to establish irreparable injury or harm.⁵ The Supreme Court of the Virgin Islands has established that losses that can be remedied through money damages cannot constitute irreparable injury for the purpose of temporary or injunctive relief.⁶ Therefore, if a party’s loss can be remedied by monetary damages, a preliminary injunction or temporary restraining order is not appropriate.⁷ It is unclear how monetary damages are inadequate in this instance and as such Plaintiff shall be prepared to address this issue at the hearing for preliminary injunction.

3. Likelihood of Immediate and Irreparable Harm to the Defendant.

Plaintiff argues that she “has experienced and is continuing to experience harm because of Defendant’s actions. The harm has now also spread to the firm Plaintiff hired to protect her real property interests because Defendant has been intimidating the workers of that firm.” Plaintiff asserts in the Verified Complaint that it is “upon information and belief” that Defendant has been intimidating the workers of the firm hired to build the fence.

Plaintiff’s arguments are not supported by facts and appear speculative. Therefore, the Court finds the likelihood of immediate and irreparable harm to the Defendant is slight, if at all. The Plaintiff shall be prepared to further address this issue at the hearing for preliminary injunction.

4. The Public Interest Factor

Plaintiff argues that “a failure of enforcement [of] civil penalties for illegal trespassing is not in the public’s best interest, especially in cases, such as here, where Plaintiff has been vigilant, and has actively hired a firm to build a fence, which has only been met with resistance and intimidation by the Defendant.” Given the lack of evidentiary record, the Court is not persuaded, at this time, that the public interest factor has been met.

After weighing all the factors, the Court concludes that Plaintiff has not met her burden for the issuance of a temporary restraining order enjoining the Defendant. The Court further concludes that Plaintiff has not “clearly show[n] that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition”, as required by V.I. R. Civ. P. 65(b)(1)(A).

2018).

³ *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (V.I. 2018) (quoting *Yusuf*, 59 V.I. at 854).

⁴ *UDI Mgmt. v. Tremblay*, 2013 V.I. LEXIS 142, at *6 (V.I. Super. Ct. Feb. 21, 2013).

⁵ *Yusuf*, 59 V.I. at 854 (citing *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551-52 (4th Cir. 1994)).

⁶ *3RC & Co.*, 63 V.I. at 562.

⁷ *Id.*

CONCLUSION

Plaintiff, at this time, has not persuaded the Court that it should issue the requested temporary restraining order to enjoin the Defendant. The Court will, however, schedule an evidentiary hearing on the Plaintiff's Motion for a Preliminary Injunction.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Temporary Restraining Order is **DENIED**; and it is further

ORDERED that this matter is scheduled for a **Status Conference on Wednesday, June 2, 2021 at 10:00 a.m. via Zoom** for the purpose of scheduling an evidentiary hearing on the Plaintiff's Motion for a Preliminary Injunction; and it is further

ORDERED that a copy of this Order shall be personally served on Defendant, John Klein, a copy directed to Plaintiff's counsel, Attorney Matthew J. Duensing, Esquire, and Defendant's counsel, J. David Crain, Esquire.

SO ORDERED this 14th day of May, 2021



SIGRID M. TEJO

Judge of the Superior Court
of the Virgin Islands

ATTEST:
TAMARA CHARLES
Clerk of the Court

BY: 

DONNA D. DONOVAN

Court Clerk Supervisor 5/19/2021

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

MADELEINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST– 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

**REPLY TO OPPOSITION TO PLAINTIFF’S EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION AND
MOTION TO RECONSIDER DENIAL OF TEMPORARY RESTRAINING ORDER**

Plaintiff Madeleine A. Bassil, by counsel, and hereby replies to Defendant’s Opposition to Plaintiff’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction (“Opposition”). In light of the Court’s May 19, 2021 Order, Plaintiff also requests reconsideration of the denial of her request for a Temporary Restraining Order and Injunction and requests a hearing on the merits as soon as possible. “It is a rare preliminary injunction that can correctly be denied without a hearing.” *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 558 (V.I. 2015). Defendant has not met his burden of proof regarding his purported right to access Plaintiff’s Parcel, and as such, Plaintiff requires immediate Court intervention to protect her property rights. Plaintiff appreciates the opportunity to be heard on June 2, 2021 with regard to the injunctive relief she seeks and she respectfully submits that her request for a Temporary Restraining Order was improperly denied and she requests reconsideration of the denial.

Preliminary Statement

This is a case that requires immediate Court intervention to prevent Plaintiff from suffering from irreparable harm. Defendant is simply a bully who has taken advantage of the Plaintiff's reluctance to travel during the Global Pandemic to cut paths and trails across Plaintiff's Parcel to serve his own personal interests. Defendant suggests that Plaintiff is not entitled to relief because she is a non-resident real property owner. Indeed Plaintiff is a non-resident, which makes Court intervention even more urgent. Further, as the party seeking to obtain rights to Plaintiff's Parcel, Defendant bears the burden of proof of establishing his claim of adverse possession by clear and convincing evidence. Defendant's purely self-interested evidence cannot meet the clear and convincing evidence standard.

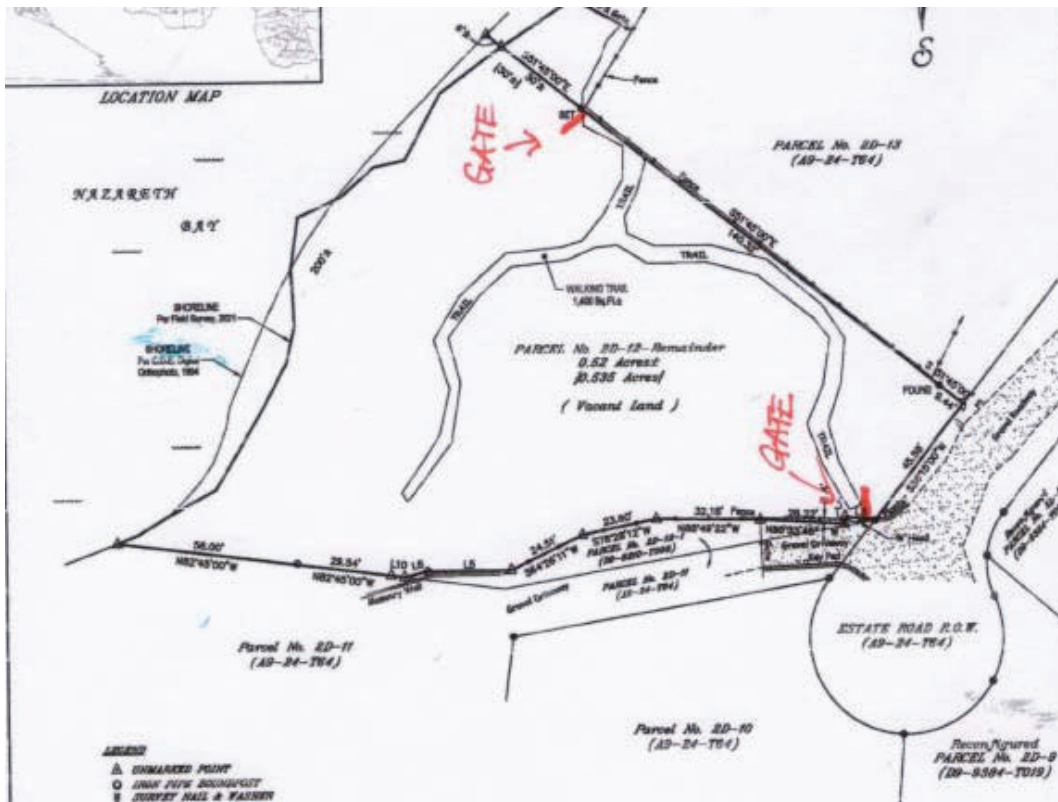
Maintaining the status quo will only lead to Plaintiff's irreparable harm. Defendant's encouragement of trespassers on her property opens Plaintiff up to liability if someone were to become injured while illegally traversing her property. Additionally, Defendant's actions have already forced Plaintiff to remove her parcel from the Multiple Listing Service ("MLS"). Plaintiff is essentially being held hostage by Defendant's false claims of adverse possession. Plaintiff fears that Defendant will completely divest her of her Parcel, since he did it before, in 2008, when he decided to build his driveway across a portion of Plaintiff's Parcel. This is Defendant's *modus operandi* and he must be stopped.

Defendant fully admits to the trespass. He admits that he has cut trails, brush, paths, and steps across Plaintiff's Parcel. Defendant's actions prevent Plaintiff from being able to provide clear title to anyone else. Since Plaintiff filed her Motion for Emergency Relief, it appears that Defendant, without a Coastal Zone Management (CZM) Permit or a Department of Natural Resources (DPNR) permit, has completed building a fence and a gate at the edge of Plaintiff's

Parcel, which further inhibits Plaintiff's access to her Parcel. The photographs below show the extent to which Defendant has brazenly constructed the fence and gates.



The survey below shows where fences have been in place separating Parcel 2D-13 and Parcel 2D-12 Remainder and the gates built by Defendant have been drawn in by hand. See **Exhibit 1**.



Background

Defendant completely misrepresents the existence of walking paths on Plaintiff's Parcel prior to around 2020 or 2021. Defendant claims that Plaintiff is not entitled to relief because of her status as an "absentee property owner." Plaintiff is not an absentee owner, and even if she was, she would still be entitled to protection from the Court, as an owner of real property within this jurisdiction.

Plaintiff has visited her Parcel every few years, and she never noticed any activity on her Parcel other than Defendant's blatant construction on her Parcel, which forced her to sell 1,030 square feet to Defendant on November 20, 2008. **Exhibit 2** (Quit Claim Deed and Survey).

Defendant's actions have clearly not been open and notorious because Plaintiff has proven that she takes action when she has noticed Defendant trespassing on her Parcel. It appears that by Defendant's actions, Defendant simply shoots from the hip and asks questions later. In 2008, Defendant built on Plaintiff's Parcel and subsequently acquired it, and now, in the midst of the Global Pandemic, he has again trespassed by cutting paths and trails, and now has enclosed the Parcel with gates for which he had no authority, permits, or permission. Defendant's blatant disregard for the laws and policies and procedures in the Territory must be stopped.

The incontrovertible evidence clearly shows that there were no paths cut across Plaintiff's Parcel. Google Earth images from April 18, 2019, show dry bush that would have clearly shown a walking path, if it had existed, as evidenced by the obvious fence line that can be seen running between Plaintiff's property and Parcel No. 2D-13. **Exhibit 3**.



Defendant states that a single trail or walking path was present in 2004. This is simply untrue and Defendant bears the burden of proof in this regard. It is imperative and urgent that this Court intervene to prevent bad actors from taking advantage of other real property owners.

Defendant asserts that he will present testimony from several witnesses to corroborate his story that he has maintained paths for the last 16 years. Despite this purported testimony, the objective evidence clearly shows that there were no apparent paths on Plaintiff's parcel in April of 2019. Defendant cannot prove that he has maintained open, obvious, notorious, and continuous paths across Plaintiff's Parcel. As a result of Defendant's actions and misrepresentations to the Court, Plaintiff urgently requires that the Court intervene to stop Defendant's continuing unlawful trespass and his unlawful attempts to adversely possess her Parcel.

Legal Standard

Virgin Islands Rule of Civil Procedure 6-4 governs motions for reconsideration. The Court may grant a motion for reconsideration as long as it is based on:

- (1) intervening change in controlling law;
- (2) availability of new evidence;
- (3) the need to correct clear error of law; or
- (4) failure of the court to address an issue specifically raised prior to the court's ruling.

V.I. R. Civ. P. 6-4(b).

When determining whether to issue a TRO or preliminary injunction, the trial court considers:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the

nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

Sam's Food Distribs., Inc. v. NNA&O, LLC, 2020 V.I. Supreme LEXIS 17, at *9 (June 9, 2020) (citing *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 550 (V.I. 2015)).

Argument

The Court improperly denied Plaintiff's request for a Temporary Restraining Order without first allowing Plaintiff the opportunity to file her Reply to the Opposition filed by Defendant. Plaintiff now files her Reply, well within the 14 day period, and submits new evidence, for the Court's consideration. Plaintiff respectfully submits that reconsideration of the denial is proper in light of these circumstances and the evidence she presents.

Defendant's actions are so egregious that they require immediate intervention by the Court to prevent irreparable harm to the Plaintiff. Plaintiff is likely to succeed on the merits, she will be irreparably harmed by the denial of relief, Defendant will not be harmed by the relief, and granting Plaintiff relief serves the public's interest. "A preliminary injunction is an extraordinary and drastic remedy ... never awarded as of right, and may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Yusuf v. Hamed*, 59 V.I. 841, 847-48 (2013) (citations and quotations omitted). Plaintiff presents such a case that warrants this extraordinary relief.

1. Success on the Merits

Defendant will not succeed in his claim to establish rights to Plaintiff's Parcel via adverse possession. "The party asserting adverse possession bears the burden of proving all the required elements by clear and convincing evidence." *Alvarez v. Estate of Keel*, 73 V.I. 538, 543 (V.I. 2020). Defendant cannot prove that he has had uninterrupted, exclusive, actual, adverse, continuous, and notorious possession under claim or color of title for title for the past fifteen

years. See 28 V.I.C. § 11. Defendant offers only self-serving and self-interested witnesses to support his claim that he meets the statutory period for adverse possession. Therefore, Plaintiff will ultimately prevail in her action for declaratory judgment to remove the cloud of title on her Parcel. To prevent further immediate damage, Plaintiff urgently requests the Court grant her request for a Temporary Restraining Order and then set a hearing for testimony regarding her request for a Permanent Injunction.

Defendant claims that the November 2015 drone photograph cannot show the purported trails because the vegetation is too plush. Defendant's own statement proves that his purported trails were clearly not open and obvious, since the plush vegetation could so easily obscure them. Moreover, if the plush vegetation could easily obscure these purported trails, then the supposed trails that existed were clearly not continuously maintained in an open and obvious manner over the course of the past 15 years. If vegetation and bush can so easily grow back as to obscure a supposed trail on a parcel of land, then the trail cannot be considered open, obvious, and continuous for the purpose of establishing a claim for adverse possession. Plaintiff was never put on notice, prior to just recently, about the purported trespass on her Parcel.

Further, the April 2019 Google Earth images, taken during the dry season, clearly show the Parcel and very plainly show the complete lack of any paths or trails cut across Plaintiff's Parcel. The Court does not even need to entertain testimony from the self-serving witnesses that Defendant purports to present to the Court on his behalf. Defendant's supposed continuous, open and notorious use of a path to the beach could not possibly have been obvious to anyone, which is clearly depicted on the Google Earth images from a mere two years ago. Yes, there are differences in the resolution of the images; but nevertheless, when the Google Earth image and the drone image of the paths are placed side by side, the fence on the north east side of the Parcel

can be seen in both images, but there is clearly no evidence of any path or trail or cutting of vegetation whatsoever on the 2019 Google Earth images, that can be so clearly seen on the recent drone image, again as evidenced by the obvious fence line that can be seen running between Plaintiff's property and Parcel No. 2D-13.



Defendant's argument that the purported paths could have been seen from the public beach or from the south side of the property is equally preposterous. Plaintiff and her ex-husband purchased the Parcel in 2002, and they used it on regular visits to St. Thomas, until they divorced in 2006. On trips to St. Thomas, they would anchor their trimaran, Freedom, in the opening of the bay, to use the hotel, beach and restaurant there, and to shore-dive off the Parcel's beach to a small reef. In fact, the small reef is colloquially known as "Terry's Reef," after Plaintiff's ex-husband. Plaintiff's ex-husband has attested, under oath, that at the time of his last visit, in 2009, there was absolutely no evidence of any path or steps giving access to the Parcel from the neighboring property in question. See Terry Anderson's Affidavit at **Exhibit 4**. Further, Plaintiff's ex-husband explored, with the neighboring property owner on the other side (toward

the hotel), the possibility of jointly repairing the then-damaged pier on the border of the two properties, but they were not interested at the time. Despite being off-island Parcel owners, Plaintiff and her ex-husband were well-acquainted with the Parcel and the activities near the Parcel since their purchase in 2002.

Defendant's argument that Plaintiff has neglected her Parcel is equally unfounded. Simply because Plaintiff cannot remember each and every visit to St. Thomas over the years, does not mean that she did not visit the Parcel. In fact, from 2009 to 2015, Plaintiff visited St. Thomas regularly and she always stayed next door, at the Secret Harbor Beach Resort. See Madeleine Bassil's Affidavit at **Exhibit 5**. Despite Defendant's assertions to the contrary, Plaintiff could not see any evidence of paths being cut across her Parcel from 2009 to 2015 from the public beach. Moreover, Plaintiff's real estate agent, Lisa Curreri, who lives on St. Thomas has also regularly checked on the Parcel and she has never seen any evidence of paths or cutting of bush that she has not arranged. See Lisa Curreri's Affidavit at **Exhibit 6**.

The mere fact that Plaintiff is an off-island owner does not render her claim less valid, as Defendant suggests; but rather, it further necessitates that the Court take this action seriously and that the Court intervene on Plaintiff's behalf. In keeping with upholding the rights of landowners, the Superior Court, Division of St. Croix recently denied a request for a preliminary injunction by holding that a right of way created in 1963 at the time the land was subdivided had not been abandoned despite testimony from the plaintiffs' expert witness that "the construction of an access road was commenced over the right of way but, in his opinion, was abandoned because the land became too steep on either side to continue the roadway to its completion as indicated in the maps." *Babij v. Cuffy*, 71 V.I. 183, 187 (V.I. Super. Ct. 2019). Similarly, here, Defendant would like to suggest that Plaintiff has abandoned her rights to her Parcel simply because she did

not have plans to build on it, and had not built on it or “improved” it. Plaintiff took reasonable steps to monitor her Parcel, and she visited it regularly. She never noticed any evidence of trespass. If the supposed existing paths were open and obvious, as Defendant claims, Plaintiff would have noticed them. Now that Plaintiff has noticed that Defendant is illegally trespassing on her Parcel, she is taking the appropriate steps to protect her interests. Plaintiff is merely trying to hold Defendant accountable for his illegal activity; and she urgently requires the Court’s help to protect her from irreparable harm. Plaintiff will succeed on the merits because Defendant will not be able to prove that he has adversely possessed Plaintiff’s Parcel.

2. Irreparable Harm

“Irreparable harm is ‘certain and imminent harm for which a monetary award does not adequately compensate.’” *Sam's Food Distribs., Inc. v. NNA&O, LLC*, 2020 V.I. Supreme LEXIS 17, at *17 (V.I. June 9, 2020) (citing *Yusuf v. Hamed*, 59 V.I. 841, 854 (V.I. 2013) (citing *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003))). Just as the Court found in *Yusuf*, that “a party’s right to control a business ‘has intrinsic value’ that cannot be compensated by money damages,” 59 V.I. at 854. In this situation, Plaintiff’s ability to protect her asset and her investment by controlling access to her Parcel, also has intrinsic value. Indeed, all real estate is deemed to have unique characteristics that have intrinsic value, which requires that the Court grant Plaintiff’s request for a Temporary Restraining Order to protect the Plaintiff from Defendant’s bad acts. In fact, Plaintiff’s Parcel is the last unspoiled parcel on this point, and it has a beautifully sloped topography that allows for one to walk directly onto the beach, which is precisely why Defendant would like to adversely possess it.

Defendant has carved out trails across Plaintiff’s entire Parcel, thereby presumably purporting to own Plaintiff’s entire Parcel via adverse possession. This would entirely divest

Plaintiff of her ability to do whatever she would like to do with her Parcel—whether it is to build a home or to sell it to someone else. Defendant also suggests that Plaintiff's should be punished because she is an off-island Parcel owner who, despite reasonable efforts, failed to monitor her property to keep persons like Defendant from trespassing. Defendant also suggests that Plaintiff should be punished for failing to improve her property, as he asserts that she never had any plans to build on her Parcel. As residents of the Virgin Islands, we are and should be aware of the unique nature of our natural environment. Indeed, Plaintiff has a unique Parcel, with beach access, which Defendant clearly wants to advertise on his AirBnB listing, such that any “improvements” to the Parcel require strict permitting procedures by DPNR and CZM to ensure that the natural environment will not be damaged. Defendant has completely disregarded the required procedures, as he installed gates and fences without DPNR or CZM approval.

In 2020, the Supreme Court upheld the Superior Court's decision to grant an injunction, in which it concluded that irreparable harm would be suffered if a company was not enjoined from blocking another company's access to cargo bay doors, because without the access, it “would effectively be incapable of utilizing its warehouse for its reasonable, intended commercial use: the storage of furniture.” *Sam's Food Distributions*, 2020 V.I. Supreme LEXIS 17, at *17 (June 9, 2020) (concluding that the Superior Court did not abuse its discretion in finding that the moving party would suffer irreparable harm in the absence of an injunction). At this moment, the intended commercial use of Plaintiff's Parcel is to list it for sale with Realtor Lisa Curreri and on the MLS. Defendant's recent actions have completely thwarted Plaintiff's intended commercial use, as she was forced to remove it from the MLS because she would not be able to provide clear title to a prospective purchaser. As a result, Plaintiff is unequivocally

suffering from irreparable harm and this factor strongly weighs in favor of granting an injunction.

3. Lack of Harm to Defendant

“In weighing the harms to the nonmoving party, the trial court is required to determine whether and to what extent the nonmoving parties will suffer irreparable harm if the court enjoins them.” *Yusuf*, 59 V.I. at 856. In *Sam's Food Distribs.*, the Superior Court found that the nonmoving party “had alternative means of providing storage for Sam's Supermarket's cold food products without blocking [the moving party's] access to the warehouse, while [the moving party also] lacked similar alternatives to conduct their business without accessing Lot 171A via its easement over Lot 171.” *Sam's Food Distribs.*, 2020 V.I. Supreme LEXIS 17, at *19-20 (June 9, 2020) (finding that the moving party faced much greater harm by the status quo and that the balancing of harms favored the moving party).

Here, it is obvious that Plaintiff faces significant harm, while Defendant does not. Defendant has created the untenable position that Plaintiff is now aware that she must **expect** trespassers and that exposes Plaintiff to significant liability. “Characterization of an entrant as an invitee, licensee, or trespasser has no bearing on the possessor's superior knowledge of the property, and to allow summary judgment where there is evidence that a plaintiff's injury was foreseeable to a land possessor, yet the possessor did not take reasonable action to prevent that injury, inappropriately places the focus of attention on the plaintiff's actions alone.” *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 386 (V.I. 2014). Plaintiff urgently requires the Court to grant this injunction so that Plaintiff may prevent third parties from foreseeable injury they could incur while traversing across her Parcel. *See, id.* at 384 (“the foreseeability of harm is the touchstone of the existence of a land possessor's duty of reasonable or ordinary care”).

Defendant cannot truly be harmed by the court preventing a continuing trespass and removing access to something that he never should have had access to in the first place. Defendant's AirBnB renters will still be content to stay at his AirBnb with stunning views, even if he is unable to continue to provide "private beach access." Moreover, Defendant's AirBnB renters still have access to the nearby Secret Harbor beach, which is an entirely safe, completely legal, and reasonable alternative to trespassing across Plaintiff's Parcel. This factor clearly weighs in favor of Plaintiff.

4. Public Interest Factors

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Yusuf*, 59 V.I. at 857-58 (citations omitted). Here, the consequences of allowing an on-island real property owner to take advantage of an off-island Plaintiff are dire. It is in the public's best interest to uphold the rights of property owners, regardless of where they live. "Adherence to the laws always serves the public interest. ... The attempts to manipulate or violate the laws can only lead to chaos and discord." *Babij*, 71 V.I. at 191. Denying Plaintiff's request for an injunction will only serve to legitimize Defendant's false claims of adverse possession.

The Supreme Court further stated that "the public interest can be defined a number of ways. The public interest factor will typically favor the moving party if it demonstrates both a likelihood of success on the merits and irreparable injury." *Id.* (citations omitted). Plaintiff has shown both a likelihood of success on the merits and irreparable injury, such that the injunction should be granted.

Bassil v. Klein
Case No. ST-2021-CV-148
Reply to Opposition to Plaintiff's Emergency Motion
Page 16

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2021, caused a true and correct copy of the foregoing to be emailed to:

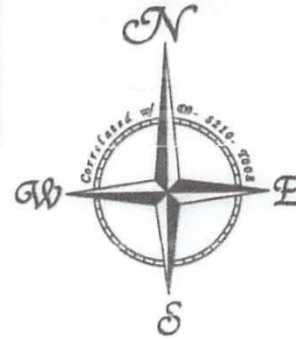
J. David Crain, Esquire
Willcox & Savage, P.C.
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
Telephone: (757) 628-5500
Facsimile: (757) 628-5566
Email: jcrain@wilsav.com
Counsel for Defendant

/s/ Daniella S. Schmeiske

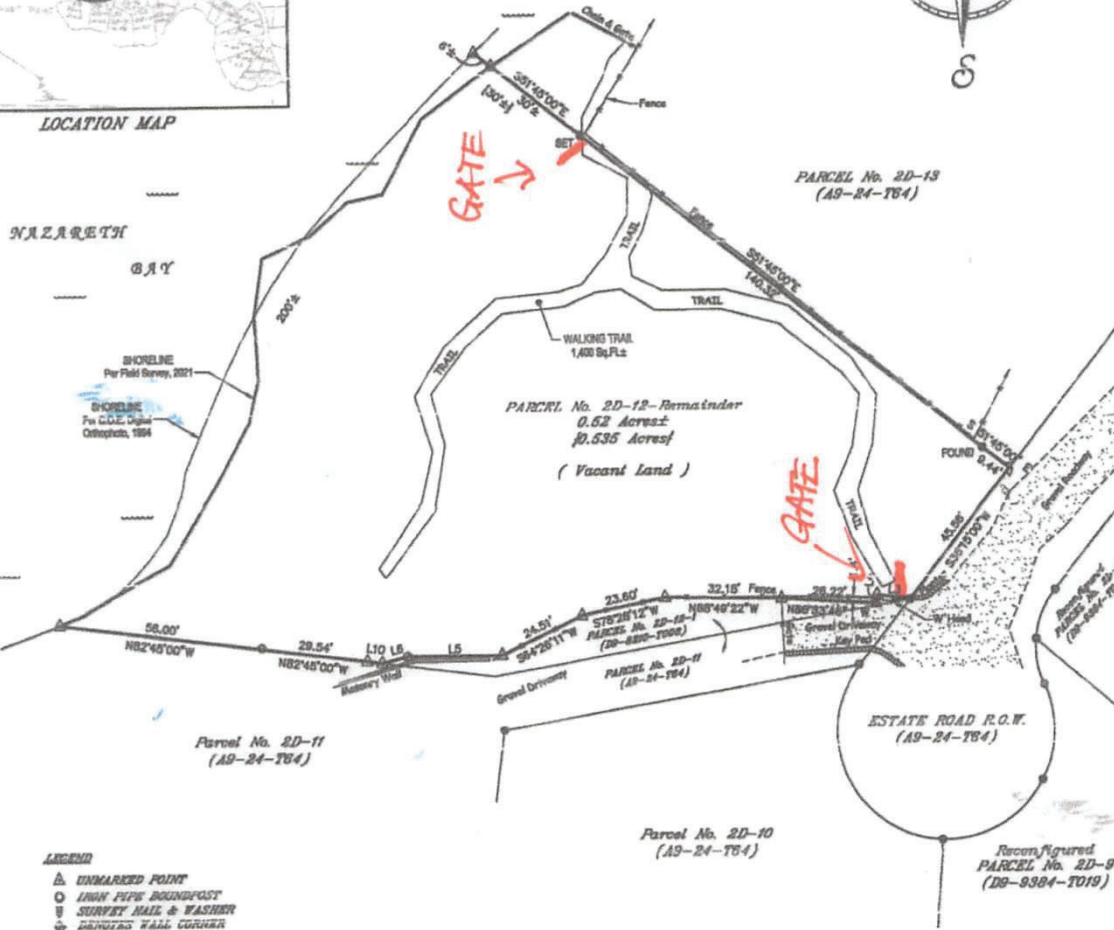
FILED

May 20, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

EXHIBIT
1



LOCATION MAP



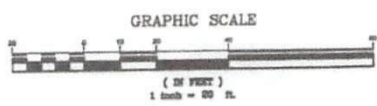
This gate is attached to Klein's stone post which houses his weather head and meter

- LEGEND**
- △ UNMARKED POINT
 - IRON PIPE BOUNDPOST
 - ⊕ SURVEY NAIL & WASHER
 - ⊙ BRONZE WALL CORNER
 - FENCE

REFERENCE
DB-0210-1008

ADAMS
R-1

NOTE:
DATA IN BRACKETS (xxx) PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.



This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021
BRIAN MOSELEY AND ASSOCIATES, INC.

Ryan C. Wischart
Ryan C. Wischart, PLS



UPDATED SURVEY: 01-19-21
ORIGINAL SURVEY: 04-04-02

Brian Moseley Associates, Inc.
Land Surveyors & Consultants
4003 RAPHAEL HILL ROAD SUITE 608
ST. THOMAS, VI 00802
PHONE (340) 774-5310
FAX (340) 775-4090

ALTA / NSPS Land Title Survey of
Parcel No. 2D-12-Remainder
Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, U.S. Virgin Islands

SURVEY: A.G.R.	DATE: 01-27-2021	DRAWN: D.J.E.	SCALE: 1" = 20'	DRWG NO.: 4506-4
CHG: R.C.R.				



Doc# 2008011975
Pages 4
12/22/2008 2:01PM
Official Records of
ST THOMAS/ST JOHN
WILMA O. HART SMITH
RECORDER OF DEEDS
Fees \$435.00

QUITCLAIM DEED

THIS QUITCLAIM DEED is made this 20th day of Nov, 2008, from MADELEINE A. BASSIL with a mailing address of 6856 Beechwood Drive, Athens, Ohio 45701 (hereinafter the "Grantor") to JOHN M. KLEIN, with a mailing address of 6501 Red Hook Plaza, Suite 201, St. Thomas, U.S. Virgin Islands 00802 (hereinafter the "Grantee").

WITNESSETH, that the Grantor, for and in consideration of the sum of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) and other good and valuable consideration, receipt of which is hereby acknowledged does hereby remise, release and forever quitclaim unto the Grantee, all of the Grantor's right, title, interest, claim and demand in and to that certain parcel of land known and described as follows:

Parcel No. 2D-12-1 Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, U.S. Virgin Islands as shown on
O.L.G. Drawing No. D9-8210-T008, dated September 15, 2008
consisting of 1,030 square feet more or less

TOGETHER with any and all appurtenances thereunto belonging and all the estate, title and right of the Grantor in and to said premises, said premises to be joined in perpetuity with Parcel No. 2D-11 Estate Nazareth, St. Thomas, U.S. Virgin Islands in order to cure a driveway encroachment;

SUBJECT, HOWEVER, to, and with the benefit of, zoning laws and regulations and covenants, restrictions, agreements and easements of record.

TO HAVE AND TO HOLD all of the Grantor's rights, title, interest, claim and demand in and to said premises unto the Grantee, his successors and assigns, forever.

This deed was received in the Virgin Islands on November 24, 2008.

Doc# 2008011975

IN WITNESS WHEREOF, the Grantor has duly executed this Quitclaim Deed the day and year first above written.

WITNESSES:

Andrew Costa

Andrew Costa

Print Name

Judy Ellis

Judy Ellis

Print Name

Madeleine A. Bassil
MADELEINE A. BASSIL

Book:
Pages: 0000
Doc# 2008011975
Filed & Recorded
12/22/2008 2:01PM
WILMA O. HART SMITH
RECORDER OF DEEDS
ST THOMAS/ST JOHN
RECORDING FEE \$ 31.00
DEED DUC STAMP 2.0 \$ 400.00
PER PAGE FEE \$ 4.00

STATE OF OHIO)
COUNTY OF ATHENS)

ss:

The foregoing instrument was acknowledged before me this 20 day of Nov. 2008, by Madeleine A. Bassil.

Judy Ellis
Notary Public

JUDY A. ELLIS
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires June 12, 2011
Commission Recorded in Maigs County

NOTED IN THE CADASTRAL RECORDS
EOE COUNTRY/TOWN PROPERTY, BOOK FOR
ESTATE NAZARETH

NO. 1 RED HOOK QUARTER

ST. THOMAS, VIRGIN ISLANDS

Cadastral Survey/Tax Assessor Offices
St. Thomas, V.I. Dated: December 1, 2008

Chester Paul
CHESTER PAUL/PUBLIC SURVEYOR
Office of the Lieutenant Governor

It is hereby certified that the above mentioned property/s which, according to QUITCLAIM DEED dated November 20, 2008 belongs to: JOHN M. KLEIN (GRANTEE)

has not, according to the Records of this office, undergone any changes as to boundaries and area.

Cadastral Survey/Tax Assessor Offices

St. Thomas, V.I. Dated: December 1, 2008

Chester Paul
CHESTER PAUL/PUBLIC SURVEYOR
Office of the Lieutenant Governor

Doc# 2008011975



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00802

-----0-----

Office of the Lieutenant Governor

TAX CLEARANCE LETTER

TO: THE RECORDER OF DEEDS

FROM: OFFICE OF THE TAX COLLECTOR

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMENDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR PARCEL NO. 1-07704-0147-00

LEGAL DESCRIPTION NAZARETH 2D -12, NO.1 RED HOOK QTR..

OWNER'S NAME ANDERSON, TERRY A. & BASSIL

TAXES RESEARCHED UP TO AND INCLUDING 2005.

RESEARCHED BY:

Karen Maynard, Tax Collector I

SIGNATURE:

K Maynard

DATE:

Monday, November 10, 2008

VERIFIED BY:

Aileen Greene Sup. of Cashiers STT/STJ

SIGNATURE:

A Greene

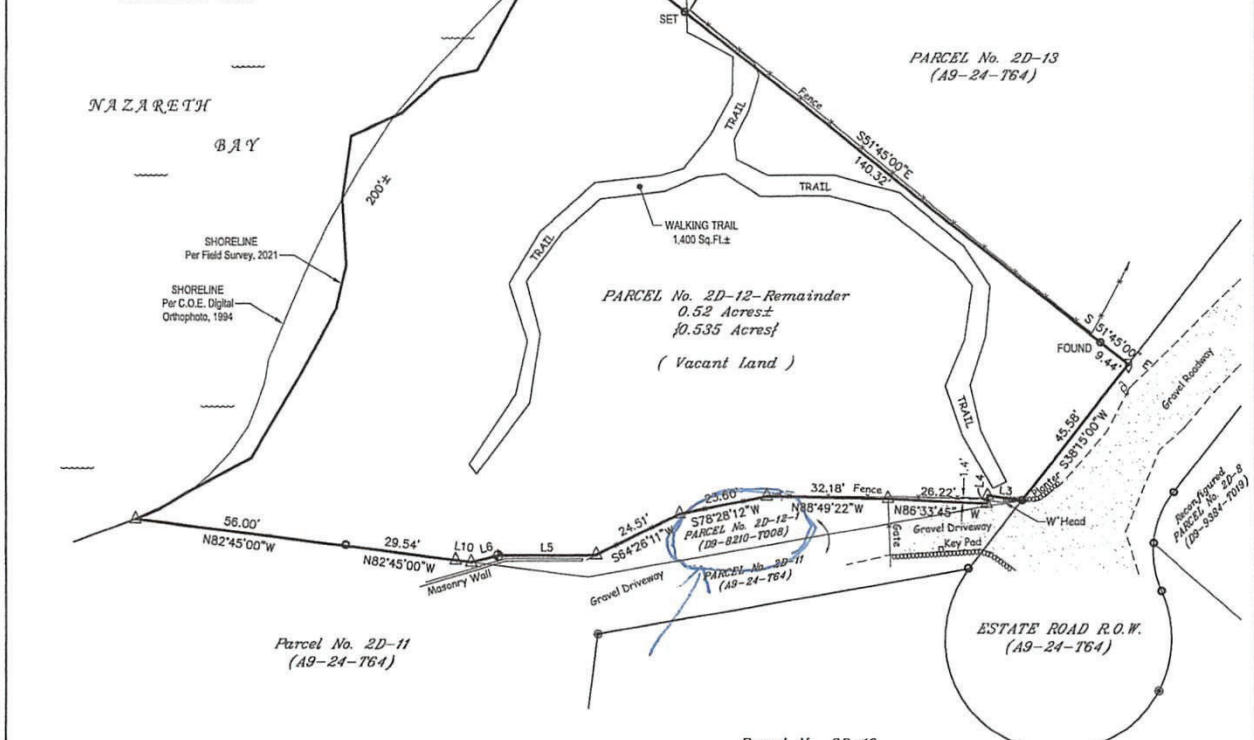
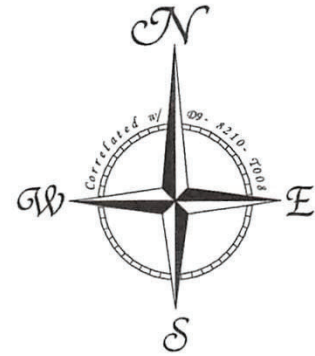
DATE:

Monday, November 10, 2008

Doc# 2008011975



LOCATION MAP



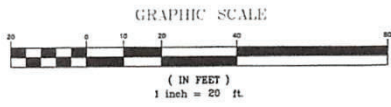
LEGEND

- △ UNMARKED POINT
- IRON PIPE BOUNDPOST
- ⊕ SURVEY NAIL & WASHER
- ◆ DENOTES WALL CORNER
- FENCE

REFERENCE
D9-8210-7008

ZONING
R-1

NOTE:
DATA IN BRACKETS (xxx) PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.



This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021

BRIAN MOSELEY AND ASSOCIATES, INC.

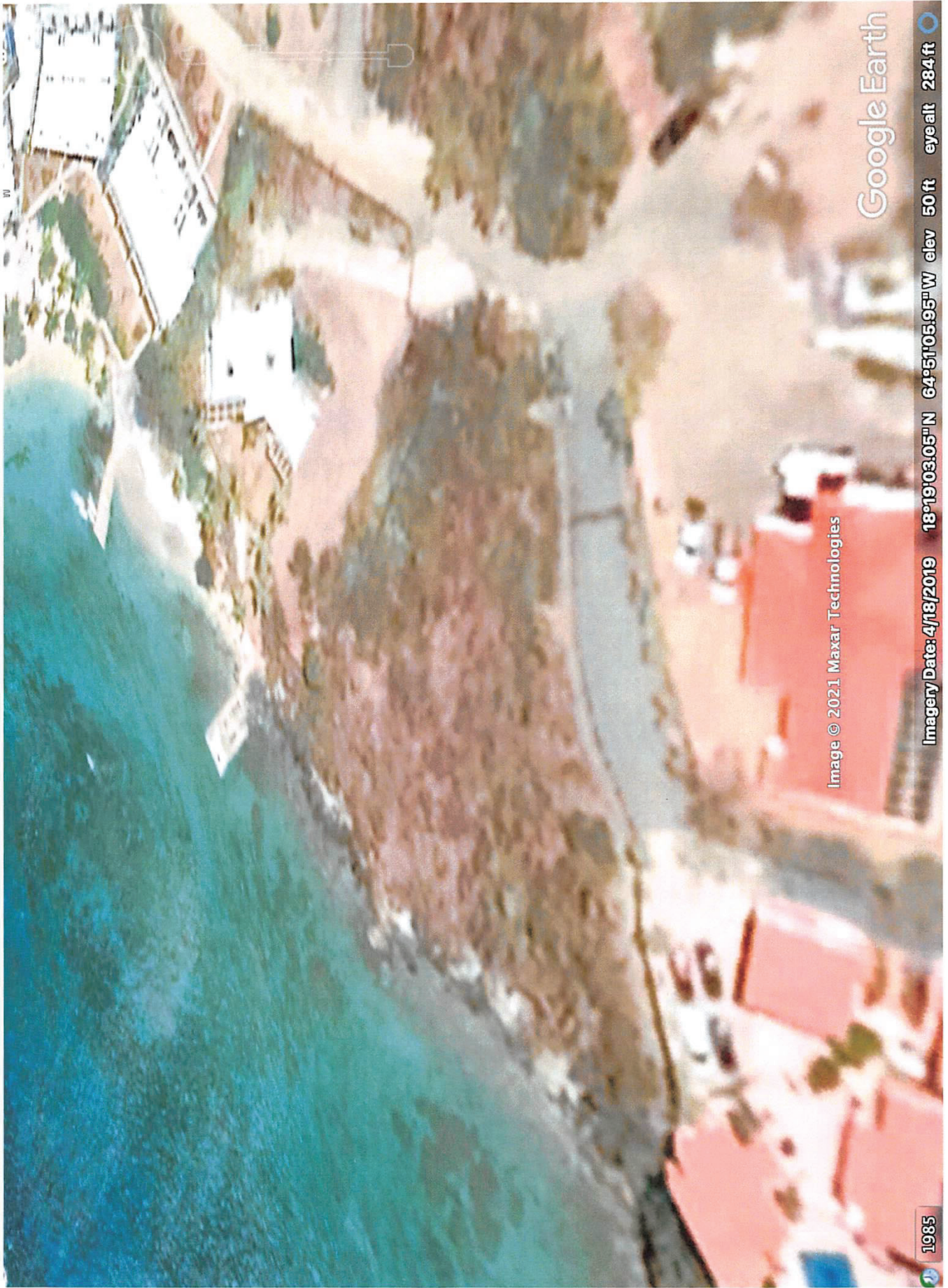
Ryan C. Wisehart
Ryan C. Wisehart, PLS



UPDATED SURVEY: 01-19-21
ORIGINAL SURVEY: 04-08-02

	Brian Moseley Associates, Inc. Land Surveyors & Consultants 4003 RAPHUNE HILL ROAD SUITE 608 ST. THOMAS, VI, 00802 PHONE (340) 774-5310 FAX (340) 776-4090		
	ALTA / NSPS Land Title Survey of Parcel No. 2D-12-Remainder Estate Nazareth No. 1 Red Hook Quarter St. Thomas, U.S. Virgin Islands		
SURVEY: A. G. B. CALC: R. C. W.	DRAWN: D. J. S. SCALE: 1" = 20'	DATE: 01-27-2021	DWG No.: 4506-4





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

MADELEINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-148

**ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

AFFIDAVIT OF TERRY ANDERSON

I, Terry Anderson, hereby declare under penalty of perjury that the following is true and correct:

1. I am Terry Anderson. I am over the age of 18. I reside in Greenwood Lake, NY. I have personal knowledge of the facts and circumstances set forth hereto.
2. I was formerly married to Madeleine Bassil, the owner of Parcel No. 2D-12 Remainder Estate Nazareth, St. Thomas, U.S. Virgin Islands ("the Property or the Parcel").
3. Madeleine and I first traveled to St. Thomas in the 1990s, and traveled there frequently for diving and sailing.
4. We bought Parcel No. 2D-12 Estate Nazareth, St. Thomas, U.S. Virgin Islands together in 2002.
5. We used the Parcel on our regular visits to St. Thomas from 2002 until 2006, when we divorced, and the Property was given over to Madeleine.
6. From 2002 to 2006, we often anchored our trimaran, Freedom, in the opening of the bay to make use of the hotel, beach and restaurant there, and to shore-dive off our small beach to a small reef that is just off Secret Harbor's entrance (the reef is nicknamed "Terry's Reef" because to our knowledge, no one else dives on it or even knows it is there). Freedom's permanent anchorage was at Elephant Bay. We both continued to travel to St. Thomas from 2006 through 2015.



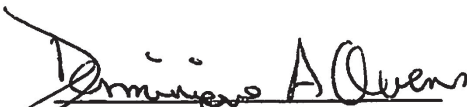
7. I have personal knowledge that Madeleine and her family and friends visited the Property throughout the period from 2006 to 2015. I also visited the property, with cousins, several times during that period to picnic, snorkel and dive.
8. At the time of my last visit, in 2009, I know absolutely that there was no path and no steps giving access to the Property from the neighboring property in question.
9. I also explored, with the neighboring property owner on the other side (toward the hotel), the possibility of jointly repairing the then-damaged pier on the border of the two properties, but they were not at the time interested.
10. I am confident that there was no access to the Property or beach from the seaward neighbor's property at any time during any of my visits to the property from 2002 to 2009.

Date: May 15, 2021



Terry Anderson

Sworn before me on this 15th day of May, 2021.



Notary Public



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

MADELEINE A. BASSIL,

Case No.: ST- 2021-CV-148

Plaintiff,

v.

**ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

JOHN KLEIN,

Defendant.

AFFIDAVIT OF MADELEINE A. BASSIL

I, Madeleine A. Bassil, hereby declare under penalty of perjury that the following is true and correct:

1. I am Madeleine A. Bassil. I am over the age of 18. I reside in New York. I have personal knowledge of the facts and circumstances set forth hereto.
2. I am the owner of Parcel No. 2D-12 Remainder Estate Nazareth, St. Thomas, U.S. Virgin Islands ("the Parcel or the Property").
3. My ex-husband, Terry Anderson, and I began traveling to St. Thomas in the 1990's. We enjoyed snorkeling, diving, and sailing on St. Thomas.
4. In 2002, Terry Anderson and I purchased Parcel No. 2D-12 Estate Nazareth, St. Thomas, U.S. Virgin Islands.
5. We used the Parcel on our regular visits to St. Thomas from 2002 until 2006. We often anchored our trimaran, Freedom, in the opening of the bay. We enjoyed shore diving and snorkeling from the small beach on the Parcel. I never noticed any trails or paths from any adjacent parcels.
6. In 2006, Terry and I divorced, and I kept the St. Thomas Property as part of the divorce settlement.
7. From 2006 to 2015, I frequently visited the Parcel with family and friends and we often stayed at Secret Harbor Beach Resort. During our visits to St. Thomas, we




would check on the Parcel.

8. I called the receptionist at Secret Harbor Beach Resort for records of my visits since 2002, but I was told that they do not keep those records.
9. On one of my visits to St. Thomas, I noticed that John Klein, the owner of the adjacent parcel, Parcel No. 2D-11 Estate Nazareth, St. Thomas, U.S. Virgin Islands, was building his driveway on part of my Parcel. I took immediate action by contacting my attorney. Ultimately, we were able to negotiate a settlement, without litigation, and in 2008, I sold a portion of my Parcel to Klein and my Parcel became Parcel No. 2D-12 Remainder Estate Nazareth, St. Thomas, U.S. Virgin Islands.
10. On occasion, I would also ask my real estate agent, Lisa Curreri, to hire people to clear portions of the Property to maintain it. The most recent time I asked Lisa Curreri to maintain the Property was just before the pandemic, and there was no evidence of any illegal trespassing, cutting of vegetation, paths, or trails on my Parcel.
11. In 2015, I distinctly remember visiting the Parcel with my sister and Lisa Curreri. We had planned to walk the Parcel, but as we tried to enter the bush, we discovered that the bush was too dense to allow us to traverse the Parcel. None of us observed any evidence of any paths or that any bush or vegetation had been cut.
12. In late 2020, I decided that I would list the Parcel for sale. I contacted Lisa Curreri to list the Parcel for sale. Lisa Curreri suggested I commission a survey of my Parcel.
13. When we commissioned the survey, we discovered that Klein had also hired the same firm to survey my Parcel and that he had openly cut the bush and vegetation on my Parcel to create paths to the beach. We also discovered that he had cut steps on Parcel No. 2D-13 Estate Nazareth, St. Thomas, U.S. Virgin Islands.
14. When I discovered that Klein had been trespassing on my Parcel, I contacted my attorney for advice. My attorney sent Klein a Cease-and-Desist letter to try to stop him from trespassing, but Klein will not stop.
15. I explored the possibility of putting up "no trespassing" signs, fully enclosing the Property with a fence, and putting up security cameras. All of these measures are quite costly, but I believe it is important to protect my Parcel from Klein because I know he is trying to take it from me, just like he did in 2008.
16. I want to do everything properly, so I filled out the Coastal Zone Management Permit form prior to installing a fence. I understand that a fence is deemed to be a structure, and I need a permit to be able to erect one.

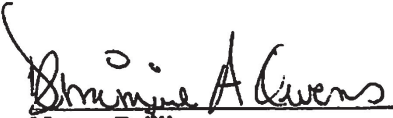
17. My real estate agent also informed me that the fence building firm she was working with had been threatened by Klein. I worry that this is all getting out of hand and I just want Klein to stop trespassing and encouraging others to trespass on my Parcel.
18. For the past few months, I have been very distressed about this. I feel that my health has worsened as a result of the stress I am enduring because I worry I will lose my Parcel.
19. I had planned to sell the Parcel now, as I have been advised that the property market on St. Thomas is a currently a seller's market. As a direct result of Klein's actions, my attorney advised me that I must remove the Parcel from the MLS due the adverse possession claims of Klein. I now frequently worry about the future and how I will be able to support myself in retirement and as I age, if I cannot sell this Parcel for fair market value.

Date: May 15, 2021



Madeleine A. Bassil

Sworn before me on this 15th day of May, 2021.



Notary Public



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

MADELEINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

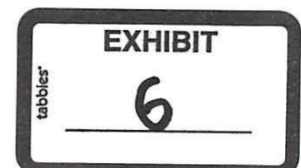
Case No.: ST- 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

AFFIDAVIT OF LISA CURRERI

I, Lisa Curreri, hereby declare under penalty of perjury that the following is true and correct:

1. I am Lisa Curreri. I am over the age of 18. I reside on St. Thomas, U.S. Virgin Islands. I am a real estate broker with Curreri and Co. Realtors LLC. My license number is 1-8305-1B. I have personal knowledge of the facts and circumstances set forth hereto.
2. I have known, Madeleine Bassil and Terry Anderson, since 2002.
3. I helped Ms. Bassil and Mr. Anderson purchase Parcel No. 2D-12 Estate Nazareth, St. Thomas, U.S. Virgin Islands, in 2002.
4. In 2006, Mr. Anderson and Ms. Bassil divorced and Ms. Bassil became the sole owner of Parcel No. 2D-12 Remainder Estate Nazareth, St. Thomas, U.S. Virgin Islands (the "Parcel" or the "Property").
5. I have remained friends with Ms. Bassil after the divorce, and we would meet at Secret Harbor Beach Resort (a short walking distance from the Property), where she would often stay during her visits to St. Thomas.
6. In 2015, Ms. Bassil and her sister visited and we went over to Ms. Bassil's Parcel to walk it. As we tried to enter the bush, we discovered that the bush was too dense and we would not be able to traverse the Parcel without a machete. On that visit, we did not observe any evidence of any paths or trails or that any bush or vegetation had



been cut.

7. When I would meet Ms. Bassil at Secret Harbor Beach Resort, we would walk from Secret Harbor Beach to her Property via the sandy shoreline. We never observed any trails, trespassing, or bush cutting from the beach area on Ms. Bassil's Property.
8. On occasion, when the Property was listed for sale, Ms. Bassil would ask me to hire people to clear small portions of the Property so that a prospective buyer could see where a driveway would access the Property. The last time she asked me to do this was shortly before the pandemic. The Property was so overgrown that it was not accomplished.
9. Prior to 2021, I had never noticed any illegal trespassing, cutting of vegetation or bush, or paths or trails on Ms. Bassil's Parcel.
10. In 2020, Ms. Bassil decided to list her Parcel for sale. It was placed on the Multiple Listing Service ("MLS") #20-2137.
11. We ordered a survey to map the trails that had been illegally cut. We already had a survey from 2008, which showed nothing on Ms. Bassil's Property, but evidenced the square footage she sold to Klein when he built on her land.
12. At that point, I also discovered that he had openly cut the bush and vegetation on Ms. Bassil's Parcel to create paths to the beach. I also discovered that he had cut steps on Parcel No. 2D-13 Estate Nazareth, St. Thomas, U.S. Virgin Islands and that he had started an AirBnB listing that openly promotes trespassing on Ms. Bassil's Parcel.
13. After the cease-and-desist letter was sent to Klein, I continued to market the Parcel, as I thought the dispute could be resolved.
14. On March 8, 2021, I removed the listing from the MLS.
15. On March 11, 2021, I received a call from a real estate broker expressing disappointment on behalf of a client that Ms. Bassil's Parcel had unexpectedly been withdrawn from the MLS.
16. On March 19, 2021, I commissioned No Trespassing signs to put up around Ms. Bassil's Parcel to prevent trespassers.
17. On March 22, 2021, I spoke with an interested purchaser of Ms. Bassil's parcel and, again, regretfully explained that it had been removed from the MLS.

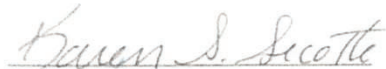
18. I also called to arrange for a firm to build a fence to fully enclose Ms. Bassil's Parcel to prevent Klein and his AirBnB guests from trespassing on the Parcel. On March 26, 2021, when I spoke with the fence building firm, the owner indicated to me that he had received a call from Klein about putting a fence up in the same location and that he felt threatened by Klein.
19. Klein's actions are probably the most brazen attack on private property rights that I have ever seen in my 40 years in the real estate business.

Date: May 14, 2021



Lisa Curreri

Sworn before me on this 14 day of May, 2021.



Notary Public

FILED

June 03, 2021

ST-2021-CV-00148

TAMARA CHARLES
CLERK OF THE COURT

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

MADELINE A. BASSIL,

Plaintiff,

v.

ST-2021-CV-148

**ACTION FOR TEMPORARY
RESTRAINING ORDER,
INJUNCTIVE RELIEF,
TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE,
and, DAMAGES FOR SLANDER
OF TITLE and INTENTIONAL
INFLICTION OF EMOTIONAL
DISTRESS**

JOHN KLEIN,

Defendant.

**OPPOSITION TO PLAINTIFF'S MOTION
TO RECONSIDER DENIAL OF TEMPORARY RESTRAINING ORDER**

NOW COMES Defendant John Klein ("Mr. Klein"), by counsel, and by and for his Opposition to Plaintiff's Motion to Reconsider Denial of Temporary Restraining Order ("Motion to Reconsider"), states as follows:

In its May 19, 2021 Order, the Court correctly determined that Plaintiff had not set forth any grounds why the Court should grant the extraordinary relief of a temporary restraining order (hereinafter, "TRO"), and that if Plaintiff intended to prove that she was entitled to injunctive relief of any sort, she "should be prepared to address [each element of the *Petrus* factors] at the hearing for preliminary injunction." May 19, 2021 Order at 2-3. Ignoring this directive, on May 20, 2021 Plaintiff filed an unsolicited sixteen-page Memorandum demanding that the Court reverse its well-reasoned decision and grant her a TRO. Plaintiff's Motion to Reconsider raises nothing of merit. Plaintiff has failed to establish that there is any recognized basis in the Rules of

Civil Procedure for reconsideration of the Court’s May 19, 2021 Order, and she has persisted in her failure to establish that any of the four *Petrus* factors governing injunctive relief weigh in her favor in this case. Accordingly, her Motion to Reconsider should be summarily denied.

A. Reconsideration is not warranted under Rule 6-4

As Plaintiff concedes, in order for the Court to reconsider its prior ruling on Plaintiff’s demand for a TRO, she must establish that one of the elements enumerated by Virgin Island Rule of Civil Procedure 6-4 is presented:

- (1) intervening change in controlling law;
- (2) availability of new evidence;
- (3) the need to correct clear error of law;
- (4) failure of the court to address an issue specifically raised prior to the court’s ruling.

V.I. R. Civ. P. 6-4(b). Plaintiff does not even contend that any of these elements are present. See Mot.to Reconsider. Rather, she merely contends that reconsideration is warranted because she had not filed a reply brief at the time the Court entered the May 19, 2021 Order. Mot. to Reconsider at 7. Rule 6-4 does not say anything about filing a reply brief. Indeed, the Rule only allows for reconsideration if the Court failed “to address an issue specifically raised *prior* to the court’s ruling.” V.I. R. Civ. P. 6-4(b)(4) (emphasis added).¹

None of the situations contemplated by Rule 6-4(b) are present here: (1) there was of

¹ Plaintiff does not even argue what effect, if any, her reply brief would have had on the Court’s May 19, 2021 Order. The Order does not state that the Court found Mr. Klein’s Opposition persuasive, or that the Court even considered the Opposition—rather, the Order merely considered Plaintiff’s Motion for a TRO against the demanding standard for TROs under Virgin Islands law, and correctly determined Plaintiff had stated no ground why a TRO was warranted. See May 19, 2021 Order. Thus, the lack of a reply to Mr. Klein’s Opposition had no bearing on the Court’s Order. Moreover, considering that Plaintiff labeled her request for a TRO an “Emergency”, and suggested that the Court should grant the request without even hearing from Mr. Klein, it does not follow why the Court’s failure to wait several weeks to see if Plaintiff would file a reply brief could possibly be considered erroneous.

course not a change in controlling law in the *single day* that passed between the Court's May 19, 2021 Order and Plaintiff's May 20, 2021 Motion to Reconsider; (2) Plaintiff does not assert that new evidence became available to her on May 20 that was not available on May 19; (3) the Court did not commit a clear error of law in refusing Plaintiff's request for a TRO, nor does Plaintiff suggest otherwise; and (4) the Court did not fail to consider any issue specifically raised *prior* to the court's ruling, nor does Plaintiff suggest otherwise. Thus, there is no basis in Rule 6-4 for the Court to reconsider its prior ruling, and Plaintiff's Motion to Reconsider should be summarily denied.

B. Plaintiff has still not established that any of the *Petrus* factors weigh in her favor

Even if the Court did analyze Plaintiff's Motion to Reconsider on the merits, it would find that Plaintiff's lengthy briefing is merely a superfluous sequel to the unmeritorious opening brief which the Court already held was insufficient to warrant a TRO. Plaintiff has persisted in misapprehending that, in order to establish her right to injunctive relief, she must establish that each of the *Petrus* factors weighs in her favor:

(1) [W]hether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the requested relief; (3) whether granting injunctive relief will result in even greater harm to the nonmoving party; and (4) whether granting the injunctive relief will be in the public interest.

Hart v. Potter, No. ST-18-CV-220, 2018 WL 2324386, at *2 (V.I. Super. Ct. May 7, 2018) (citing *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (2012)) (the "*Petrus*" factors). Because Plaintiff has continuously failed to establish that each of these factors weigh in her favor, there is still no reason why the Court should grant Plaintiff a TRO.

1. Plaintiff has not demonstrated a sufficient probability of success on the merits.

In the Motion to Reconsider, Plaintiff argues that she is likely to succeed on the merits

because Mr. Klein has failed to carry a burden he purportedly owes to prove that Plaintiff will be *unlikely* to succeed on the merits. *See* Mot. to Reconsider at 7 (“Defendant cannot prove that he has uninterrupted, exclusive... possession.”); Mot. to Reconsider at 11 (“Plaintiff will succeed on the merits because Defendant will not be able to prove that he has adversely possessed Plaintiff’s parcel.”). That is not the standard. Mr. Klein does not bear a burden to *disprove* Plaintiff’s mere assertion that she is likely to succeed on the merits. Mr. Klein is not the movant; he has not asked the Court to grant him a TRO. Indeed, the burden as to whether a TRO should be granted rests with Plaintiff, as it logically should. *Hart*, 2018 WL 2324386, at *2 (citing *Petrus*, 56 V.I. at 554 (2012)). Plaintiff has failed to carry that burden. She has alleged that Mr. Klein has made use of property for which Plaintiff is currently the record owner (hereinafter “the disputed property”). Considering that Mr. Klein has asserted rights over the disputed property pursuant to the doctrines of adverse possession or easement by prescription, however, the mere allegation that Mr. Klein has made use of the disputed property does nothing to establish that Plaintiff is likely to succeed in proving a claim against Mr. Klein. This is especially true when Plaintiff’s asserted claim is that Mr. Klein purportedly owes Plaintiff civil liability for violation of a criminal trespass statute, which as the Court already pointed out in the May 19, 2021 Order, only the Virgin Islands Department of Justice has the authority to prosecute. *See* May 19, 2021 Order at 2.

Moreover, as Mr. Klein has already argued in his Opposition, he intends to elicit evidence and testimony establishing that he has used, maintained, and improved the trails and/or walking paths in question continuously, and at least three individuals will offer testimony establishing that Defendant created and/or began using the trails more than fifteen years ago. May 7, 2021 Opp. at 6-7. This, in itself, establishes that Plaintiff is not sufficiently likely to

succeed on the merits to warrant a TRO, because if the Court finds this testimony credible then Plaintiff would not succeed on the merits of any claim that Mr. Klein has interfered with her property rights (much less a claim that Mr. Klein owes civil liability to Plaintiff for alleged criminal trespass).

Plaintiff argues that the Court does not need to consider the testimony of Mr. Klein's witnesses before deciding the merits of Plaintiff's claim, because Plaintiff has already decided that the testimony would be unpersuasive. Mot. to Reconsider at 8 ("The Court does not even need to entertain testimony from the self-serving witnesses Defendant purports to present to the Court on his behalf.") This is a silly, meritless argument. The Court should decline Plaintiff's invitation to replace the traditional, adversarial judicial process with Plaintiff's unilateral decisions about what evidence is worth considering, and should therefore determine that Plaintiff has failed to establish that the likelihood of success on the merits element weighs in her favor.

2. Plaintiff has not demonstrated irreparable harm.

As for the irreparable harm element, Plaintiff's Motion to Reconsider doubles-down on the argument she made in her opening brief—that she will suffer irreparable harm because she allegedly seeks to sell the disputed property, and she allegedly cannot do so due to Mr. Klein. Mot. to Reconsider at 12-13. This argument was already considered and rejected by the Court in its May 19, 2021 Order. May 19, 2021 Order at 2. It is certainly not grounds for reconsideration of the Court's Order that Plaintiff would simply like to continue arguing a point she has already made, and which has already been rejected. *See* V.I. R. Civ. P. 6-4(b).

Moreover, Plaintiff's argument fails at a very fundamental level because there is not even a connection between the irreparable harm she is alleging and the injunctive relief she seeks. Plaintiff is requesting that the Court enjoin Mr. Klein from entering the disputed property until

such time as a hearing on Plaintiff's Motion for a Preliminary Injunction can occur. *See* Pl.'s Apr. 26, 2021 Proposed TRO at 1-2. She is alleging, for her claim of "irreparable harm," that she cannot sell the disputed property because "she would not be able to provide clear title to a prospective purchaser." Mot. to Reconsider at 12. Preventing Mr. Klein from entering the disputed property during a brief interim period until the Court holds a hearing on Plaintiff's Motion for a Preliminary Injunction has absolutely nothing to do with whether Plaintiff has "clear title" to the disputed property.

As Plaintiff concedes, her allegations that she cannot sell the disputed property are due to Mr. Klein's ownership of and/or easement over the disputed property under the doctrines of adverse possession or easement by prescription. *See* Mot. to Reconsider at 11-12 ("Defendant has carved out trails across Plaintiff's entire Parcel, thereby presumably purporting to own Plaintiff's entire parcel via adverse possession. This would entirely divest Plaintiff of her ability to do whatever she would like to do with her Parcel—whether it is to build a home or to sell it someone else.") A TRO preventing Mr. Klein from entering the disputed property for a brief interim period has nothing to do with his rights to possession, use, and legal title of the disputed property under the doctrines of adverse possession or easement prescription. Even if the Court were to agree with Plaintiff that her alleged inability to sell the disputed property due to its uncertain state of title constitutes an "irreparable harm," the injunctive relief she has proposed would do nothing to cure that irreparable harm.

Rather than curing her alleged irreparable harm, Plaintiff has merely asked the Court to enjoin Mr. Klein from entering the disputed property because she wishes for him not to be upon it. That is not an irreparable harm. Indeed, as the Court pointed out in its May 19, 2021 Order, if Plaintiff is correct that Mr. Klein has entered the disputed property without legal right to do so,

that would be an injury that could be remedied by monetary damages. *See* May 19, 2021 Order at 3.

Rather than curing an irreparable harm she is actually facing, Plaintiff's Motion to Reconsider essentially suggests that the Court should enjoin Mr. Klein from asserting a legal claim of adverse possession or easement by prescription over the disputed property. *See* Mot. to Reconsider at 2 ("Plaintiff is essentially being held hostage by Defendant's false claims of adverse possession. Plaintiff fears that Defendant will completely divest her of her Parcel, since he did it before, in 2008, when he decided to build his driveway across a portion of Plaintiff's Parcel. This is Defendant's *modus operandi* and he must be stopped.")² Plaintiff has not cited any authority for the *extraordinary* proposition that the Court may enjoin Mr. Klein from asserting a legal claim, especially one which has never previously been presented to any Court of competent jurisdiction, but that is what Plaintiff is really asking for in her Motion to Reconsider. *See* Mot. to Reconsider at 8 (Plaintiff's argument that the Court does not even need to hear testimony from Mr. Klein's witnesses before making a decision on the merits of his claim for adverse possession or easement by prescription). Plaintiff hopes that, because she has copy-and-pasted a few unauthenticated blurry photographs into a brief she submitted only a few weeks into this case, the Court will forego due process entirely and simply make Mr. Klein's claim for adverse possession or easement by prescription disappear without ever providing him an opportunity to be heard. That is certainly not how judicial process works; Mr. Klein has a right to discovery, a right to present evidence in support of his claim, and a right to all of the other procedures afforded by right to litigants before this Court.

Because Mr. Klein's entry upon the disputed property during the pendency of the Motion for a Preliminary Injunction would not cause harm to Plaintiff which monetary damages could

² In reality, Plaintiff took advantage of Defendant in the past and is trying to do so again.

not satisfy in the event Plaintiff prevails, and because Plaintiff has no right to enjoin Mr. Klein from asserting a legal claim in the disputed property, Plaintiff has not shown any irreparable injury.

3. Plaintiff has not demonstrated that granting injunctive relief will not result in even greater harm to Mr. Klein.

In its May 19, 2021 Order, the Court concluded that this factor did not weigh in favor of Plaintiff. May 19, 2021 Order at 3. In her Motion to Reconsider, Plaintiff does not seriously question that conclusion. She advances a thin argument about a duty she may owe to trespassers, but that argument assumes a series of legal conclusions which are the core of the dispute in this litigation: (a) it has not yet been established that Plaintiff does, in fact, own the disputed property, such that she may owe a duty to maintain the premises; and (b) it has not yet been established that Mr. Klein or his guests are, in fact, trespassers, but instead Mr. Klein asserts that they are using the disputed property under clear legal right. Moreover, Plaintiff has not asserted that this premises liability concern is an irreparable harm, such that it could not be remedied at the conclusion of the litigation, rather than now at the outset. Indeed, Plaintiff does not allege that anyone has even been injured while on the disputed property, much less that they have asserted a claim against Plaintiff arising therefrom, so this argument is entirely speculative.

Moreover, Plaintiff has ignored the harm that injunctive relief would cause Mr. Klein. Mr. Klein has made use of the disputed property for many years, and has worked to improve it during that time. He also uses the paths that go over the disputed property as part of his AirBNB business. Mr. Klein would be harmed by an injunction barring him from using the disputed property, which would serve no purpose other than to satiate Plaintiff's indignity that Mr. Klein has acquired legal rights in the disputed property. Plaintiff's argument, which is essentially that Mr. Klein will be just fine if he is unfairly enjoined from using his property because he also

owns some other property, is totally unavailing, and is certainly not a basis for upending the status quo and enjoining Mr. Klein from using property he has been regularly using for over fifteen years. *See Yusuf*, 59 V.I. at 856 (The goal of emergency injunctive relief is to “maintain the status quo” pending litigation. This ensures that “[the non-moving party] is not deprived of the same legal rights to which he is entitled” while the temporary restraining order is effective.)

4. Plaintiff has not demonstrated that granting injunctive relief will be in the public interest.

In its May 19, 2021 Order, the Court concluded that this factor did not weigh in favor of Plaintiff. May 19, 2021 Order at 3. In her Motion to Reconsider, as with the third *Petrus* factor, Plaintiff does not seriously question that conclusion. *See Mot. to Reconsider* at 14 (advancing only a few sentences in support of her argument on this factor). The limited argument Plaintiff offers is largely a restatement of the argument in her opening brief, again showing no basis why reconsideration is warranted. *See V.I. R. Civ. P. 6-4(b)*. Moreover, Plaintiff essentially argues that the public interest is in her favor because denying her injunction would give Mr. Klein a fair opportunity to be heard on the merits. *See Mot. to Reconsider* at 14 (“Denying Plaintiff’s request for an injunction will only serve to legitimize Defendant’s false claims of adverse possession.”) When Plaintiff has taken such a strong stance against due process of law, it cannot reasonably be said that the public interest weighs in her favor. The Court correctly determined in its May 19, 2021 Order that this factor did not weigh in Plaintiff’s favor, just as it correctly determined that each of the other *Petrus* factors did not weigh in Plaintiff’s favor. Plaintiff’s Motion to Reconsider should be denied.

CONCLUSION

For the foregoing reasons, Mr. Klein respectfully asks that this Court deny Plaintiff’s Motion to Reconsider and grant Mr. Klein such further relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2021, I electronically filed the foregoing with the Clerk of Clerk, which will send notification of such filing to all counsel of record:

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Counsel for Defendant

FILED

June 04, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

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

MADELINE A. BASSIL,

Plaintiff,

v.

ST-2021-CV-148

**ACTION FOR TEMPORARY
RESTRAINING ORDER,
INJUNCTIVE RELIEF,
TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE,
and, DAMAGES FOR SLANDER
OF TITLE and INTENTIONAL
INFLICTION OF EMOTIONAL
DISTRESS**

JOHN KLEIN.

Defendant.

ANSWER AND COUNTERCLAIM

NOW COMES Defendant, John M. Klein (“Defendant”), by counsel, and for his Answer to the Complaint, states as follows:

INTRODCUTION

1. Defendant admits that Plaintiff owns some property on St. Thomas. Defendant has insufficient information to admit or deny Plaintiff’s remaining allegations in Paragraph No. 1, and therefore, denies same and calls for strict proof thereof.

2. Admitted.

JURISDICTION AND VENUE

3. The allegations in Paragraph No. 3 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

4. The allegations in Paragraph No. 4 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

5. Admitted.

PARTIES

6. Defendant admits that Plaintiff owns a portion of Parcel No. 2D-12 Remainder Estate Nazareth. It is further admitted that at some point she owned the property with Terry Anderson. Defendant has insufficient information to admit or deny the remaining allegations in Paragraph No. 6, and therefore, denies same and calls for strict proof thereof.

7. Defendant admits that he owns Parcel No. 2D-11 Estate Nazareth and that he purchased said property in 2004. Defendant denies the remaining allegations in Paragraph No.7 and calls for strict proof thereof.

BACKGROUND

8. Denied.

9. It is admitted that Defendant purchased a small portion of Parcel No. 2D-12 to resolve a dispute between the parties, but avers that such information and/or history is irrelevant to this action and should be stricken from the Complaint.

THE DISPUTE

10. Denied.

11. Denied as to the assertion that Defendant was criminally trespassing, but Defendant has insufficient information to admit or deny the other allegations in Paragraph No. 11, and therefore, denies same and calls for strict proof thereof

12. It is admitted that Defendant was served with correspondence in or around February 2021, but denies any assertion of implication that Defendant's conduct was improper or illegal.

13. It is admitted that Defendant has acquired rights to a portion of Parcel No. 2D-12 through adverse possession and/or prescriptive easement.

14. Denied.

15. Denied.

16. Denied.

17. Defendant denies that he or any of his guests trespass on Parcel 2D-12 as he owns and/or has a prescriptive easement for use of the paths located on Parcel 2D-12.

18. Defendant denies that he or any of his guests trespass on Parcel 2D-12 as he owns and/or has a prescriptive easement for use of the paths located on Parcel 2D-12.

19. Defendant has insufficient information to admit or deny Plaintiff's allegations in Paragraph No. 19, and therefore, denies same and calls for strict proof thereof.

20. Denied.

21. The allegations in Paragraph No. 21 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

22. Defendant has insufficient information to admit or deny Plaintiff's allegations in Paragraph No. 22, and therefore, denies same and calls for strict proof thereof.

23. Defendant has insufficient information to admit or deny Plaintiff's allegations in Paragraph No. 23, and therefore, denies same and calls for strict proof thereof.

24. Denied.

COUNT I – INJUNCTIVE RELIEF (in the alternative treble damages for TRESPASS)

25. Defendant incorporates his previous answers and responses as though fully stated herein.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

COURT II – DECLARATORY JUDGMENT

41. Defendant incorporates his previous answers and responses as though fully stated herein.

42. The allegations in Paragraph No. 42 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

43. The allegations in Paragraph No. 43 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

44. The allegations in Paragraph No. 44 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

45. The allegations in Paragraph No. 45 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

46. The allegations in Paragraph No. 46 call for a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies same and calls for strict proof thereof.

47. Plaintiff knew or should have known through the exercise of even the slightest care about the creation, use, and maintenance of the paths on Parcel 2D-12 over fifteen (15) years ago, but Plaintiff did not give Defendant permission to create or use the paths. Plaintiff, however, never objected to and/or sought to eject Defendant from the paths on Parcel 2D-12, despite Defendant's continuous, open, and notorious use of the paths.

48. Plaintiff knew or should have known through the exercise of even the slightest care about the creation, use, and maintenance of the paths on Parcel 2D-12 over fifteen (15) years ago, but Plaintiff did not give Defendant permission to create or use the paths. Plaintiff, however, never objected to and/or sought to eject Defendant from the paths on Parcel 2D-12, despite Defendant's continuous, open, and notorious use of the paths.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

COURT III – SLANDER OF TITLE

53. Defendant incorporates his previous answers and responses as though fully stated herein.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

59. Defendant incorporates his previous answers and responses as though fully stated herein.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Defendant has insufficient information to admit or deny Plaintiff's allegations in Paragraph No. 67, and therefore, denies same and calls for strict proof thereof

68. Denied.

69. All allegations not specifically admitted are hereby denied.
70. Defendant denies it is indebted to Plaintiff for any reason or in any sum.

AFFIRMATIVE DEFENSES

1. Defendant affirmatively asserts that Plaintiff's own negligence or lack of due care, in whole or in part, caused or contributed to the alleged incident, injuries or damages, particularly Plaintiff's lack of maintenance, inspection, and oversight of her property, thereby completely barring or reducing her claim under the doctrine of contributory negligence.
2. Some or all of Plaintiff's claims are barred and/or limited by the statute of limitations.
3. Defendant's alleged acts and/or omissions were not the cause of Plaintiff's purported injuries.
4. Plaintiff failed to mitigate her damages.
5. Defendant is entitled to a set-off or credit against any damages suffered as alleged, in the amount of any compensation from a collateral source.
6. Plaintiff's claim for declaratory and/or injunctive relief is barred because Plaintiff has not suffered irreparable injury (nor is it imminent) and she is not likely to succeed on the merits.
7. Plaintiff's claim for declaratory and/or injunctive relief is barred because it would result in greater harm to Defendant, and the public interest does not favor such relief.
8. The doctrines of bad faith, unclean hands, unjust enrichment, leaches, waiver, estoppel and/or other doctrines of equity bar Plaintiff from recovery of any damages, costs, or attorneys' fees.
9. Defendant affirmatively asserts that he owns the subject paths through adverse possession.

10. Defendant affirmatively asserts that he has an exclusive or non-exclusive right to use the paths through an easement by prescription.

11. Defendant asserts that Plaintiff has failed to state a viable claim for relief.

12. Defendant reserves the right to raise any defenses about which he becomes aware during discovery or at the trial of this matter and, therefore, reserves the right to amend these responsive pleadings as appropriate.

JURY DEMAND

Defendant hereby gives notice of their demand for Trial by Jury of all claims and issues in this matter.

COUNTERCLAIM

NOW COMES Defendant/Counterclaim Plaintiff, John M. Klein (“Defendant”), by counsel, and for his Counterclaim, states as follows:

1. John M. Klein (“Counterclaim Plaintiff” or “Mr. Klein”) is the owner of Parcel No. 2D-11 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands (“Parcel No. 2D-11”).

2. Mr. Klein is, and at all times mentioned in this Counterclaim was, a resident of St. Thomas, U.S. Virgin Islands.

3. The Court has subject matter jurisdiction by virtue of 4 V.I.C. § 76. Venue is proper in this Court pursuant to 4 V.I.C. § 78(a), as the relevant acts occurred in this judicial division.

4. Mr. Klein purchased the property located at Parcel No. 2D-11 on April 22, 2004.

5. Mr. Klein is the owner by adverse possession of a certain portion of the real property located at Parcel 2D-12 Estate Nazareth.

6. Prior to Mr. Klein's purchase of Parcel No. 2D-11, he identified the existence of a path running across Parcel 2D-12 and down to the beach at Secret Harbour ("the original path").

7. Shortly after purchasing Parcel No. 2D-11 and continuously thereafter, Mr. Klein used, maintained, and improved upon the original path running across Parcel 2D-12 and down to the beach at Secret Harbour. Mr. Klein has never received permission to use the original path, and he has used, maintained, and improved it under a claim of right.

8. Additionally, while constructing his residence at Parcel 2D-11, Mr. Klein created a second path across Parcel 2D-12 ("the second path"). The second path originated from a different location on Parcel 2D-11, but connected with the original path towards the north end of Parcel 2D-12. Mr. Klein never received permission to create the second path, nor did he ever receive permission to use, maintain, or improve it. He has acted at all times under a claim of right to the second path.

9. Mr. Klein is a sixty-eight (68) year old service disabled Army veteran with pulmonary and cardiac medical disabilities who has regularly, continuously, exclusively, and openly created, maintained, improved and/or used the original path and the second path to access Secret Harbor Beach to engage in his aquatic cardiovascular physical therapy in Nazareth Bay along with the assistance of his service dog(s).

10. Mr. Klein has regularly, continuously, and openly used the original path and the second path as a means of ingress and egress to the public Secret Harbor Beach since 2004 and 2005, or in excess of the past sixteen (16) years. Mr. Klein has given his family, friends, and guests permission to use the original path and the second path during the same period of time. No other party has been given permission to use the original path or second path in the past sixteen (16) years.

11. Madeleine Bassil, Counterclaim Defendant, was the prior owner of the original path and the second path at Parcel 2D-12.

12. Although she knew or should have known through the exercise of any level of care for the property about the creation, maintenance, improvement, and use of the original path and the second path, Madeleine Bassil did not object to Mr. Klein's creation, maintenance, improvement, and use of the original path and the second path until February 2021.

13. Although she knew or should have known through the exercise of any level of care for the property about the creation, maintenance, improvement, and use of the original path and the second path, Madeleine Bassil failed to object to the use of or eject Mr. Klein from that certain portion of Parcel 2D-12 from 2004 until February 2021.

14. Ms. Bassil has willfully and/or negligently neglected Parcel 2D-12, including with regard to maintenance and inspections of the property.

15. Mr. Klein's possession and acts of ownership of the original path and second path include, without limitation,

- a. creation of the second path
- b. maintenance of the original path and the second path
- c. improvements upon the original and the second path
- d. creation and posting of private property signs along the original and second paths
- e. erection of gates along the original and second paths
- f. eradication of rats, rodents, termites, fire ants, and other infestations along the original and second paths
- g. creation of natural steps to ensure safe passage along the original and second paths

h. use of the original and second paths by Mr. Klein, but also by family, friends, and guests

16. Mr. Klein and his family, friends, and guests (with his permission) have used and occupied the original path and the second path to the exclusion of all others, without permission, since at least 2005.

Count I
(Declaratory Judgment)

17. Mr. Klein repeats and realleges paragraphs 1 through 15 as though the same were set forth fully herein.

18. Mr. Klein seeks a declaration that his creation, maintenance, improvement and/or continuous, open, and customary use of the original path and the second path over the course of over sixteen (16) years resulted in his adverse possession of the original path and the second path and/or entitled him to a private prescriptive easement with the right to use the original path and the second path in a similar manner as he has continuously enjoyed for the past sixteen (16) years.

Count II
(Adverse Possession)

19. Mr. Klein repeats and realleges paragraphs 1 through 17 as though the same were set forth fully herein.

20. Title 28, Section 11 of the Virgin Islands Code provides a right to adverse possession in the Virgin Islands.

21. Without interruption, from at least 2005, Mr. Klein has maintained exclusive, actual, physical, open, and notorious possession and use of the original path and the second path

at Parcel 2D-12 that was adverse to the alleged interest of Madeleine Bassil, and did so under a claim of title.

22. Mr. Klein's exclusive, actual, physical, open, and notorious possession and use of the original path and the second path at Parcel 2D-12 qualifies as adverse possession, and Mr. Klein is entitled to receive clear title to the original path and the second path.

Count III
(Easement by Prescription)

23. Mr. Klein repeats and realleges paragraphs 1 through 22 as though the same were set forth fully herein.

24. Without interruption, from at least 2005, Mr. Klein has maintained exclusive, actual, physical, open, and notorious use of the original path and the second path at Parcel 2D-12 that was adverse to the alleged interest of Madeleine Bassil.

25. Mr. Klein's exclusive, actual, physical, open, and notorious use of the original path and the second path at Parcel 2D-12 establishes the elements necessary for an easement by prescription, and Mr. Klein is entitled to receive an exclusive easement for use of the original path and the second path.

26. In the alternative, Mr. Klein has maintained, and had actual, physical, open and notorious use of the original path and the second path at Parcel 2D-12 that was adverse to the alleged interest of Madeleine Bassil. Mr. Klein's actual, physical, open, and notorious use of the original path and the second path at Parcel 2D-12 establishes the elements necessary for an easement by prescription, and Mr. Klein is entitled to receive a non-exclusive easement for use of the original path and second path.

WHEREFORE, Mr. Klein demands judgment against Plaintiff/Counterclaim Defendant as follows:

1. For judgment that Mr. Klein is the fee simple owner of all right, title, and interest in and to the original path and the second path at Parcel 2D-12;
2. Order issuance of a deed conveying title to the original path and the second path on Parcel 2D-12 to Mr. Klein;
3. Issue temporary and permanent restraining orders barring Ms. Bassil's claims to right of the original path and the second path on Parcel 2D-12;
4. For judgment that Plaintiff/Counterclaim Defendant does not have any right, title, estate, or interest in or lien on the original path and the second path at Parcel 2D-12;
5. Alternatively, for an Order declaring that Mr. Klein has either an exclusive or non-exclusive easement by prescription for use of the original path and the second path on Parcel 2D-12 for himself and any guests;
6. Issue temporary and permanent restraining orders barring Ms. Bassil from interfering with Mr. Klein's prescriptive easement for the original path and the second path on Parcel 2D-12;
7. For attorney's fees and costs incurred in defending and prosecuting this matter;
and
8. For such further relief as the court may deem proper.

Dated: June 4, 2021

Respectfully submitted,

JOHN M. KLEIN

By: /s/ J. David Crain
Of Counsel

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2021, I electronically filed the foregoing with the Clerk of the Court, which will send notification of such filing to all counsel of record:

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Joseph D. Sauerwein, Esquire
Robin P. Seila, Esquire
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Counsel for Defendant

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

MADELEINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

**REPLY TO DEFENDANT’S OPPOSITION TO PLAINTIFF’S
MOTION TO RECONSIDER DENIAL OF TEMPORARY RESTRAINING ORDER**

Plaintiff Madeleine A. Bassil, by counsel, and hereby replies to Defendant’s Opposition to Plaintiff’s Motion to Reconsider Denial of Temporary Restraining Order (“Opposition”).

On March 16, 1985, Plaintiff Madeleine Bassil, experienced the unthinkable, when her husband and the father of their unborn baby, Terry Anderson—a decorated Marine and the Chief Middle East correspondent for the Associated Press, was kidnapped by a Shi’ite Muslim fundamentalist group. Ms. Bassil was left to raise her child without her partner, as Mr. Anderson would spend the next seven years in deplorable conditions in captivity. **Exhibits 1 and 2.** When Mr. Anderson was finally released, the family struggled to readjust to life together, after so many years of separation and trauma. Part of the healing process was to spend time in Caribbean, where they fell in love with their property on Estate Nazareth, St. Thomas. Now, over thirty-five years later, the unthinkable is happening again, but this time in the United States, a country that prides itself on setting the standard for following the rule of law. Defendant is trying to steal Plaintiff’s beautiful waterfront property. Plaintiff is astonished that such indignations can occur

in the United States, a country that values the rule of law and where people cannot simply steal one's property, as they do in other nations, such as Lebanon, where Ms. Bassil grew up.

Plaintiff properly filed her Motion for Reconsideration well within the fourteen-day requirement set forth in V.I. R. Civ. P. 6-4.

Virgin Islands Rules of Civil Procedure 6-4(b) further provides:

A motion to reconsider must be based on: (1) intervening change in controlling law; (2) availability of new evidence; (3) the need to correct clear error of law; or (4) failure of the court to address an issue specifically raised prior to the court's ruling. Where ground (4) is relied upon, a party must specifically point out in the motion for reconsideration where in the record of the proceedings the particular issue was actually raised before the court.

The comments to the rule explain that in *Martin v. Martin*, 58 V.I. 620, 629 (V.I. 2013), and *Beachside Assocs. v. Fishman*, 53 V.I. 700, 71 (V.I. 2010), the Supreme Court said that a party moving for reconsideration must: “demonstrate that there was (1) an intervening change in controlling law; (2) newly available evidence; or (3) a need to correct clear error of law or prevent manifest injustice.” “The purpose of a motion to reconsider is to allow the court to correct its own errors, sparing parties and appellate courts the burden of unnecessary proceedings.” *Hamed v. Yusuf*, No. SX-12-CV-370, 2014 V.I. LEXIS 133, at *2 (V.I. Super. Ct. Dec. 5, 2014) (Yusuf requested reconsideration in light of the fact that the Court did not consider his reply brief prior to issuing its order, but finding that Yusuf did not present any intervening changes to controlling law, or the availability of new evidence, and did not demonstrated the need to correct clear error or to prevent manifest injustice).

Here, Plaintiff properly filed her Motion for Reconsideration, well within the time limit. She presented new evidence for the Court's consideration, by way of additional photos and affidavits to further support her Verified Complaint and her initial Motion for Temporary

rseila@vilawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2021, caused a true and correct copy of the foregoing to be emailed to:

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Counsel for Defendant

_____/s/ Daniella S. Schmeiske

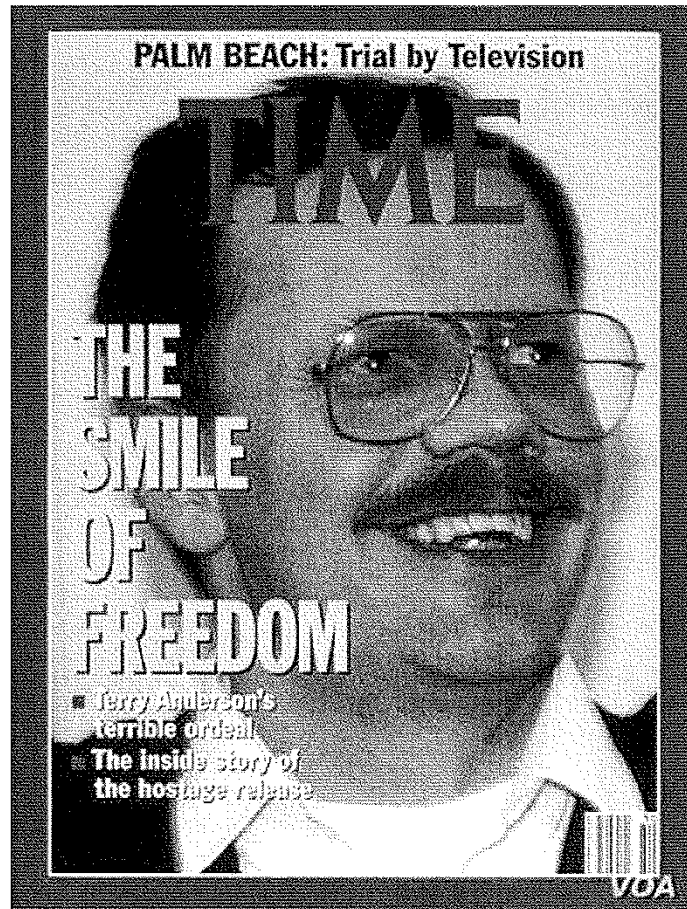


Exhibit 1

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Monday, Dec. 16, 1991

Delivered From Evil

By Nancy Gibbs

TIME

It was a cold day in hell when Terry Anderson won his freedom at last. The snow fell hard in Mount Lebanon as he spent the last 24 hours pacing in his cell, playing solitaire by candlelight and listening to the BBC broadcast stories of his progress on the road to Damascus. Those last hours passed with infernal slowness; his captors continued to argue over whether to let him go at all. But when at last the path to freedom cleared, he appeared to a world captured in a camera lens, and all was finally well.

What is the best unit of measure for courage? Is it registered in the 2,455 days lost, the countless millions of ribbons tied, the prayers asked, the letters sent, the rumors of death, the hopes dashed and then raised again? Where did he find the generosity of spirit to smile when he walked out of captivity into a roomful of colleagues and told them, "You can't imagine how glad I am to see you. I've thought about this moment for a long time, and now it's here, and I'm scared to death. I don't know what to say."

In a way, what was most impressive was what he didn't say. Here was a man who had been wrapped like a corpse from head to foot in adhesive tape and moved from one hiding place to another in a coffin. With the others, he endured beatings and blindfolds and boredom, months spent chained to furniture, months without bathing, without real food or his professional staple, news of the world outside his grave. And yet there was no hatred, little bitterness, only that great wide smile and a promise of forgiveness that prompted the millions who watched to wonder, How would I have fared? Would I have had that strength?

The prayers, he said, made all the difference during the dark times. Yet he and his fellow prisoners had no way of knowing the place they held in America's heart. They did not hear the anchors keeping count of the days on the evening news, the countless appeals and press conferences in which the hostage families and dear friends pounded on the nation's attention to force Americans to keep them in mind when many would have just as soon forgotten. The captives did not know that people they had never met wore a tiny yellow ribbon on their lapel every day for seven years, with the words **FREE THE HOSTAGES**.

Exhibit 2

Anderson credited his friends and his stubbornness and his faith, as practiced in their private sanctuary, the Church of the Locked Door. Thomas Sutherland taught him French; he taught the others the sign alphabet for the deaf so they could communicate when they were not allowed to speak. It was Anderson who made the tinfoil chess pieces, the Scrabble games, the Monopoly set. In a sense, as the longest held and best known, Anderson had become a symbol for all the captives, for the 17 Americans who were taken -- the three who died, the 13 others who have retrieved their freedom one by one, including Joseph Cicippio and Alann Steen, who finally saw daylight last week.

As the last Americans came out, they were freed from their symbolism -- no longer did they stand for national helplessness and failed presidencies, for ill-fated schemes and a foreign policy with its principles held hostage. Instead they were real, grateful, living people with daughters they had never seen, scars that will never heal, long nights full of lessons they will never forget.

If, as the scholars observed last week, the '70s was the decade of terrorism and the '80s the decade of hostages, there is sure to be a new nightmare waiting. This chapter, now nearly closed, is not the end in a part of the world where all too often old hatreds die hard, people are pawns, and lives are meant for sacrificing. Two Germans remain imprisoned, and all accounts remain unsettled. But after all this, perhaps it is not too much to hope that last week brought a portent of peace to a waiting world tired of weeping over the opportunities it has already lost.

 Click to Print

Find this article at:

<http://content.time.com/time/magazine/article/0,9171,974447,00.html>

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FILED

June 23, 2021

ST-2021-CV-00148

TAMARA CHARLES
CLERK OF THE COURT

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

MADELEINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

ANSWER TO COUNTERCLAIM

Plaintiff and Counterclaim Defendant Madeleine A. Bassil (“Plaintiff” or “Counterclaim Defendant”), through undersigned counsel Duensing & Casner, hereby Answers John Klein’s (“Defendant” or “Counterclaim Plaintiff”) Counterclaim as follows:

1. Plaintiff lacks information to either admit or deny the allegations of Paragraph 1 and therefore demands strict proof thereof.
2. Plaintiff lacks information to either admit or deny the allegations of Paragraph 2 and therefore demands strict proof thereof.
3. Admits.
4. Plaintiff lacks information to either admit or deny the allegations of Paragraph 4 and therefore demands strict proof thereof.
5. Denies.
6. Denies.
7. Denies.
8. Denies.

9. Denies.

10. Denies.

11. Denies as stated, but admits that Plaintiff is the owner of Remainder Parcel No. 2D-12
Estate Nazareth St. Thomas USVI.

12. Denies.

13. Denies.

14. Denies.

15. Denies as to all subparts.

16. Denies.

Count I (Declaratory Judgment)

17. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

18. Denies.

Count II (Adverse Possession)

19. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

20. This paragraph states a legal conclusion to which no responsive pleading is required.

21. Denies.

22. Denies.

Count III (Easement by Prescription)

23. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

24. Denies.

25. Denies.

26. Denies.

SPECIAL AND AFFIRMATIVE DEFENSES

1. Defendant's counterclaim fails to state a claim upon which declaratory judgment, adverse possession, easement by prescription, or injunctive relief can be granted against Plaintiff.
2. Defendant has not met the statutory requirements to have acquired rights by adverse possession to any part of Plaintiff's Parcel.
3. Defendant cannot establish by clear and convincing evidence that he is entitled to the relief sought in his counterclaim.
4. Defendant has not met the statutory requirements to have acquired rights by prescriptive easement to any part of Plaintiff's Parcel.
5. Defendant's counterclaim is barred by the applicable statute of limitations.
6. Defendant has failed to satisfy conditions precedent to recovery for all counts.
7. Defendant is barred from the relief sought in his counterclaim by his "unclean hands" and other equitable considerations, including criminal trespass.
8. Plaintiff specifically reserves the right to amend its Answer to Defendant's Counterclaims at any time prior to, during or after trial to assert any affirmative defense that is subsequently established by the evidence.

LAW OFFICES OF DUENSING & CASNER

Dated: June 23, 2021

By: /s/ Matthew J. Duensing
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2021, caused a true and correct copy of the foregoing document to be served via EMAIL, and Superior Court C-Track E- filing System on:

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Counsel for Defendant

/s/ Daniella S. Schmeiske

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

MADELINE A. BASSIL,)
)
)
PLAINTIFF,	) ACTION FOR TEMPORARY
	) RESTRAINING ORDER,
	) INJUNCTIVE RELIEF,
	) TRESPASS, DECLARATORY
	) JUDGEMENT, QUIET TITLE, and
	) DAMAGES FOR SLANDER OF
	) TITLE and INTENTIONAL
	) INFELICTION OF EMOTIONAL
	) DISTRESS
vs.	) CASE NO. ST-2021-CV-148
)
JOHN KLEIN,	) VOL. I
)
DEFENDANT.)
)

TEMPORARY RESTRAINING ORDER HEARING

T R A N S C R I P T

JULY 27, 2021

BEFORE: HONORABLE JUDGE SIGRID TEJO
PRESIDING

APPEARANCES: Matthew J. Duensing, Esquire
James Casner, Esquire
Robin P. Seila, Esquire
9800 Buccaneer Mall, Building 2, Suite 9
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(For the Plaintiff)

Jerome David Crain, Jr., Esquire
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Norfolk, Virginia 23510
(For the Defendant)

COURT REPORTER: MYKA V. CALLENDER-SMITH, CSR.
Official Court Reporter I

//

I N D E X

<u>PLAINTIFF'S WITNESSES</u>	<u>D</u>	<u>X</u>	<u>RD</u>	<u>RX</u>	<u>FRD</u>	<u>FRX</u>
John Klein	17					
Ryan Wisehart	43	61	64	70		
Exam by The Court	67					
Terry Anderson	74	81		90		
Exam by The Court	89					
Madeline Bassil	93	102	114			
Exam by The Court	115					
Rennix Charles	119	125				
Exam by The Court	126					
Lisa Curreri	139	159				
Exam by The Court	169					
Jacqueline Marin	176	182				
Sharon Hupprich	213	223				

	<u>D</u>	<u>X</u>	<u>RD</u>	<u>RX</u>
1	DEFENDANT WITNESSES			
2	John Klein			
3	Kenneth Black	185/208	210	
4	Frank Saunders	195	200	205
5	Exam by The Court	205		
6	Reconvened w/Mr. Black	207		
7	Sidney Bennett	226		
8	Alfredo Melhem	233	338	
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10	Asif Glasgow	246		
11	Kevin Keating	252	256	
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23				
24				
25				

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Good morning,
3 everyone. Good morning, counsel. Good morning,
4 Mrs. Smith and Ms. Donovan.

5 If everyone's ready, would you please
6 call the calendar, please?

7 THE CLERK: Civil case calendar
8 for Tuesday, July 27, 2021, number one on the
9 calendar Madeline A. Bassil vs. John Klein.

10 ATTORNEY DUENSING: Good morning,
11 Your Honor. Matthew Duensing, Robin Seila and
12 James Casner are here on behalf of the plaintiff,
13 Ms. Bassil.

14 THE COURT: Okay. Attorney
15 Duensing, are they coming in as observers or are
16 they going to participate in the hearing?

17 ATTORNEY DUENSING: Um, Ms. Seila
18 will be participating in the hearing, Mr. Casner
19 and Mr. Fitzsimmons are observing.

20 THE COURT: Okay. The Court as
21 is consistent with the other court rooms -- Ms.
22 Bassil, I'm going to need to mute your mic because
23 you're giving feedback. If your attorney needs you
24 to address the Court, you can unmute. Thank you.

25 Attorneys, as is customary in practice,

1 one attorney per witness. I'm not going to have
2 you double teaming with objections or questioning.
3 So, you each would have your own witnesses; is that
4 understood?

5 ATTORNEY DUENSING: Understood,
6 Your Honor.

7 ATTORNEY CASNER: Yes, Your
8 Honor.

9 THE COURT: Thank you.
10 Attorney Crain, put your appearance on
11 the record.

12 ATTORNEY CRAIN: Yes, Your Honor.
13 David Crain for the defendant, John Klein who is
14 also joining us via zoom.

15 THE COURT: Okay. And so the
16 rest of the parties can be aware, Attorney Taite
17 and Attorney Schorlemmer are my law clerks and they
18 are participating to assist the Court in note
19 taking.

20 Pending before the Court is a Motion to
21 Impose an Ethical Wall with respect to judicial
22 entering Marina Parlato.

23 Attorney Crain, the Court is not in
24 receipt of any response from you. So, I'm going to
25 have Attorney Duensing address this motion.

1 ATTORNEY DUENSING: Yes, Your
2 Honor. Just briefly, we have laid out I think in
3 more detail in our motion that there is a close
4 connection between the intern and the defendant and
5 his family. And I believe we've documented that.
6 I don't think there's a whole lot else to be said
7 about it. We're just simply asking that she not
8 participate in this particular case.

9 We were not aware of her participation
10 until the last status conference and it was simply
11 as a result of her participation in that hearing
12 that we brought up the issue.

13 THE COURT: Attorney Duensing,
14 how is her appearing as a member of the public
15 which any one can do in these zoom hearings, how do
16 you draw that she was participating other than as
17 an observer?

18 ATTORNEY DUENSING: That, we
19 don't know, Your Honor. We would leave it to Your
20 Honor to make that determination.

21 THE COURT: And how is it by
22 photographs, being a classmate and being on a swim
23 team, how does counsel draw that there is a close
24 personal friendship or relationship there? None of
25 these photographs that were submitted show any

1 comments between Ms. Parlato or Ms. Klein.

2 Additionally, what was the point of
3 posting and filing with the Court a picture of
4 Ms. Parlato with her family? How is that relevant
5 to your issue of creating an ethical wall?

6 ATTORNEY DUENSING: Your Honor,
7 we were simply showing that it was our belief that
8 this is an ongoing and continuing friendship that
9 was documented by the fact that they remain -- what
10 we interpret it as is close friends on Facebook and
11 --

12 THE COURT: And the last post
13 being 2017, correct?

14 And it's not even a post by
15 Ms. Parlato or Ms. Klein, correct?

16 ATTORNEY DUENSING: That, I don't
17 even recall, Your Honor.

18 THE COURT: If we look at exhibit
19 -- Composite Exhibit 3, there is a graduation
20 photo. It doesn't show -- They're not even looking
21 at each other. They're sitting probably in a row
22 that was compiled by the school for graduation.
23 They're not even looking at each other. They're
24 not holding hands.

25 The second photograph attached to

1 Exhibit 3 is a copy of a printout from a Ms. Devani
2 Mahani. Again, it shows them in a graduation
3 procession or line-up. Again, probably composed by
4 the school because if they were close friends, they
5 will probably be standing next to each other and
6 holding hands. They're not even looking at each
7 other.

8 The third photograph which I find
9 highly inflammatory and improper is a photo with
10 her posing with her mother and father and at this
11 juncture. I'll disclose to the parties which I
12 didn't think was necessary because we live on an
13 Island where we come in contact with people all the
14 time, for various circumstances and reasons. I've
15 known the Parlato's since they became the initial
16 owners of SOS back in the 1990's. So, I don't see
17 the relevance of this considering that it's a post
18 from Marie Bernard, not even Ms. Parlato posted it
19 nor did Ms. Klein post it.

20 Again, another photograph that looks
21 like it was staged by someone else not even any
22 indication of who with no comments.

23 The fourth photograph then shows
24 Ms. Parlato next to Ms. Klein. Again, not looking
25 at each other, not holding hands, no comments that

1 they are friends. The mere fact that they went to
2 school -- Again, being on an island with very slim
3 options for private schools, the coincidence that
4 they were at the same school.

5 I understand the need for counsel
6 wanting to bring this to the Court's attention, but
7 I think the manner and the conclusions that were
8 drawn from the photographs were border line and
9 somewhat in appropriate.

10 I think it was trying to inflame the
11 Court. The Court can be incline to recuse itself
12 or disqualify itself, if the parties deem it
13 necessary because the Court could go through both
14 witness list and find the connection where at some
15 point in the Court's life, they've had a connection
16 with one or all of the witnesses. I have lived
17 here 55 years. This is my home.

18 So, if the parties want the Court to
19 disqualify itself because a summer intern who was
20 here assigned to the Court pursuant to the
21 Department of Labor Summer Lift Program. She is a
22 summer student not charged with research or
23 discussing the merits of the case, was not
24 discussing the merits case by participating as a
25 member of the public, or as a part of her

1 internship. She is not an employee of the Court.
2 She was assigned here because the Superior Court of
3 the Virgin Islands supports the hiring of our local
4 youth to give them an opportunity over the summer
5 to experience employment that they may not have
6 been able to experience otherwise.

7 In abundance of caution, the Court did
8 ask Ms. Parlato who is completely mortified by this
9 motion to not view or listen as she would have had
10 the right as a member of the public to do. So
11 she's being excluded for no other reason but this
12 motion. The Court's not granting it because the
13 Court believes that there is any impropriety,
14 impartiality or lack of bias. The Court will grant
15 it in abundance of caution to keep this matter
16 moving forward.

17 However, I caution the parties, this is
18 not a jury trial which reminds me that the Court
19 again finds that the plaintiff filed in her motion
20 to reconsider a photographs of her husband as a
21 hostage and I find that a little troubling. And
22 the reasoning behind that is a little difficult to
23 understand, but again this is not a jury trial and
24 this matter is not going to be resolved on sympathy
25 or emotions. It's going to be decided on the law.

1 ATTORNEY DUENSING: That's fine,
2 Your Honor. And I would note for the record that
3 we expressly did not ask Your Honor to recuse
4 herself.

5 We're ready proceed on the merits of
6 the case, as well. And addressing the issue of the
7 intern, we don't know. We simply didn't know what
8 the connection was, what the involvement was. We
9 knew that it appeared to us there was a close
10 connection. It was of concern to us and we felt
11 that it was appropriate to simply bring it to the
12 Court's attention. It sounds like Your Honor has
13 addressed that.

14 The issue with Mr. Anderson first of
15 all, that was a cover of Time Magazine. It was a
16 public document but that bears on his interest in
17 the property in St. Thomas, why he came to
18 St. Thomas and purchased the property that he did
19 and bought a sale boat named *Freedom*. So, it did
20 have bearing on our claims in this case. And I can
21 assure you, Your Honor, we are here to proceed and
22 we have complete faith and confidence that the
23 Court will deal with the case on the facts and on
24 the evidence presented.

25 THE COURT: Attorney Crain, do

1 you wish to be heard?

2 ATTORNEY CRAIN: I just want to
3 address, Your Honor that we didn't respond because
4 we were somewhat taken aback by the motion and
5 certainly trust that the Court to deal with it
6 appropriately. And so my position generally in
7 these matters, I wish they had reached out to me to
8 discuss the matter before filing the motion and
9 maybe we could have figured out some information
10 before going down the route they went down. But
11 you know, certainly, my rule of thumb is I trust
12 the Court to make its decision about recusal and
13 who is involved and who is not. I have no reason
14 to believe the Court has made an imperfect decision
15 here.

16 THE COURT: The Court too wish
17 that this was handled differently because I believe
18 the Court now -- The family did not need this filed
19 as a public document especially the one photograph
20 of the Parlato's had no bearing on any kind of
21 connection to the Klein's. It doesn't show Mr. &
22 Mrs. Parlato in any kind of relationship with them
23 except enjoying the moment with their daughter
24 which now is going to forever remind them that
25 during the internship where she was supposed to be

1 exposed to the joy and the process here at the
2 court house that things can become vicious, and I
3 don't know how they say that otherwise. I find it
4 inappropriate I do agree that if counsel had a
5 concern with that, it could have been raised with
6 the Court and addressed. I didn't need it to be
7 addressed in that manner as it is now a public
8 document.

9 ATTORNEY DUENSING: Well, Your
10 Honor, just for the record, it was already a public
11 document when it was posted on Facebook. That's
12 how we found it. It's not something that's been
13 newly disclosed to the public.

14 With all due respect, look, you know,
15 we've all been outraged with things that are
16 happening in this case. We're outraged that
17 Mr. Klein is trying to take our client's property,
18 but we are trying to protect our client's interest
19 as best we can.

20 We felt that once we learned about the
21 information, we had an ethical duty to present it
22 to the Court and that's what we did. The Court has
23 dealt with it and we're ready to move on.

24 THE COURT: Just one last thing,
25 Attorney Duensing. Yes, they were public

1 photographs, but they were not tied to a litigation
2 at the time they were posted. And again, they were
3 not posted by Ms. Parlato, but the Court will move
4 on.

5 Is there anything else that the parties
6 wish to address prior to beginning the hearing?

7 ATTORNEY CRAIN: No, Your Honor,
8 not from the defense.

9 ATTORNEY DUENSING: Nothing
10 further.

11 THE COURT: Okay.

12 The Court is in receipt of the parties'
13 exhibit list and plaintiff's witness list and the
14 defendant's witness list because the witnesses are
15 to remain in the waiting room until they are called
16 to testify.

17 Are the witnesses listed in the order
18 in which the parties intend to call them?

19 ATTORNEY DUENSING: I believe
20 that our witnesses are listed in the correct order,
21 Your Honor. There may be a slight movement in the
22 sense that Rennix Charles will be coming to our
23 office in the conference room to get computer
24 access and we have scheduled his arrival around
25 11 o'clock. And we're hopeful that we can fit him

1 in that slot, but it my slightly change the
2 sequence, but I don't believe any kind of
3 substantial way, Judge.

4 ATTORNEY CRAIN: Your Honor, from
5 the defense side, they are not in -- they were not,
6 due to not knowing the exact timing when people
7 would go on. They are not in any particular order
8 as far as calling the witnesses.

9 THE COURT: Okay, Attorney Crain,
10 I believe your witnesses will be probably later
11 this afternoon or tomorrow. So if you can provide
12 the Court with a closer line-up so that we can move
13 them out of the waiting room and move it forward.

14 The Court anticipates we'll go about
15 noon today and take a lunch break and then resume
16 and go until 4 o'clock and again if necessary
17 resume again tomorrow at 9:00.

18 ATTORNEY CRAIN: Thank you, Your
19 Honor.

20 ATTORNEY DUENSING: Thank you,
21 Your Honor.

22 THE COURT: Attorney Duensing, a
23 Terry Anderson is in the waiting room.

24 Shall I admit?

25 ATTORNEY DUENSING: Your Honor, I

1 think what we would like to do, we're going to call
2 Mr. Anderson. He probably is going to be the third
3 because we're are accommodating a surveyor. And
4 we'd like to call Mr. John Klein as our first
5 witness, Your Honor.

6 THE COURT: Okay.

7 Mr. Klein is already there. Madam
8 clerk, can you swear Mr. Klein in?

9 Oh, I'm sorry. For the parties, we did
10 this at the status hearing. We did not do that.
11 Now, are the parties waiving opening?

12 ATTORNEY CRAIN: Yes, Your Honor.

13 ATTORNEY DUENSING: Yes, Your
14 Honor.

15 THE COURT: This matter is before
16 the Court for a preliminary injunction hearing.
17 The Court is not deciding the merits today.

18 ATTORNEY DUENSING: Thank you,
19 Your Honor.

20 THE COURT: Okay.

21 THE CLERK: Good morning,
22 Mr. Klein. Can you raise your right hand?

23 **JOHN KLEIN**, having been first
24 duly sworn as a witness, testified as follows:

25 MR. KLEIN: Yes.

1 THE CLERK: Thank you.

2 THE COURT: Attorney Duensing,
3 you may proceed.

4 ATTORNEY DUENSING: Thank you,
5 Your Honor.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY DUENSING:

8 Q. Good morning, Mr. Klein.

9 A. Good morning.

10 Q. Mr. Klein, in October of 2020, you filed a
11 lawsuit against three entities out at Secret Harbor:
12 Secret Harbor Beach Associate, LP, and Secret Harbor
13 Beach Resort Inc., and Secret Harbor House, LLC; is that
14 correct?

15 A. I believe so.

16 Q. And did you authorize your attorney, Mr. Crain
17 to file that lawsuit on your behalf?

18 A. Yes.

19 Q. All right. And am I correct in understanding
20 that that lawsuit concerns your desire to gain beach
21 access across certain property that's owned by some or
22 all of those three defendants that I just named?

23 A. No, I wouldn't categorize it that way.

24 Q. You would not?

25 A. No. I had access. I wanted to maintain the

1 access.

2 Q. All right.

3 A. It wasn't to gain access. It was to continue
4 access.

5 Q. Mr. Klein, I would like to refer to what we've
6 marked as Plaintiff's Exhibit 13.

7 Ms. Seila will share that on the screen for
8 us.

9 Can you tell us what that document is,
10 Mr. Klein?

11 A. It looks like the face of the suit, and
12 looking at it, a judgement and an injunction at that
13 time against Secret Harbor and these other entities so
14 can I can maintain an access that I've been using for
15 many years.

16 Q. All right. And I would like to refer you to
17 paragraph 12 of that complaint that's in a section
18 labeled the *factual background*.

19 A. Can you blow that up a little bit on the
20 screen? Can you make it a little bigger, please?

21 THE COURT: Attorney Duensing,
22 are you going to admit this document or are you
23 having him testify from a document that's not in
24 evidence?

25 ATTORNEY DUENSING: That's fine,

1 Your Honor. We can move to have it admitted. It's
2 a Court document. But sure, Your Honor, we will
3 move to admit Plaintiff's Exhibit 13.

4 THE COURT: Any objections?

5 ATTORNEY CRAIN: No objections,
6 Your Honor.

7 ATTORNEY DUENSING: Thank you.

8 THE COURT: Exhibit 13 is
9 admitted.

10 ATTORNEY DUENSING: Thank you,
11 Your Honor.

12 BY ATTORNEY DUENSING:

13 Q. Mr. Klein, can you see paragraph 12 now?

14 A. Yes.

15 Q. All right. And in Paragraph 12, you have
16 referenced Parcel No. 2 D A and that's Estate Nazareth,
17 correct?

18 A. Yes.

19 Q. Okay. I want to try to sort of create a kind
20 of a mental image of where the respective properties
21 are.

22 So, as I understand it, there is an estate
23 road that runs from the Secret Harbor Resort property to
24 where your house this situated at number 2 D - 11
25 Nazareth; is that correct?

1 A. Yes.

2 Q. And according to your reference in paragraph
3 14, you're the one who has solely maintained that estate
4 road for all these years; is that correct?

5 A. No, that's not what I said. I maintain the
6 road between my property here, and where the path and
7 the stairway were, that piece of road, not the entire
8 road, just that section.

9 Q. Okay, understood. Would it be correct in
10 saying that your residence at Parcel No. 2 D - 11, is it
11 at the end of that road?

12 A. Yes.

13 Q. And then if we were -- if we were -- and you
14 -- Can you walk along that road correct, it's clear?

15 A. Yes.

16 Q. All right. So if we were going to walk from
17 your residence to the Secret Harbor Resort as we left
18 your property, the first property that we would pass on
19 our left or on the seaside would be Ms. Bassil's
20 property at 2 D - 12 remainder as it's now known;
21 correct?

22 A. Yes, it will be 2 D - 12 will be the first
23 property on the left after mine, going down the road.

24 Q. And then the next property you would pass is
25 number 2 D - 13 which is the property that actually has

1 a house on it, on the old cement dock?

2 A. Yes.

3 Q. Okay. And then, the next parcel that you
4 would arrive at as you're walking towards the resort
5 will be the Parcel 2 D - A to which you refer in your
6 complaint, correct?

7 A. I believe so, yes.

8 Q. All right. And it's that parcel that you were
9 over 18 years according to paragraph 12 of your
10 complaint, you used that to gain access to the public
11 Secret Harbor Beach and ultimately Nazareth Bay,
12 correct?

13 A. Well, that's partially correct. I used that
14 and I use the path that I had on 2 D - 12, as well.

15 Q. Right. But according to your complaint for
16 example, paragraph 17 --

17 THE COURT: Attorney Duensing,
18 how does this apply as to whether or not defendant
19 is trespassing on Ms. Bassil's property causing her
20 emotional distress or endangering her property?

21 ATTORNEY DUENSING: Well, Your
22 Honor, first of all, it doesn't address the
23 question of whether Mr. Klein and his commercial
24 guests are trespassing on Ms. Bassil's property.
25 That's already been judicially admitted in this

1 case. The issue that is of much greater concern to
2 us is whether Mr. Klein has been trespassing on
3 Ms. Bassil's property for a period of at least
4 15 years or more so that he can gain the
5 prescriptive easement. And we believe that it's
6 very critical to understand that first of all
7 Mr. Klein is making the exact same claim against
8 another neighboring property owner. And as I was
9 getting ready to ask him in the complaint against
10 Secret Harbor, which we believe was filed before
11 the trails were illegally cut on Ms. Bassil's
12 property.

13 Mr. Klein specifically says that it was
14 his normal and customary way to access the beach
15 through the Secret Harbor property. So we believe
16 this is highly probative to the question of when
17 those trails was illegally cut on our client's
18 property.

19 THE COURT: Okay, if we can get
20 to those issues then?

21 ATTORNEY DUENSING: Thank you,
22 Your Honor.

23 BY ATTORNEY DUENSING:

24 q. So Mr. Klein, as I was stating, in paragraph
25 17 of your complaint, you refer to the fact that these

1 defendants in the Secret Harbor case, they blocked your
2 customary and normal access to the beach, correct?

3 A. I used -- They blocked that access, and I used
4 that access along with the paths depending on the
5 weather and depending on whom my guest was. The paths
6 are a bit rocky. They are a bit steep, and they get a
7 bit muddy. So I use both of those accesses since I've
8 been on the property even before I was on this property.

9 And by the way, much of the public -- the
10 public also use those accesses that were there, as well.
11 There are property owners that go down that road that
12 also use those stairs to go down to Secret Harbor.

13 Q. Correct. And it was in basically September of
14 2020, when the powers of Secret Harbor put up a gate and
15 block your access, correct?

16 A. They blocked that access, yes.

17 Q. So, am I correct in understanding that if you
18 walked just a little further down the road, there's
19 another way to access the beach at Secret Harbor and
20 that's just the general public access where someone
21 would come in if they were going to the restaurant
22 there, for example; is that correct?

23 A. That's not correct. It's not a little bit
24 down the road. It is a very steep concrete driveway.
25 It's many hundreds of feet. It's a dangerous road to

1 walk down. It's not cared for. There was no public
2 access until I brought these issues to DPNR last year at
3 which point, they forced Secret Harbor to make public
4 access again because they blocked all public access to
5 the beach. Beach access in the Virgin Islands is a very
6 sensitive thing, and they blocked it for anybody being
7 able to get to the beach.

8 So it's not -- with that access blocked,
9 it's very difficult to get to the beach from this area
10 that's up here, but it is dangerous actually. It's a
11 slick road. People have fallen down on the road. I've
12 fallen down on that road both walking up and walking
13 down.

14 Q. But it is possible to access the beach simply
15 by going further down that road, correct?

16 A. At some point -- yes, you can get to the
17 beach, but you have to walk through the Secret Harbor
18 Resort and there are issues right now with DPNR about
19 that access because Secret Harbor has not complied with
20 some rulings that DPNR has given to them.

21 Q. So when you and/or your commercial guests, and
22 am I correct in understanding that you have a commercial
23 hotel operations at your residence?

24 A. That's not correct.

25 Q. How would you describe it?

1 A. I have a house that I rent, and I have two
2 studio Airbnbs that I rent.

3 Q. And you charge for those rentals, correct?

4 A. Yes.

5 Q. Do you charge per night/per week? How do you
6 charge for that?

7 A. Both.

8 Q. All right. So you do have commercial
9 operations at your residence, correct?

10 A. I don't know the categorization of current
11 commercial -- I mean, many people in the B.V.I. -- I'm
12 sorry, in the U.S.V.I. right now are doing Airbnbs; I am
13 doing rental through Airbnb.

14 Q. And how much do you charge this time of the
15 year for those rentals?

16 THE COURT: Attorney Duensing,
17 that's not relevant.

18 ATTORNEY DUENSING: Well, Your
19 Honor, we believe he is using our client's property
20 to aid and assist his commercial operation. It's
21 not something that --

22 THE COURT: I think.

23 ATTORNEY DUENSING: Pardon?

24 THE COURT: I think that's
25 understood. It doesn't matter if he charges a

1 dollar or \$5,000. He's using his property as an
2 Airbnb. He admitted to that. He admitted to
3 renting his house. Whether he wants to categorize
4 it as commercial or not, it's not a residential
5 property.

6 ATTORNEY DUENSING: Well, where
7 I'm going with this, Judge, and again, I'm not
8 interested in wasting the Court's time. I am
9 simply trying to flesh out the factors that we
10 believe are critical. And where I am going with
11 this, Judge, is very much our client's concern.
12 Our client has concerns just like the Court has
13 concerns. And Secret Harbor according to the
14 complaint that is now in evidence, Secret Harbor
15 made clear to Mr. Klein that they were denying him
16 access to basically trespass against their property
17 because they were concerned about liability. And
18 where I'm going with this line of questioning
19 addresses Ms. Bassil's concerns about liability
20 for --

21 THE COURT: Well, then address
22 those concerns. The amount of money that he
23 receives is not addressing that concern.

24 ATTORNEY DUENSING: Well, where I
25 am going with that is whether he uses that income

1 to purchase liability insurance to cover
2 Ms. Bassil's property when his commercial guests
3 traverse across her property.

4 THE COURT: Then, ask him that
5 question, sir.

6 BY ATTORNEY DUENSING:

7 Q. Mr. Klein, have you purchased liability
8 insurance to protect Ms. Bassil and her property when
9 your commercial guests traverse her property to access
10 the beach?

11 A. That's in process right now.

12 Q. So, you have not done it, as yet?

13 A. The insurance was ordered; we're waiting to
14 get the paperwork back.

15 Q. All right. So, you haven't done it?

16 A. I have done it. I have ordered the insurance,
17 and I am waiting to get the certificate of insurance.

18 Q. Do you know whether there is liability
19 coverage in place today as we sit here covering
20 Ms. Bassil's interest for her property at 2 D - 12
21 Remainder Estate Nazareth?

22 A. I believe that is today. I would have to ask
23 counsel, but I believe there is. We were in a between
24 place, but I do believe we do have coverage now that
25 covers that property.

1 Q. And would it be accurate to say that you
2 encourage your commercial guests to traverse
3 Ms. Bassil's property when they access the beach?

4 A. Well, I don't know whether I would categorize
5 that as Ms. Bassil's property. I can tell you that I
6 do advertise that they can use that access to get to the
7 beach, yes.

8 Q. All right. Have you ever offered to pay a
9 percentage of Ms. Bassil's property taxes?

10 A. No.

11 Q. Have you ever offered to pay Ms. Bassil
12 anything for allowing your commercial guests to traverse
13 her property on the way to the beach?

14 A. No.

15 Q. And isn't it correct that allowing your
16 commercial guests to traverse Ms. Bassil's property to
17 access the beach is really just a matter of convenience
18 because there is an alternate route to the beach along
19 the road that you described previously, correct?

20 A. No, I don't agree. It is not a feasible
21 alternative because it is a dangerous road. It is not
22 meant for foot traffic and I would not encourage anybody
23 to walk down that road to get to the beach.

24 Q. But you did it for 18 years, correct?

25 A. That's not true. I walked down the steps that

1 were close by me and I used the paths that are on my
2 property. I used both ways.

3 Q. So, you're saying that only when you go beyond
4 where those steps are, does the road become dangerous?

5 A. That's correct.

6 Q. So basically, until Secret Harbor closed that
7 gate in September of 2020, it was not necessary for your
8 commercial guests to go across Ms. Bassil's property to
9 access the beach. It was only after the access at the
10 Secret Harbor property was denied to you that your
11 guests needed to traverse Ms. Bassil's property and that
12 was in September of 2020, correct?

13 A. I wouldn't categorize it that way, no.

14 Q. Well, it was until September of 2020 that you
15 had that alternate access through the gate and the steps
16 on the Secret Harbor property, correct?

17 A. That's correct. It was an alternate access,
18 but it wasn't the only access that I used and we when
19 talk by my guests -- I'm renting Airbnbs since the
20 beginning of this year, but before that I had friends/
21 family. People would come visit me and we will use the
22 path that is existence all these years across 2 D 12 and
23 we would also use the steps that went down Secret
24 Harbor. Again, that depended upon the weather and the
25 desire of people to walk-up and down a steep path that

1 sometimes got a little bit muddy; we used both access.

2 Q. And wouldn't you say that for your guests --
3 So you maintained the road from your house to the point
4 where that gate at the Secret Harbor property was,
5 correct?

6 A. Yes.

7 Q. And you have a crew that does that road
8 maintenance or is that something you do yourself?

9 A. I don't understand your question. If I have
10 people doing landscaping around my house, we would go
11 down there. We will take our shovels. We will take our
12 rakes. We will get rid of the potholes in the road. On
13 occasions, I've had a backhoe come up here to re-grade
14 it, put gravel down and so forth. Cars will come up
15 here to the end of the road. They would turn around and
16 put rocks in the road. No one ever fixed the road. So
17 I fixed it for my own convenience not to have potholes
18 in the road, have gravel spinning. We have these issues
19 all over the Virgin Islands, and this is one here there
20 is nobody to wait for. So, I went and I maintained that
21 piece of road there. So that I wasn't ruining my own
22 automobile or anybody who came to visit me here.

23 Q. Wouldn't you agree that until that gate --
24 until you one denied access to the gate and the stairs
25 by Secret Harbor in September of 2020, it was actually

1 safer for you and your commercial guests to simply walk
2 from your house along that road to access the beach
3 rather than traversing the rocky undeveloped property
4 owned by Ms. Bassil?

5 A. No, I wouldn't agree that. And I wouldn't
6 agree with that because that road now started to get a
7 lot of traffic because Secret Harbor moved the parking
8 lot to just above where the gate is, and there was a lot
9 of traffic that will go to old unused parking lot which
10 created a lot of traffic in the neighbors.

11 People there who were drinking too much at
12 the restaurant will be driving there at high rates of
13 speed going up and down the road. So walking down that
14 road is not safe since they moved the parking lot. It
15 used to be safer, but they moved the parking lot
16 sometime last year or so. That road is not safe anymore
17 because there is traffic. Secret Harbor have the
18 restaurant employees park up there. There's people
19 parking up there all time, day and night. It's not a
20 safe road to walk on a regular basis. It can be and it
21 used to be, but it isn't anymore.

22 Q. Right. And again this is a fairly recent
23 development that you're describing, correct?

24 A. When you say *recent development*, there are two
25 different things that happened. Blocking the gate

1 happened much later than the moving of the parking lot.

2 Q. All right. Mr. Klein, this does not -- this
3 case that we're dealing with today is not the first time
4 that you have claimed an interest in Ms. Bassil's
5 property, correct?

6 A. I'm not sure I understand your question.

7 Q. Well, isn't it true that back in 2007 and
8 2008, you've had dealings with Ms. Bassil related to the
9 fact that you had encroached upon her property by
10 constructing part of your driveway, a wall, and a fence
11 on her property which was then known as 2 D - 12,
12 correct?

13 A. I would not agree with that whatsoever.

14 Q. You do not -- you do not agree that you
15 constructed part of your -- aspects of your residence on
16 Ms. Bassil's parcel dash 2D - 12 back in the 2007 and
17 2008?

18 A. I had dirt that's when I was excavating for
19 the house here, fell on Ms. Bassil's property. And I
20 was then going to put the dirt back because when I was
21 doing the excavation here, dirt fell on her property and
22 then Ms. Bassil came to me with someone else. I don't
23 know who it was and asked me to pay rent for couple of
24 years because the dirt had fallen on the property.

25 We ultimately settled by me agreeing to buy

1 a sliver of the property at the highest amount of money
2 that anyone has ever paid for a piece of land on St.
3 Thomas for a small little square-foot piece of land.

4 Q. I'd like to refer you to what we have marked
5 as Plaintiff's Exhibit No. 18 for identification,
6 Mr. Klein.

7 Take a moment to review that and let us know
8 whether you can identify that.

9 A. It's an e-mail from Mrs. Bassil. It looks
10 like 13 years ago, and she wrote me a note.

11 ATTORNEY DUENSING: Your Honor,
12 we would move to admit Plaintiff's Exhibit 18 into
13 evidence.

14 THE COURT: Attorney Crain.

15 ATTORNEY CRAIN: Your Honor, I
16 object to the portions that are not part of the
17 admissions; it's hearsay.

18 THE COURT: And which?

19 ATTORNEY CRAIN: Anything that is
20 not Mr. Klein's statement will be hearsay.

21 ATTORNEY DUENSING: That's fine,
22 Your Honor. We intend to refer Mr. Klein to his
23 statements further down the chain of
24 communications.

25 THE COURT: Okay. Exhibit 18 is

1 admitted for the limited purposes for refreshing or
2 using Mr. Klein's statements as evidence.

3 ATTORNEY DUENSING: Robin, can
4 you scroll down a bit?

5 THE COURT: If you can establish,
6 Attorney Duensing, if you can establish further
7 relevance through Ms. Bassil later, the Court will
8 reconsider the admission again.

9 ATTORNEY DUENSING: Thank you,
10 Your Honor.

11 Robin, I'd like to refer to Mr. Klein's
12 comments only a little further down. Here we are.
13 All right.

14 Mr. Klein, can you identify this aspect of
15 this communication strictly commentary from you?

16 A. Can you make it a little bigger on the screen,
17 please?

18 Q. Sure, I think so.

19 A. Thank you. And can I have full screen because
20 I can't read all the words.

21 Q. I believe so.

22 A. Can I have a second to read it?

23 Q. Absolutely. Take whatever time you need.

24 A. Thank you. (Witness reads document to
25 himself.) Okay. I've read it. What's the question?

1 Q. Do you recognize this document?

2 A. It looks like an e-mail that I sent to
3 Madeline Bassil.

4 Q. All right. And does that refresh your
5 recollection about whether you previously made a claim
6 of interest in Ms. Bassil's property?

7 A. Well, I don't know; I am not sure what you
8 mean, by claim of interest? What it refreshes my
9 memory, I bought the property from Dan Dipmore
10 (phonetically) or a trust or something that he had, and
11 when I bought this property, there was a driveway that
12 was here to come into this property. I think the term
13 might be called a *flag lot* because there is a sort of a
14 skinny driveway that comes in from the estate road and
15 then spreads out when it gets to the end. So it's kind
16 of a shape of a flag with the pole and I was using the
17 driveway coming in here and the same space that was
18 there.

19 Prior to me buying the house is the same
20 space that I used in order to try to maintain a peaceful
21 relation with Ms. Bassil. I was reluctant but I
22 ultimately agreed to try to avoid what then would be a
23 costly litigation to pay a very high sum of money to
24 just make it go away. But I didn't feel I was obligated
25 to do it, but I felt in a situation where there is the

1 cost benefit that I had to think through, it was easier
2 to make it go away by just paying than it was to fight
3 what seemed to be something that I was just going to pay
4 a lot of money in legal fees, that I felt will
5 ultimately prevail, but there was no reason to go
6 through it if there was a way to end it. I bought this
7 little thousand square-foot sliver of land.

8 Q. Right. And in this correspondence, you
9 claimed that you owned that sliver of land by adverse
10 possession, correct?

11 A. Well, in my --

12 Q. I am sorry?

13 A. I was basing what I was saying on the advice
14 that I got from my attorney at the time who was Henry
15 Feuerzeig. I call him Hank Feuerzeig who I believe was
16 a well respected and still a well respected member of
17 the legal community here. And he advised me to go ahead
18 and settle it. He also advised me that because of the
19 amount of time that the property was owned by the
20 previous owner and that access coming into the property.
21 I had a *succession of interest*, I believe was the words
22 -- I'm sorry if I am wrong; I'm not an attorney. But I
23 believe that because I was maintaining and using the
24 same access he had all those years, I was entitled to an
25 adverse claim if I needed to, but I took his advice and

1 paid Ms. Bassil a very high sum of money for the very
2 little sliver of land.

3 Q. I understand and I have the utmost respect for
4 Hank Feuerzeig. He brought me down to St. Thomas
5 32 years ago and was my boss.

6 But my point is, that in this correspondence
7 to Ms. Bassil and I understand you ultimately resolved
8 the dispute, but in this correspondence to Ms. Bassil,
9 you claim and specifically the first sentence of the
10 last paragraph, that you owned the piece of property in
11 question by adverse possession, correct?

12 A. Yes, and I -- this letter was -- I was
13 assisted in wordsmithing the letter by my counsel at the
14 time.

15 Q. All right. So my point is this, Mr. Klein --
16 And I am coming to a conclusion shortly, Your Honor --
17 Is that we now know and have established here in this
18 case that on at least, at least three occasions, you
19 have claimed that you have an interest in your
20 neighbor's property, correct?

21 We have number one, Secret Harbor that
22 you're still actively involved in litigation with them
23 claiming that you have the right to go across their
24 private property for your convenience beach access with
25 your dog.

1 And we have number two, in 2008 when you
2 were encroaching on Ms. Bassil's property, you told her
3 that you really didn't have to do anything because you
4 already owned it by adverse possession.

5 And number three, is this lawsuit here that
6 we're dealing with here today where you're claiming
7 rights to Ms. Bassil's property, correct?

8 A. I don't remember your question now. I'm
9 sorry. What's your question?

10 Q. Isn't it a correct that we now know of at
11 least three occasions going back to 2008 when you have
12 claimed that you have an interest in your neighborhood's
13 property?

14 A. I wouldn't categorize it that way, counselor,
15 because the Virgin Islands is full of situations. There
16 are people who bought land, buy land, and they don't
17 maintain it. They are not round. They don't have
18 caretakers for it.

19 I came up here. I took a big risk. I built
20 a house for my family, and I inherited the condition
21 that I found when I got up here. And those are the same
22 conditions that I continue to maintain and if the areas
23 that were occupied by people before me that I then
24 occupy after I purchased the property, I continued in
25 the same occupation of those properties.

1 Q. That's fine. Let's move on.

2 ATTORNEY DUENSING: I'd like to
3 look at Plaintiff's Exhibit 16 for purposes of
4 identification, Judge.

5 BY ATTORNEY DUENSING:

6 Q. Mr. Klein, I'd like for you to review what
7 we've marked as Exhibit 16 and let us know whether you
8 can identify that document.

9 ATTORNEY DUENSING: And Robin,
10 you may want to show the last page and then work
11 back from the last page which is where the
12 signature can be found.

13 THE COURT: Attorney Duensing and
14 Attorney Crain, did the parties confer to see if
15 there is anything you can stipulate to the
16 admission so that things can move a little bit
17 quicker if there's no objection?

18 ATTORNEY DUENSING: We have not,
19 Your Honor. I don't anticipate any controversial
20 exhibits that should take much time, Judge.

21 I fully expect for us to finish our
22 case if not by midday, by early afternoon.

23 THE COURT: Okay Attorney Crain,
24 can we stipulate to the admission of this document?

25 ATTORNEY CRAIN: Waiting to

1 identify. I don't have any objections to the
2 admission of the document.

3 THE COURT: Okay.

4 THE WITNESS: Is there a question
5 for me? I'm sorry.

6 BY ATTORNEY DUENSING:

7 Q. Yes, just simply whether you can identify this
8 document for us, Mr. Klein?

9 A. It looks like an offer I made on Ms. Bassil's
10 property some years ago.

11 Q. All right. So at least at the point in which
12 you made this offer, you acknowledge that Ms. Bassil was
13 the owner of parcel 2 D - 12 Nazareth; correct?

14 A. Yes, certainly in 2014, it was my
15 understanding and my recollection that the property was
16 on the market and I made an offer to buy the property.

17 Q. Thank you. Let's move on.

18 ATTORNEY DUENSING: We would move
19 to admit, Your Honor, Exhibit 16 and I understand
20 that there is no objection.

21 THE COURT: It's admitted.

22 ATTORNEY DUENSING: I'd like to
23 move on to Exhibit 17 and I think we can wrap this
24 up, Judge.

25 ATTORNEY CRAIN: Judge, I don't

1 have any objections to 17 either.

2 THE COURT: It's admitted.

3 BY ATTORNEY DUENSING:

4 Q. Mr. Klein, is that your signature?

5 A. Yes.

6 Q. And can you tell us, what this document is?

7 A. Again, it looks like I made an offer. Can I
8 see the date please, at the top?

9 Q. Sure.

10 A. Okay. It looks like I made an offer at a
11 later date from the first one to buy Ms. Bassil's
12 property. I also knew at that time based upon how long
13 I was there and how long I personally was using those
14 paths. I hadn't used the paths long enough for an
15 adverse possession claim and I felt that what I wanted
16 to do is protect my investment up here, and buy the
17 property that was next to me and for future protection
18 or development or whatever.

19 Q. So at least at this point in time, in February
20 of 2015, you understood Ms. Bassil to be the owner of
21 parcel 2 D - 12 Nazareth, correct?

22 A. Yes.

23 Q. All right. One quick question in conclusion.
24 Are you familiar with the survey company on St. Thomas,
25 Brian Mosley & Associates?

1 A. Yes.

2 Q. To your knowledge, is that a reputable survey
3 company?

4 A. Yes.

5 Q. And did you hire them to do work for you over
6 the years?

7 A. Yes.

8 Q. And Ryan Wisehart in particular, are you
9 familiar with him?

10 A. Yes.

11 Q. And have you hired Mr. Wisehart to do survey
12 work for you?

13 A. Well, I hired the firm and I believe now he
14 owns the firm, yes.

15 Q. And do you understand Mr. Wisehart to be a
16 competent and qualified Virgin Islands surveyor?

17 A. Yes.

18 Q. All right.

19 ATTORNEY DUENSING: Thank you,
20 Your Honor. We have no further questions for
21 Mr. Klein. We tender the witness.

22 THE COURT: Thank you. Attorney
23 Duensing, before Attorney Crain questions it, by
24 admissions by Exhibit 13, I believe it was the
25 complaint in 2021 CV 420, are you asking the Court

1 to take judicial notice of the entire lawsuit or
2 just the complaint?

3 ATTORNEY DUENSING: Just the
4 complaint itself, Your Honor.

5 THE COURT: Attorney Crain?

6 ATTORNEY CRAIN: Your Honor, I
7 don't have any questions for Mr. Klein at the
8 moment. I reserve the right to call him during our
9 evidence.

10 THE COURT: Okay.

11 Attorney Duensing, who would you like
12 to call as your next witness?

13 ATTORNEY DUENSING: Thank you,
14 Your Honor for our next witness, I believe we will
15 call Mr. Wisehart, who I believe is standing by.

16 THE COURT: He's being admitted
17 from the waiting rooming.

18 ATTORNEY DUENSING: Thank you.

19 THE CLERK: Mr. Wisehart, could
20 you please raise your right hand to be sworn?

21 **RYAN WISEHART**, having been first
22 duly sworn as a witness, testified as follows:

23 MR. WISEHART: I do.

24 THE CLERK: Thank you.

25 THE COURT: Thank you.

DIRECT EXAMINATION

1
2 BY ATTORNEY DUENSING:

3 Q. Good morning, Mr. Wisehart, how are you?

4 A. I'm well, thank you.

5 Q. Would you identify yourself for the record
6 please?

7 A. My name is Ryan Wisehart. I'm a resident of
8 St. Thomas, U.S. Virgin Islands.

9 Q. And what is your profession?

10 A. I am a licensed professional land surveyor and
11 the own of Brian Mosley & Associates, Incorporated.

12 Q. And can you just very briefly summarize for
13 the Court your education and training that led to you
14 becoming a licensed surveyor in the Virgin Islands?

15 A. I have a bachelor of science in land surveying
16 from Purdue University in West Lafayette, Indiana. I
17 have roughly 30 years experience in surveying about
18 since 1999 here in the Virgin Islands and prior to that
19 in the state of Indiana.

20 Q. Thank you.

21 ATTORNEY DUENSING: And Your
22 Honor, we would tender Mr. Wisehart as an expert in
23 the field of surveying here in the Virgin Islands.

24 THE COURT: Attorney Crain?

25 ATTORNEY CRAIN: Your Honor, I

1 don't have an objection to qualifications. I would
2 note that obviously this didn't comply with the
3 typical expert type disclosure with the report and
4 all that sort of information, but I understand the
5 circumstance we're under. So, I don't object him
6 as an expert, but want to note that weren't
7 entitled obviously to the full exploration of
8 Mr. Wisehart's opinion, but we normally would be in
9 any case.

10 THE COURT: Attorney Duensing,
11 did Mr. Wisehart complete any reports and any
12 disclosures or statements that were made prior to
13 the hearing that was disclosed.

14 ATTORNEY DUENSING: Yes, Your
15 Honor we did provide among our exhibits, the survey
16 report that Mr. Wisehart prepared back in January
17 of 2021 when he did the most recent survey of our
18 client's property. We have not asked him to
19 prepare any report for this litigation in
20 particular.

21 We also disclosed Mr. Wisehart's C V
22 and his rate sheet. The only thing that we did not
23 give the opposing side technically, would be within
24 the scope of Rule 26 would be the list of cases in
25 which he has testified. I would note that this is

1 a preliminary proceeding. We don't even have a
2 Rule 26 pretrial scheduling plan in order, in place
3 and we've all been trying to deal with this on an
4 expedited basis.

5 I can assure you that this is not trial
6 by ambush. The exhibits that we intend to ask
7 Mr. Wisehart about are simply surveys that he has
8 done over the years of the property in question and
9 the survey leading to the survey report that I
10 referenced earlier all of which been public
11 documents of record and were produced to the other
12 side, Judge.

13 THE COURT: I'm sorry.
14 Mr. Wisehart, when did you acquire Brian Moseley &
15 Associates?

16 THE WITNESS: I came into full
17 ownership in 2012. And prior to that, I had a
18 minor sharehold interest.

19 THE COURT: How prior? I'm
20 looking at what counsels refer to as survey. They
21 are all dated around 2005 and 2007. They are not
22 signed by the surveyor. So, how is this notice
23 that Mr. Wisehart is testifying about these
24 documents?

25 THE WITNESS: Um.

1 THE COURT: Attorney Duensing.

2 I'm sorry, Mr. Wisehart.

3 ATTORNEY DUENSING: I'm sorry,
4 Your Honor. They're identified as documents that
5 were created and remained business records of Brian
6 Moseley & Associates.

7 Mr. Wisehart is now -- We understand
8 that he is now the sole owner of Brian Moseley &
9 Associates. And as part of his taking ownership of
10 that business, he also acquired the files and the
11 business records that may have been prepared by his
12 predecessor, Mr. Moseley at or near the time that
13 those various surveys were undertaken.

14 We also understand that Mr. Wisehart
15 remains the custodian of those records. We're
16 simply trying to --

17 THE COURT: The Court will allow
18 Mr. Wisehart to testify as the custodian of these
19 documents. Unless, he created a survey and the
20 report, the Court's not qualifying him as an
21 expert.

22 ATTORNEY DUENSING: That's fine,
23 Your Honor. We are simply asking him to identify
24 the various surveys and tell us what those surveys
25 reveal as a surveyor to a layman. And we're also

1 going to ask Mr. Wisehart about his own personal
2 observations out at the property which I think
3 clearly is any other witness who has actual
4 knowledge. He should be entitled to do.

5 THE COURT: He can testify as the
6 fact witness, to his personal observations. He
7 can't testify as an expert to something that he is
8 a custodian of or know what procedures may have
9 been used for these documents. And I don't -- If
10 what counsel represented to the Court is the need
11 for this witness. I don't believe he needs to be
12 qualified as an expert.

13 ATTORNEY DUENSING: Well I --

14 ATTORNEY CRAIN: I just want to
15 note Your Honor, I think what Mr. Duensing said,
16 was that he was going to have him to interpret the
17 survey which is -- I think is expert testimony.
18 It's not quite his personal observations.

19 ATTORNEY DUENSING: Well I think,
20 Your Honor, what we need in particular from
21 Mr. Wisehart is the information that is revealed in
22 his January of 2021 survey and the survey report
23 that he actually did prepare, not Mr. Moseley.

24 The other surveys, we felt were helpful
25 simply because they track the evolution of these

1 properties from the time that our client first
2 acquired the property with her husband Terry
3 Anderson in 2002 and bring them forward to as near
4 the present as possible which was January of 2021
5 when Mr. Wisehart was actually retained by both
6 parties, Your Honor, to conduct surveys at the
7 property. And that's all we're trying to do is to
8 create the record of what has evolved on our
9 client's property since she first bought it.

10 THE COURT: And to the extent
11 that Mr. Wisehart's report contains information in
12 his survey, he can testify to those documents. I
13 don't know that he needs to be an expert to do
14 that.

15 ATTORNEY DUENSING: That's fine,
16 Judge. That's fine.

17 THE COURT: Okay, you may
18 proceed.

19 BY ATTORNEY DUENSING:

20 Q. Okay, I would -- First of all, Mr. Wisehart
21 can you just give the Court a summary of your history of
22 involvement -- First of all, do you know which
23 properties we are talking about in this case? Can you
24 tell us that?

25 A. We're primarily concerned with Parcel 2 D - 12

1 Estate Nazareth.

2 Q. And are you familiar with that particular
3 property?

4 A. Yes.

5 Q. And are you also familiar with the two
6 properties on either sides of Parcel 12 D - 12 Nazareth?

7 THE COURT: Mr. Wisehart, do you
8 have documents in front you that you're referring
9 to, to refresh your recollection on this testimony?

10 THE WITNESS: I have some
11 available, but I'm not -- I was going to depend on
12 whatever counsel brings up on the screen.

13 THE COURT: Okay. It looks like
14 you were reading from a document.

15 THE WITNESS: Well, I'm looking
16 -- I am sorry. Let me backtrack. I'm looking at
17 the tax map that helps me keep track of which
18 parcels are where. So --

19 THE COURT: Attorney Crain, do
20 you have any objections to that?

21 ATTORNEY CRAIN: I don't, not to
22 that document, but there's other documents I'm
23 entitled to see them, but I don't have any
24 objection.

25 THE COURT: Thank you.

1 Attorney Duensing.

2 BY ATTORNEY DUENSING:

3 Q. All right. Mr. Wisehart, can you just tell
4 the Court about your own personal experience out at the
5 property that you just described?

6 A. Okay. My -- well, my personal experience has
7 been mostly to visit the property, not in great detail
8 but to be in the area where my survey crews would be
9 working, and also to be in the neighborhood to go to
10 Secret Harbor and things like that. So some of it would
11 have been involved in active engagement and projects we
12 are doing in the area which would have been quite a few
13 not just this property, but in the last two years since
14 the hurricanes.

15 Q. All right. And during those occasions when
16 you had an opportunity to be in the area, did you also
17 have an opportunity to observe our client's property at
18 Parcel 2 - D 12 Nazareth?

19 A. Yes, just insofar as passing on the state
20 road.

21 Q. All right. And was there an occasion upon
22 which you first observed that gates and trails had been
23 created upon Parcel 2 D - 12?

24 A. Not directly myself, only through my crew
25 chief and the surveys that we produced under my direct

1 supervision.

2 Q. All right. And when was that?

3 A. I'm going to refer to notes that I took that
4 were taken from just the surveys that we've done in the
5 area. And that would have been --

6 THE COURT: Attorney Duensing --
7 Mr. Wisehart.

8 THE WITNESS: Yes.

9 THE COURT: Just a moment please,
10 thank you.

11 Attorney Duensing, were those notes
12 turned over to the defense?

13 ATTORNEY DUENSING: We don't have
14 the notes to which he is referring to right now. I
15 believe what he's referring to is notes that were
16 incorporated into his actual survey report which I
17 was getting ready to ask him about here in just a
18 moment, Judge.

19 THE COURT: Mr. Wisehart, unless
20 the document is in evidence that can refresh your
21 recollection, you need to testify from your memory
22 or anything that Attorney Duensing may use to
23 refresh your recollection unless, those documents
24 were provided or disclosed previously.

25 THE WITNESS: Yes, Your Honor.

1 BY ATTORNEY DUENSING:

2 Q. What I would -- I would first ask the witness
3 to take a look at what we've marked as Exhibit 2 J for
4 identification.

5 A. I see it.

6 Q. Can you tell us what this document is,
7 Mr. Wisehart?

8 A. This is a land title survey prepared for
9 Parcel No. 2 D - 12 Remainder Estate Nazareth and I
10 can't quite read the date, but it's early 2021. If you
11 go to the bottom of the drawing if you're able to. So,
12 that was dated January 27th, 2021.

13 Q. All right. And that's your signature on
14 there?

15 A. It is.

16 Q. All right.

17 ATTORNEY DUENSING: First Your
18 Honor, we would move to admit Exhibit 2 J.

19 THE COURT: Attorney Crain?

20 ATTORNEY CRAIN: No objection.

21 THE COURT: Admitted without
22 objection.

23 ATTORNEY DUENSING: All right.

24 Q. Mr. Wisehart, can you tell us looking at this
25 exhibit -- if Robin can lower it a little bit so we can

1 see the substance of the exhibit?

2 What if anything is indicated with regard to
3 trails or paths or Parcel 2 D - 12 Remainder?

4 A. There is a meandering path that we labeled as
5 a *trail*. We also have a label in there called *walking*
6 *trail* and the area of the walking trail is 1400 square
7 feet more or less. It proceeds roughly from the estate
8 road area where it intersects Parcel 2 D - 12 - 1 and
9 2 D - 11 and proceeds through the property, towards the
10 ocean.

11 Q. All right. Can you explain to the Court if
12 you know, we've heard this particular parcel earlier
13 referred to as Parcel No. 2 D - 12. Do you know how
14 this parcel became renamed 2 D - 12 Remainder?

15 A. Yes. There is a parcel that was created from
16 this which is shown here which is called 2 D - 12 - 1,
17 and it's on the lower part of the property, and that was
18 created in 2008. And the remainder portion is the
19 larger part of the parcel which is referred to as
20 2 D - 12 - Remainder.

21 Q. All right. Thank you.

22 I'd like to now refer you to what we've
23 marked as Exhibit 2 M for purposes of identification.

24 Can you tell us -- take a look at this
25 document and tell us what this is.

1 A. This is a surveyor's report that accompanied
2 the survey that we just were looking at. That is also
3 dated January 27th, 2021.

4 ATTORNEY DUENSING: Your Honor,
5 we would move to admit Exhibit 2 - M.

6 THE COURT: Attorney Crain.

7 ATTORNEY CRAIN: Your Honor, I
8 would object that this is essentially an expert
9 report. That's what he is representing it has and
10 those are not admissible. They are hearsay
11 documents and experts shows and talks about their
12 opinions not just introduces their report.

13 THE COURT: Attorney Duensing.

14 ATTORNEY DUENSING: Well, Your
15 Honor. First of all, this is a document that the
16 surveyor obviously relies upon in offering his
17 opinions is not in offering any opinion on ultimate
18 issues in this case. It's simply, accompanying the
19 survey that shows factually what's occurring on the
20 property at the time.

21 THE COURT: I agree with counsel.
22 It just shows what Mr. Wisehart did as a result of
23 taking the survey. The report is admitted as a
24 work product and not an expert report.

25 ATTORNEY DUENSING: Thank you,

1 Your Honor.

2 BY ATTORNEY DUENSING

3 Q. Mr. Wisehart, so are we correct in
4 understanding that this document basically files in
5 tandem with the previous Exhibit 2 - J?

6 A. Yes, they go hand-in-hand.

7 Q. All right. What if any observations were made
8 with regard to the trails that were noted on Exhibit 2
9 J?

10 A. On this report, the note, numbered number one
11 says with reference to rights-of-way, old highways or
12 abandon roads, etcetera. My comment was the trail
13 meandering through the surveyed property apparently
14 opened and utilized by the owner of Parcel No. 2 D - 11.

15 Q. Right. And do you know where that information
16 came from?

17 A. It came from the collection of data on the
18 property and the process of preparing the survey, as
19 well as the observations or hand-in-hand with the
20 observations of the crew chief/the survey crew chief who
21 did the fieldwork.

22 Q. All right. Thank you. I'd like to now refer
23 to you what we've marked for purposes of identification
24 as Exhibit 2 K.

25 Can you tell us what this document is,

1 Mr. Wisehart?

2 A. Well, it's an unsigned -- and it doesn't have
3 the registration number, but I believe it is the
4 registered survey for the Parcel 2 D - 12 - 1 and 2 D -
5 12 - Remainder from 2008 that we discussed a little bit
6 before.

7 Q. So in other words, this is a survey that
8 reflects the fact that, that one sliver of land was
9 acquired by the owner of 2 D - 11?

10 ATTORNEY CRAIN: Objection, Your
11 Honor. Leading. And I would object to the
12 exhibit, as well.

13 THE COURT: First to the question
14 by Attorney Duensing, I think you're assuming facts
15 not in evidence. Again, you've not established
16 that Mr. Wisehart is custodian of this document or
17 how he is able to testify about a document that he
18 did not create or knows who created it, since he
19 candidly admitted that it's not signed or does not
20 appear to have the registered seal.

21 ATTORNEY DUENSING: That's fine
22 Judge. Then, I will refer the witness to Exhibit 2
23 A.

24 ATTORNEY CRAIN: I would note the
25 same objection, Your Honor. In that he has

1 identified that he wasn't a part of this survey.

2 He has no personal knowledge of it.

3 BY ATTORNEY DUENSING:

4 Q. Mr. Wisehart, can you identify this document
5 as a custodian of record?

6 THE COURT: I think he needs to
7 establish that he has those duties before you can
8 call him a custodian of records, Attorney Duensing.

9 ATTORNEY DUENSING: That's fine,
10 Judge.

11 BY ATTORNEY DUENSING

12 Q. Mr. Wisehart when you acquired Brian Moseley
13 & Associates, did you acquire his prior files and
14 surveys as part of that acquisition?

15 A. Yes.

16 Q. And do you maintain those preexisting files
17 and records as part of your current business records?

18 A. I do.

19 Q. And is it the ordinary and customary practice
20 of your business operation to maintain these records?

21 A. It is.

22 Q. And the entries in these record to your
23 knowledge, are they made at or near the time of the
24 actual survey themselves?

25 A. Yes, yes, that's correct.

1 Q. All right. And are these surveys made by your
2 company by someone with knowledge of the information
3 that they depict?

4 A. Yes.

5 Q. And in many cases, do these become official
6 recorded documents?

7 A. Many cases, yes.

8 Q. All right. And do you recognize the stamp as
9 your company's stamp on this document?

10 A. I do.

11 ATTORNEY DUENSING: Your Honor,
12 we would move to admit this as a business record.

13 THE COURT: Attorney Crain.

14 ATTORNEY CRAIN: Your Honor, I
15 note my objection, in the sense that he has not
16 established that he has any knowledge of what was
17 actually done here or that he -- I mean, all he is
18 saying that had I bought the company and I have
19 records now, but how they were created, he doesn't
20 really know or hasn't laid a foundation for it, at
21 least.

22 THE COURT: Mr. Wise --

23 ATTORNEY DUENSING: I'm simply
24 going to ask him to read this document for us and
25 tell us when it was created first of all, if he

1 can.

2 THE COURT: Mr. Wisehart, did you
3 have an opportunity to work at Brian Moseley
4 Associates prior to owning it?

5 THE WITNESS: I did.

6 THE COURT: And are surveys and
7 survey reports created in the same manner presently
8 as it were prior to you owning it?

9 THE WITNESS: They are.

10 THE COURT: And are you familiar
11 with the procedures?

12 THE WITNESS: Yes, I am.

13 THE COURT: And are they the same
14 procedures that you utilize now?

15 THE WITNESS: They are.

16 THE COURT: The Court will accept
17 Mr. Wisehart as the custodian of the record. He
18 testified that these documents were kept in the
19 ordinary course of business and he's familiar with
20 them.

21 Attorney Duensing, other than 2 A, are you
22 going to have Mr. Wisehart admit any other documents
23 admitted through Mr. Wisehart as the custodian?

24 ATTORNEY DUENSING: No Your
25 Honor, nothing other the documents that we

1 previously admitted with him.

2 THE COURT: Okay, 2 A is
3 admitted.

4 BY ATTORNEY DUENSING:

5 Q. And Mr. Wisehart, can you tell us the date
6 when this document was created?

7 A. I believe, I'm reading August 12th, 2008.

8 Q. All right. And on this document, is there any
9 reference to walking trails on Parcel 2 D - 12?

10 A. No.

11 ATTORNEY DUENSING: I have
12 nothing further of this witness, Your Honor.

13 THE COURT: Attorney Crain.

14 ATTORNEY CRAIN: Thank you, Your
15 Honor.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY CRAIN:

18 Q. Mr. Wisehart, you were retained by Ms. Bassil
19 in this case, correct?

20 A. I was.

21 Q. All right. And you are being paid for both
22 your work and your testimony, right?

23 A. Right.

24 Q. Okay. You were involved in any of the survey
25 other than the January 2021 survey, correct?

1 A. You're breaking up just a little bit. Could
2 you repeat the question?

3 Q. I apologize. Please, stop me if I'm breaking
4 up again, okay.

5 You weren't involved in any of the surveys
6 other than the 2021 survey, correct?

7 A. Of the things that we've seen today on the
8 screen?

9 Q. Yes, yes.

10 A. That is correct.

11 Q. All right. And with regard to Exhibit 2 A
12 that was just admitted as you being the custodian, you
13 don't know the task that was assigned to the survey
14 company with regard to this specific survey because you
15 weren't involved, correct?

16 A. I was not involved; that's correct.

17 Q. And you don't know whether during the 2008
18 survey anyone went into the interior of 2 D 12, correct?

19 A. From my knowledge, the manner in which surveys
20 are conducted, I do know that the surveyors would have
21 gone into 2 D - 12. That's part of their work.

22 Q. And I'm going to ask you specifically, you
23 weren't there, so you don't know whether they did in
24 this case, correct?

25 A. That is correct.

1 Q. Okay. And there are such things such as
2 boundaries surveys that survey the outer edges of a
3 property, correct?

4 A. Sorry, can you say that again?

5 Q. Sure. There are such a thing called a
6 boundaries survey that surveys the pins and the outer
7 region of a particular property, correct?

8 A. Yes, that is correct.

9 Q. And in 2021 your testimony is with regard to
10 that survey that you were just overseeing generally the
11 work not that you were onsite, correct?

12 A. I was not specifically on the property myself.

13 Q. And so to this day, you still have not walked
14 the interior of that property, correct?

15 A. That's correct.

16 Q. And in your survey reports which I believe was
17 noted as Exhibit 2 M, you testified about that it says
18 trail meandering through the surveyed property
19 apparently opened and utilized by the owner of Parcel
20 No. 2 D 11. You don't know when that trail was open or
21 cut, correct?

22 A. I have from my conversation with the party
23 chief that it was being --

24 Q. I don't want to hear about your conversation
25 with someone else.

1 Mr. Wisehart, you don't know when the trial
2 was cut, correct?

3 A. I did not witness that, no.

4 Q. Do you know how often the trail was maintained
5 and used by any individual, correct?

6 A. I don't know.

7 Q. Do you have any notes or any other records
8 that reflect whether someone walked in the interior of
9 property in the 2008 survey?

10 A. The -- well, yes. I don't have them in front
11 of me, but I do as part of the files that was done in
12 2008.

13 Q. You didn't produce them to counsel that hired
14 you, correct?

15 A. No.

16 Q. All right. And you spoke to Mr. Klein a few
17 months ago and indicated that to your knowledge back in
18 2008, no one had entered the interior of that property,
19 correct?

20 A. I believe that I have had that conversation
21 with him.

22 ATTORNEY CRAIN: Nothing else
23 from me, Your Honor.

24 ATTORNEY DUENSING: Your Honor,
25 just one brief follow-up.

1 THE COURT: Yes.

2 **REDIRECT EXAMINATION**

3 BY ATTORNEY DUENSING:

4 Q. Within the scope of the prior cross,
5 Mr. Wisehart, and now we're asking you within your
6 status as an expert surveyor, because I'm referring back
7 to the survey report that's been admitted in evidence as
8 2 M.

9 Is it a customary practice of a surveyor such
10 as yourself to rely upon information given to you by
11 your field chief in preparing your survey report?

12 A. Yes.

13 ATTORNEY CRAIN: Objection, Your
14 Honor. I think the Court was clear that he's not
15 allowed to testify as an expert as to these matters.

16 THE COURT: That is true.

17 ATTORNEY DUENSING: It is my
18 understanding, Your Honor, with regard to the
19 survey report and actual survey, items 2 J and 2 M
20 since Mr. Wisehart is the one who prepared that
21 survey document and report, that in that limited
22 area, he would be able to testify as an expert.
23 But with regard to the prior surveys, it was simply
24 as a custodian of business records; it was my
25 understanding.

1 THE COURT: No, the Court ruled
2 that Mr. Wisheart can testify. He didn't need to
3 testify as an expert; he can testify as to what he
4 used to complete his report.

5 ATTORNEY DUENSING: All right.

6 Q. So Mr. Wisheart in completing that survey
7 report, what source of information did you use?

8 A. Field notes and from the crew chief that was
9 conducting the field survey.

10 Q. And what information lead you to make that
11 notation in your report that the trail had been opened
12 up by the next door neighborhood?

13 A. That would have been derived from the
14 interaction between myself and the crew chief and his
15 field notes. Excuse me.

16 Q. And what information did he provide on that
17 specific topic?

18 ATTORNEY CRAIN: I would object
19 to hearsay.

20 THE COURT: That calls for
21 hearsay, Attorney Duensing.

22 BY ATTORNEY DUENSING:

23 Q. But it is correct without getting into the
24 specific substance that the information that you relied
25 upon in noting item number one in your survey report,

1 that's been admitted as Exhibit 2 M. That's information
2 that came from your actual crew chief who was out on the
3 property, correct?

4 A. That is correct.

5 Q. And again, without getting into substance,
6 your crew chief that actually prepared notes that
7 addressed that matter as well, correct?

8 A. Correct.

9 Q. All right.

10 ATTORNEY DUENSING: I have
11 nothing further, Your Honor.

12 THE COURT: Attorney Crain.

13 ATTORNEY CRAIN: Nothing further,
14 Your Honor.

15 THE COURT: Do the parties have
16 any objections to the Court asking questions?

17 ATTORNEY DUENSING: Not at all,
18 Your Honor.

19 ATTORNEY CRAIN: No, Your Honor.

20 THE COURT: Thank you.

21 BY THE COURT:

22 Q. Mr. Wisehart, who was the crew chief that
23 prepared the survey?

24 A. Andrew Bennett.

25 Q. Is he still an employee at Brian Moseley?

1 A. He is.

2 Q. And Mr. Wisehart, counsel referred to a
3 boundary survey. How is that different from the survey
4 you completed that's been admitted into evidence?

5 A. Boundary surveys typically concerned with the
6 limits and the description of a piece of a property
7 contrasted with the land title survey is a depiction of
8 that description within the context of reporting on the
9 improvements on the property, as well as, how the
10 boundary interfaces with those improvements.

11 Q. And your -- your survey was at a land title
12 survey?

13 A. Yes, that's correct.

14 Q. And 2 A, that was created in 2008, is that a
15 boundary survey?

16 A. Um, yes.

17 Q. So that boundary survey would not have any
18 kind of encroachments on it or showing any title
19 defects; is that my understanding?

20 A. Well, can I qualify what I said? The drawing
21 that was presented --

22 THE COURT: Attorney Duensing,
23 can you put 2 A back up for the Court?

24 ATTORNEY DUENSING: Sure, Your
25 Honor.

1 THE COURT: Thank you.

2 Q. Would that help, Mr. Wisehart?

3 A. Yes, please. Thank you.

4 THE COURT: Okay, for the record
5 we are looking at 2 A. And the Court's question
6 was whether this was a boundary survey that would
7 include any type of title defects or encroachments.

8 A. Okay.

9 Robin, can you blow it up so I can see the
10 note that's roughly in the middle of the page?

11 THE COURT: And that would for
12 the record be under what's marked as a stonewall.

13 Q. Is that the notes you are referring to?

14 A. I'm looking. Yes, right there the text that's
15 a little bolder and it says, *The area of land possessed*
16 *by the wall, fence, driveway and weatherhead is*
17 *approximately 1,030 square feet.*

18 Q. And what does that mean or indicate to you?

19 A. It indicates to me that the survey was showing
20 what was located on Parcel 2 D - 12 or what improvements
21 or in the words of the note, the land possessed by the
22 wall, fence, and driveway and weatherhead.

23 Q. So, would this survey had necessarily been
24 concerned with any paths or walkways on 2 D -- 12?

25 A. I believe it would have been, yes.

1 Q. And would it indicate if they were seen during
2 this survey?

3 A. Yes.

4 THE COURT: Thank you,
5 Mr. Wisehart.

6 Attorney Duensing, any questions on the
7 Court's questions?

8 ATTORNEY DUENSING: No, Your
9 Honor. Thank you.

10 ATTORNEY CRAIN: Sorry.

11 **RECROSS-EXAMINATION**

12 BY ATTORNEY CRAIN:

13 Q. Mr. Wisehart, going back to the 2008 survey
14 again, you weren't a party to the survey, correct?

15 THE WITNESS: Robin, can you show
16 the whole title block?

17 A. Okay, what I was looking for were the initials
18 of the person who did the survey. And so, to answer
19 your question, no.

20 Q. So, you don't have any personal knowledge of
21 what the crew did or didn't do other than they
22 identified the driveway issue?

23 A. That's correct.

24 Q. So you don't know for example, if they went on
25 the north side of the property or looked for any trail

1 or went anywhere other the driveway area, correct?

2 A. I don't know.

3 Q. Okay. And that survey is not even signed,
4 correct?

5 A. It does not have a signature on it, no.

6 ATTORNEY CRAIN: Nothing further
7 from me, Your Honor.

8 THE COURT: Attorney Duensing,
9 you have you the last word.

10 ATTORNEY DUENSING: Nothing
11 further, Your Honor. Thank you.

12 THE COURT: May Mr. Wisehart be
13 excused?

14 ATTORNEY DUENSING:
15 (Non-responsive.)

16 THE COURT: Counsel, may
17 Mr. Wisehart be excused?

18 ATTORNEY DUENSING: Oh, I'm
19 sorry. Yes, Your Honor.

20 THE COURT: Attorney Crain.

21 ATTORNEY CRAIN: Yes, Your Honor.

22 THE COURT: Okay. Mr. Wisehart,
23 you're excused from the Court. You may remain and
24 observe as long as you keep your mic muted or you
25 may exit the meeting and have a great day.

1 THE WITNESS: Thank you, Your
2 Honor.

3 THE COURT: Thank you.

4 ATTORNEY CRAIN: Your Honor,
5 could I ask for a couple minutes, a courtesy break?

6 THE COURT: That's fine. The
7 Court will take a five-minute recess.

8 Attorney Duensing, is your next witness
9 in the waiting room?

10 ATTORNEY DUENSING: Yes, our next
11 witness is Mr. Terry Anderson, Your Honor.

12 THE COURT: Okay. I'm going to
13 admit Mr. Anderson and the Court is going to be in
14 recess for five minutes.

15 ATTORNEY DUENSING: Thank you.

16 **(Whereupon, proceedings were in recess from**
17 **10:40 a.m. to 10:46 a.m.)**

18 THE COURT: Counsels, are we
19 ready?

20 ATTORNEY CRAIN: I am, Your
21 Honor.

22 THE COURT: Attorney Duensing. I
23 believe Mr. Anderson is out of the waiting room.

24 ATTORNEY DUENSING: Thank you,
25 Your Honor.

1 ATTORNEY CRAIN: If we're waiting
2 a minute, Your Honor, may I indulge you with a
3 question unrelated to this?

4 Is there any idea when they might get
5 back to a more an in-person approach to hearings
6 and such?

7 THE COURT: We are working on a
8 schedule for bench trials for necessary hearings
9 that we can't conduct via zoom, but it's looking
10 toward September for those and maybe later in a
11 year for a jury trial.

12 ATTORNEY CRAIN: That's pretty
13 consistent.

14 THE COURT: Well, I guess with
15 this new outbreak has given us a possible pause.

16 ATTORNEY CRAIN: Right. Who
17 knows? We'll see how this plays out.

18 THE COURT: I've also gotten a
19 message from the court reporter. Please remember
20 that we do have a court reporter taking everything
21 down. So please speak slowly and as clearly as
22 possible.

23 Attorney Crain, I don't mean to call
24 you out.

25 ATTORNEY CRAIN: No, no, no. I'm

1 a faster talker. I appreciate the reminder.

2 THE COURT: You do speak a little
3 quickly even by my standard. I have always been
4 told that I'm a fast speaker, as well.

5 All right. We are back on the record.

6 Attorney Duensing, I believe
7 Mr. Anderson is out of the waiting room.

8 ATTORNEY DUENSING: Thank you,
9 Your Honor.

10 THE COURT: Mr. Anderson, can you
11 turn on your video?

12 THE WITNESS: Yes, ma'am. I
13 thought it was on. I'm looking to see what's
14 wrong.

15 THE COURT: Okay, can you swear
16 Mr. Anderson in?

17 THE CLERK: Mr. Anderson, can you
18 raise your right hand?

19 **TERRY ANDERSON**, having been first
20 duly sworn as a witness, testified as follows:

21 MR. ANDERSON: I do.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY DUENSING:

24 Q. Good morning, Mr. Anderson?

25 A. Good morning.

1 Q. Would you state your full name for the record,
2 please?

3 A. Terry Allen Anderson.

4 Q. Good morning. Mr. Anderson, what is your
5 profession?

6 A. I am retired right now. I was a journalist
7 and a university professor.

8 Q. Am I correct in understanding that at a
9 certain point in time, you owned the property that was
10 subject of a litigation, Parcel 2 -- 2 D - 12 Estate
11 Nazareth?

12 A. With my then wife, yes.

13 Q. All right. Can you tell the Court how it is
14 you first became interested in St. Thomas in general,
15 and acquiring a piece of property on St. Thomas in
16 particular?

17 A. Well, when I returned -- actually, when I left
18 the A P, we were going to Antigua every once in awhile
19 because that's where I was taken after my immediate
20 release from Lebanon. We found Antigua delightful, but
21 very small. So we tried the Virgin Islands, and we
22 thought Charlotte Amalie and the area is very nice.

23 I'm a diver, a scuba diver and of course
24 there is a great deal of scuba diving in the US Virgin
25 Islands and BVI next door. So we just found it very

1 congenial and interesting and quite a lovely place. We
2 learned of this small piece of property which had a very
3 tiny, but still actual beach in Secret Harbor. As we
4 got to know the islands, and we decided that that will
5 be a very nice place to put a small villa so we bought
6 it.

7 Q. Mr. Anderson, if I can interrupt for just one
8 moment. I would like to you take a look what I have
9 marked as Exhibit 10. We are going to share that on the
10 screen for you.

11 And take a look at that and let us know if
12 you can tell us what that is?

13 A. That's the deed to the property that we
14 bought.

15 Q. All right.

16 ATTORNEY DUENSING: And Your
17 Honor, we would move to admit Plaintiff's
18 Exhibit 10 into evidence.

19 THE COURT: Attorney Crain.

20 ATTORNEY CRAIN: Your Honor, no
21 objection. I will certainly stipulate if it helps
22 to speed things along to the transfer of title as
23 well, from Mr. Anderson the seal of 2006.

24 ATTORNEY DUENSING: Thank you,
25 counsel.

1 That will be Exhibit 11, Your Honor.
2 That will be the only two exhibits that we seek to
3 admit through Mr. Anderson.

4 THE COURT: Okay. They are
5 admitted by stipulation.

6 BY ATTORNEY DUENSING:

7 Q. Mr. Anderson, I'm sorry. I apologize. I
8 interrupted you. You were getting ready to tell us how
9 you became interested in this particular piece of
10 property.

11 A. It was intriguing because it was the last
12 actual piece of beach in and around Secret Harbor, and
13 even though the Virgin Islands is very large, that was a
14 unique thing for us. And we thought it would be a very
15 nice to have it. We didn't have any immediate plans to
16 build on it, but we discussed what we might do with the
17 property when we bought it.

18 Q. And when you first acquired this property in
19 2002, did you have an opportunity to actually see the
20 property and walk the property?

21 A. Oh, yes. We wouldn't have bought it without
22 walking it.

23 Q. And at that point in time Mr. Anderson, were
24 there any established walking trails on that property?

25 A. No, it was mostly covered with a funny kind of

1 brush and other plants. You could pick your way down
2 the hill to the beach, but it wasn't exactly easy, but
3 you could do that, but there wasn't any established
4 route down there.

5 Q. And over the years actually, did you have
6 occasion to do what you just described in terms of
7 picking your way down the hill to the water?

8 A. Oh, yes. We picnicked there, and we went
9 there for snorkeling, and I did quite a number of shore
10 dives from that beach up through the mouth of Secret
11 Harbor out of about a hundred meters or so. To the
12 left, there is a small reef that I quite enjoy diving,
13 you can see.

14 THE COURT: Attorney Duensing,
15 can we put a time period on these?

16 ATTORNEY DUENSING: Absolutely,
17 Judge.

18 BY ATTORNEY DUENSING:

19 Q. So, Mr. Anderson, you've started with your
20 acquisition of the property in 2002, correct?

21 A. Yes.

22 Q. And can you tell Your Honor when was the last
23 time you that you had an opportunity to visit the
24 property?

25 A. In 2009, I believe it was the spring.

1 Q. All right. And when you were there in 2009,
2 did you have an opportunity to walk the property?

3 A. Yes, I went there and did the shore dive from
4 the beach.

5 Q. And how did you access the property 2009?

6 A. The same way I always did, you pick your way
7 down through the bushes to the beach. It's not a long
8 distance, but you have to take care.

9 Q. Did you park at the top on the estate road
10 sort of at the top end of the property?

11 A. Right, on the estate road off on the shoulder
12 of the estate road where the property is.

13 Q. And on the last occasion when you went,
14 visited the property and went diving, did you make your
15 way from the top of the property where the estate road
16 is, down to the water?

17 A. Yes.

18 Q. And were there any established trails when you
19 were at the property in 2009?

20 A. Not that I can see, no.

21 Q. All right. At any time during your visits to
22 the property from 2002 to 2009, did you ever observe any
23 established trails on your property?

24 A. No, every once in awhile I can see evidence
25 that somebody had been there, but there was still no

1 trail built from the top down to the beach.

2 Q. And did you ever have -- You owned a boat in
3 the area for some period of time also, correct?

4 A. Yes.

5 Q. Would you anchor the boat there in Secret
6 Harbor on occasion?

7 A. At the mouth of Secret Harbor. It was a large
8 turn around so you can actually take it into the area,
9 but in the mouth, that's where we anchored it.

10 THE COURT: Attorney Duensing, is
11 Mr. Anderson a hostile witness?

12 ATTORNEY DUENSING: No, he's not.

13 THE COURT: We are trying to move
14 this along, but a lot of your questions are
15 leading. Although there's no objections from
16 counsel --

17 ATTORNEY CRAIN: I was trying to
18 hold my tongue, Your Honor, to help speed things
19 along and I appreciate it.

20 ATTORNEY DUENSING: I'm wrapping
21 up this witness, Judge. I was just trying to move
22 things quickly. I apologize.

23 BY ATTORNEY DUENSING:

24 Q. Mr. Anderson, the time that you were on your
25 boat in the area, what timeframe was that?

1 A. Oh, that would have been 2003 to 2009.

2 Q. And did you ever have occasion to observe your
3 property while you were on your boat?

4 A. Well, yeah sure. We could see it directly
5 there.

6 Q. And during those occasions, were you ever able
7 to observe any established trail on your property?

8 A. No.

9 Q. All right. Thank you, Mr. Anderson.

10 ATTORNEY DUENSING: I have
11 nothing further, Your Honor.

12 THE COURT: Attorney Crain.

13 ATTORNEY CRAIN: Thank you, Your
14 Honor.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY CRAIN:

17 Q. Mr. Anderson, you never lived on St. Thomas,
18 correct.

19 A. No.

20 Q. And you only visited on occasion?

21 A. That's correct.

22 Q. The property is generally wooded and
23 undeveloped, correct?

24 A. Yes. I wouldn't say wooded, but it's covered
25 with bushes.

1 Q. Okay. There are trees on the property, as
2 well?

3 A. No big trees, no; I call them bushes.

4 Q. All right. Do you have a specific
5 recollection of any particular date, one of which you
6 visited the property?

7 A. Not a specific date. It's been quite a long
8 time since I've been there, but I've traveled in and out
9 of the Virgin Islands many times over those years. I
10 had -- my boat was anchored at Elephant Harbor. I would
11 go down and stay on it for three or four weeks at a
12 time, sometimes with my family, sometimes with friends,
13 sometimes by myself. I captained most of those times
14 most of the time take care of that boat, but I was in
15 and out of the Virgin Islands frequently.

16 Q. And when you took your boat, you'd anchor it
17 in the bay, correct?

18 A. Sometimes.

19 Q. You didn't sleep at the property, correct?

20 A. No, there was no place to sleep there.

21 Q. So, all you could do when you have your boat
22 was observe it from the bay?

23 A. Yeah, or go ashore and walk on the beach, but
24 that was all.

25 Q. All right. And when you were there, you were

1 there for a day or maybe a couple days at a time; is
2 that right?

3 A. No, sometimes I stayed in the Virgin Islands
4 for a month.

5 Q. Sorry. When you were near your property, the
6 property 2 D 12, you were there for a day or maybe a
7 couple days, correct?

8 A. Yes.

9 Q. And so for the vast majority of each given
10 year, you weren't near the property, correct?

11 A. No.

12 Q. And that will be true of Ms. Bassil, as well,
13 to your knowledge?

14 A. You would have to ask her.

15 Q. While you were married to her and you were
16 traveling together?

17 A. Yes, when were married, yes, certainly true.
18 After we were married, she traveled. After we were
19 divorced, she traveled separately; I know, we do that.

20 Q. But you don't know what she did on those post
21 divorced trips, correct?

22 A. No.

23 Q. All right. You didn't own the property after
24 2006, correct?

25 A. No.

1 Q. You completed an affidavit in this case, am I
2 right?

3 A. Yes.

4 Q. And in your affidavit, you never mentioned
5 anywhere that you traveled through the property to get
6 to the beach, correct?

7 A. Well no, no that wasn't the question that was
8 asked of me. I didn't say that, but that's the only way
9 to get to the beach, except from the water.

10 Q. Okay. So the way to the get to the beach --
11 so what you testified to earlier I think Mr. Anderson is
12 that you will park near the estate road, and you would
13 walk through the property down to the beach, correct?

14 A. Yes.

15 Q. Okay. And you saw evidence of other people
16 having used the property when you weren't there,
17 correct?

18 A. Occasionally, yeah. It would look like
19 somebody had picnicked there or something, left some
20 trash.

21 Q. You don't know who those people were or how
22 they were using it, correct?

23 A. No.

24 Q. And would you describe the property being full
25 of thorns?

1 A. Yeah, there were a lot of thorn bushes in
2 there.

3 Q. So you had to follow a particular sort of path
4 to get to the beach, correct?

5 A. Well, you can go around to either side of the
6 bush, yeah, but there was no trodden path.

7 Q. Did you ever use the steps to Secret Harbor to
8 get to the beach?

9 A. What do you mean steps to Secret Harbor?

10 Q. There are some steps near Secret Harbor to get
11 to the beach as I understand it. Did you ever use it?

12 A. No, no. I occasionally took my dinghy to the
13 beach at Secret Harbor and there were a few times when
14 we stayed at the hotel there.

15 Q. All right. And so you'd agree with me then
16 Mr. Anderson essentially whatever you want to call it,
17 you walked the path from the estate road down to the
18 beach?

19 A. I walked from the top to the bottom, not
20 always following the same route.

21 Q. Did you have to use a machete?

22 A. No.

23 Q. And that's because there was enough clearing
24 for you to walk down?

25 A. Enough room for me to walk down, yeah.

1 Q. Right. And you said you entered the property
2 in 2009 was the last time?

3 A. I believe that's so, yes.

4 Q. Who were you there with?

5 A. My cousins, Tom Anderson and his lady. They
6 dropped me off at the top of the beach -- at the top of
7 the property, and I went for the shore dive while they
8 went shopping, and they came back and picked me up and
9 we left.

10 Q. Did they walk down the path as well to go to
11 the beach?

12 A. No, they didn't go through the path. They
13 stayed in the car.

14 Q. All right. In 2009, did you walk the exterior
15 of the property?

16 A. No, I just went down the hill to the beach.

17 Q. I'm sorry. You went -- So you walked back up
18 the path too, to get back to the car?

19 A. Yes. There was no trodden path. I said that
20 several times. You just picked your way through the
21 bushes as you went up or down.

22 Q. And when you last visited the property
23 subsequent to your purchase, that you walked through, I
24 think you testified that you walked through on a couple
25 of occasions. When was that specifically?

1 A. Well, we saw it before we bought it. And
2 then I visited the property a number of times in the
3 years between then and 2006 when I deeded it to Madeline
4 and then a few times after that.

5 Q. Prior to your purchase of the property, did
6 you walk through the interior of the property?

7 A. Yes.

8 Q. When was that?

9 A. When we purchased -- just before, we purchased
10 it.

11 Q. Okay, who were you with?

12 A. The realtor and Madeline.

13 Q. All right. When you came back in 2009 and
14 walked down from the estate road to the beach, you
15 didn't own the property. So you were trespassing at
16 that point; is that right?

17 A. My ex-wife and I are on good terms. I don't
18 think she'd mind.

19 Q. All right. And so, how many days
20 Mr. Anderson, in total would you say that you stayed at
21 the property 2 D 12 while you were in St. Thomas between
22 when you purchased and when you last visited in 2009?

23 A. That will be hard to say. I know I dove that
24 reef at least a dozen or 15 times. I found it was a
25 very congenial, and a very nice dive. I occasionally

1 went snorkeling off that beach. And I snorkeled when we
2 stayed at the Secret Harbor several times, from Secret
3 Harbor beach over to that area. I don't know. I guess
4 I would say 20 or 30 times over the years. That's a
5 guess.

6 Q. And did you hire any caretaker of any kind to
7 maintain the property while you owned it?

8 A. No.

9 Q. So there was no one overseeing the use of the
10 property while you weren't on island, correct?

11 A. No, the realtor kind of kept an eye on it for
12 us, but we were friends so.

13 Q. And did you take any extra precautions while
14 walking from the road down to the beach to make sure you
15 didn't get stuck by any thorns or anything?

16 A. I would be careful not to get scratched.
17 Although, I did get scratched a few times. You have to
18 walk carefully because it's a steep hill and there are a
19 lot of rocks around.

20 Q. It's a fairly narrow area you walk through; is
21 that correct?

22 A. Fairly narrow passage way between the bushes,
23 yes.

24 Q. All right.

25 ATTORNEY CRAIN: Nothing further

1 for me at this moment, Your Honor.

2 THE COURT: Thank you.

3 Attorney Duensing.

4 ATTORNEY DUENSING: Thank you,
5 Your Honor. I have nothing further of
6 Mr. Anderson.

7 THE COURT: The Court has a
8 couple of questions.

9 **EXAMINATION**

10 BY THE COURT:

11 Q. Mr. Anderson, what is your understanding when
12 you were asked by *established trails*, what does that
13 mean to you?

14 A. A trail that's been cut and smooth so that you
15 can walk down it.

16 Q. Okay. And you used a term trodden path and
17 what do you mean by that?

18 A. An obvious path. I mean, like a fairly large
19 amount of traffic on it.

20 Q. When you walked the property prior to your
21 purchase, you said that your then wife was with you and
22 the realtor. What realtor was with you?

23 A. What is her name? Madeline -- I've forgotten
24 her name. She has remained close friends with her.
25 It's been a long time for me.

1 Q. Okay. And at that time, did you see any
2 established trail or trodden paths as you described
3 them.

4 A. No, I don't think so. It is pretty much
5 covered in brush. There was also -- the base is rock
6 mostly. So there wouldn't have been much evidence of
7 people occasionally going through there. There is no
8 grass or anything to be stepped on.

9 THE COURT: Thank you,
10 Mr. Anderson.

11 Any questions from counsel based on the
12 Court's questions, Attorney Duensing?

13 ATTORNEY DUENSING: Nothing
14 further, Your Honor.

15 THE COURT: Attorney Crain?

16 **RECROSS-EXAMINATION**

17 BY ATTORNEY CRAIN:

18 Q. Would you agree Mr. Anderson, it is very
19 difficult to walk through the bush in the Virgin
20 Islands, correct?

21 A. Depends on what kind of bush it is. I mean,
22 the bush wasn't that thick; it was, you know, you can
23 walk through the bush.

24 Q. All right.

25 ATTORNEY CRAIN: Nothing further

1 from me, Your Honor.

2 THE COURT: Thank you.

3 Anything on that, Attorney Duensing?

4 ATTORNEY DUENSING: No, Your
5 Honor. Thank you.

6 And as far as we are concerned
7 Mr. Anderson, we thank you and you can be excused
8 if that's okay with the Court.

9 THE COURT: Attorney Crain, is
10 there any further testimony from Mr. Anderson?

11 ATTORNEY CRAIN: No, Your Honor.

12 THE COURT: Mr. Anderson, thank
13 you for your testimony. You can remain as a public
14 observer if you'd like with your microphone muted
15 or you may leave the meeting now.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: Thank you. Have a
18 good day.

19 THE WITNESS: You too.

20 THE COURT: Attorney Duensing,
21 there is no one left in the waiting room. Do you
22 have your next witness?

23 ATTORNEY DUENSING: Yes, Your
24 Honor. I believe -- well, we intend to call Rennix
25 Charles next. I just need to -- I just need to

1 check quickly because he was coming to our office
2 and make sure that he has arrived. We have a back
3 up witness in case he doesn't arrive. So if you'll
4 just indulge me for just one minute while I step
5 out of my office.

6 THE COURT: Okay. Can one of
7 your colleagues see if he is there?

8 ATTORNEY DUENSING: Yes, just one
9 second.

10 (RESPITE.)

11 ATTORNEY DUENSING: Your Honor, I
12 believe that he's in -- he may be in route.
13 Attorney Sauerwein will give us a report.

14 THE COURT: Attorney Duensing,
15 you are not muted.

16 ATTORNEY DUENSING: Your Honor.

17 THE COURT: Yes.

18 ATTORNEY DUENSING: Okay, Rennix
19 is still in route and Lisa Curreri is about 10
20 minutes away. So I suggest that we go forward with
21 Madeline Bassil so we don't waste any time.

22 THE COURT: Okay.

23 Madam clerk, can you swear in
24 Ms. Bassil?

25 THE CLERK: Ms. Bassil, can you

1 raise your right hand?

2 **MADELINE BASSIL**, having been
3 first duly sworn as a witness, testified as
4 follows:

5 MS. BASSIL: I do.

6 THE CLERK: Okay.

7 THE COURT: You may proceed.

8 ATTORNEY DUENSING: Thank you,
9 Your Honor.

10 **DIRECT EXAMINATION**

11 BY ATTORNEY DUENSING:

12 Q. Good morning, Ms. Bassil how are you?

13 A. Fine, thank you.

14 Q. Would you state your full name for the record
15 please?

16 A. Madeline Adib Bassil.

17 Q. And where did you live?

18 A. I live in New York.

19 Q. All right. And this case concerns property
20 that you own at Parcel 2 D - 12 Nazareth; do you
21 understand that, correct?

22 A. Yes.

23 Q. Okay. Can you tell the Court how you first
24 became interested in St. Thomas and the property that
25 you acquired at Secret Harbor?

1 THE COURT: Attorney Duensing,
2 I'm sorry.

3 Ms. Bassil, there is quite a bite a
4 feedback when Ms. Bassil has her microphone on.
5 Are you near anything, Ms. Bassil, that will be
6 causing that feedback?

7 THE WITNESS: No, I'm in my
8 office.

9 THE COURT: Is there a radio on?

10 THE WITNESS: No, ma'am.

11 THE COURT: Okay. We'll keep
12 trying. The court reporter might have a hard time.

13 THE WITNESS: Excuse me, it's not
14 coming from me. I don't think so.

15 THE COURT: Okay, the Court is
16 going to try muting its mic for now. Okay, the
17 Court is going to mute its mic. I think that will
18 help.

19 Counsel, you can proceed.

20 ATTORNEY DUENSING: Thank you,
21 Your Honor.

22 BY ATTORNEY DUENSING

23 Q. Ms. Bassil, how it is that you first became
24 interested in St. Thomas in acquiring the property
25 that's the subject of this case?

1 A. I mentioned when he came home in '91. We went
2 to a few places in the Caribbean because that's where
3 they sent us first, for briefing, debriefing.

4 Anyway, and so then we went to St. Thomas
5 several times and we liked it. We thought it was nice
6 and through friends, we met Lisa Curreri and you know,
7 she told us there was the property and if we were
8 interested. I mean, we were interested that's how we
9 were looking for someone and through friends we met her.
10 And she told us about that property and then, you know,
11 we immediately fell in love with it, you know, we bought
12 it and --

13 Q. Put this in context. Can you tell us when
14 this was when you first observed the property?

15 A. It was just before 2002.

16 Q. All right. And when you were -- when you were
17 thinking about -- when you were thinking about buying
18 the property with Mr. Anderson, did you have an
19 opportunity to inspect the property?

20 A. Of course.

21 Q. All right. Did you actually walk the property
22 at that time?

23 A. We did. It's difficult, but we did. Yes, we
24 have to, to see the size, you know, and for me I don't
25 understand sizes then especially so and how close it is

1 to walk to go down to the water, how big it is. So
2 yeah, hardly but we did definitely.

3 Q. And at that time in 2002, did you observe any
4 established trails or paths on your property?

5 A. No.

6 Q. All right. And did you -- What was your
7 original intention with regards to the property after
8 you bought it?

9 A. Building our future home.

10 Q. All right. And did you ever -- did you ever
11 actually clear any trails on that property?

12 A. We did a couple times through Lisa. She
13 actually, it was she mentioned a couple of times, you
14 know, let's clear especially when she thought it was
15 time to do it. We did it a couple of times.

16 Q. Are you talking about clearing brush or
17 clearing trails?

18 A. No. Clearing, you know, instead of being too
19 bushy, so to clear so you know -- not we, so it can be
20 taken care of, just to clear.

21 Q. And when was that?

22 A. That's a good question. I know that at least
23 one of them was in 2015 something like that, around that
24 time, but the first one was sometime before.

25 Q. All right. And did you continue -- You never

1 actually lived on St. Thomas, correct?

2 A. Lived like have an address there, no.

3 Q. Yes.

4 A. I would stay at Secret Harbor. I personally
5 stayed, me and my daughter. We stayed several times
6 there and by myself and my sisters and my friends. I
7 was there -- The last time I was there was in 2015 or
8 '14, '15 with my sister. We stayed two weeks in Secret
9 Harbor.

10 Q. All right. And during those times that you
11 stayed at Secret Harbor, are you talking about the
12 resort property down on the beach, correct?

13 A. That's correct.

14 Q. All right. During those times that you stayed
15 at Secret Harbor leading up to 2015, did you have any
16 opportunity to observe your property?

17 A. Always.

18 Q. Right.

19 A. I'm sorry because I stayed there and my sister
20 and my friend Evanna when we went in 2012. And be
21 honest, I'm showing off my property to them. I love it.
22 I didn't get a chance to build on it and I regret.

23 Q. And during those times, you were showing off
24 your property leading up to 2015, did you ever see any
25 established trails on your property?

1 A. No, we didn't. We tried, my sister and I to
2 walk from up the road down, there was no way we can do
3 that. I just showed it to her. I showed his property,
4 Mr. Klein's property adjacent to mine. I showed her
5 where he took down the 1,000 foot. And so no, we
6 couldn't, we could never -- we could not walk.

7 Q. When you are talking about the 1,000 foot, is
8 that where you are referring to the encroachment dispute
9 that you had back in 2008?

10 A. Yes.

11 Q. And how was that? What's your recollection
12 about that encroachment?

13 A. Mr. Klein called me on the phone. I thought
14 he wrote me but I'm mistaken. He called me and said
15 that by mistake, his contractor took some foot from --
16 He wanted to build either a wall or something and he
17 took down -- he didn't mention the amount of foot, but
18 that he is very sorry this happened. This is when I
19 immediately, I think -- I believe I called Lisa and we
20 spoke to David Nickles, the lawyer, and he took the
21 case, but then I found out that he is actually
22 Mr. Klein's lawyer. So, I had to decline using him
23 because of conflict of interest.

24 Q. When was this again?

25 A. It was -- I mean, it is in 2008.

1 Q. All right. Well at the time you were dealing
2 with this -- Well, what was the nature of the
3 encroachment in 2008?

4 A. The nature?

5 Q. Yes, what had Mr. Klein put on to your
6 property?

7 A. I think he put a wall down. He extended his
8 driveway and then took this much down this way, to the
9 sea, to the water from up to the driveway, close to the
10 driveway -- he was doing his driveway and he was --
11 Yeah, he extended it, and he said the contractor made a
12 mistake.

13 Q. All right. And at the time you were
14 attempting to work out the dispute in 2008, did you
15 observe any trails that had been cut on your property?

16 A. No, sir.

17 Q. And if you had observed trails cut on your
18 property at that time, would you have dealt with that
19 then, as well?

20 A. To be honest with you, I wouldn't have known
21 what to do because I -- I would have gone straight to
22 someone who would have known and it would be Lisa. It
23 will be -- I mean, it will be someone with the
24 understanding. It will definitely be Lisa. I wouldn't
25 have known that this is an encroachment, he should or

1 shouldn't have done. This is the honest truth.

2 Q. So how did you work out that encroachment with
3 Mr. Klein, the one in 2008, involving the wall and the
4 driveway?

5 A. Well, then when he called me to say that, I
6 took it innocently and I contacted -- I told Lisa. Lisa
7 contacted -- I know a lawyer who is Mr. Nickels. We
8 spoke and we talked. I went to the island and saw him
9 and yeah, that's how we approached Mr. Klein about this.
10 And then we started e-mailing back and forth and at some
11 point when we were about to make -- like he admitted
12 that he did that, we decided that's the best way to do
13 it, is that he buys that what he took already and pays
14 for it and then after that, soon after, we kind of
15 agreed. I found out that he actually took more than he
16 had said, and then I went to the island, and I had to
17 stop with Mr. Nickels and flew a friend, someone I know
18 whose daughter work in St. Croix. She's a lawyer. I
19 contacted her and she said, we don't do that work
20 because we're in St. Croix and you're in St. Thomas.
21 And then she gave me Mr. Casner's name to contact.

22 Q. All right. So your last visit to St. Thomas
23 was in 2015, correct?

24 A. Correct.

25 Q. And were you at Secret Harbor in that last

1 visit?

2 A. Yes, almost every time, I stayed at Secret
3 Harbor, always.

4 Q. And did you have an opportunity in 2015 during
5 that visit to observe your property?

6 A. Yes.

7 Q. And did you see the trails that -- The trails
8 that are now on your property, did you see them in 2015?

9 A. No, sir.

10 Q. All right. Now have you recently attempted to
11 list your property for sale?

12 A. Yes.

13 Q. And were you able to list it for sale?

14 A. No, because --

15 Q. And why not?

16 A. -- because when, you know, once we wanted to
17 put it for sale, you know. They had to put the sign and
18 this is when they discovered the trail. And Lisa told
19 me -- We put it for sale and then she said oh, oh this
20 is -- there is a trail here. We don't know what's going
21 on. We cannot put the property on sale because it would
22 be there's a word for it; I cannot say.

23 ATTORNEY CRAIN: Your Honor, can
24 I object to the hearsay from Ms. Curreri? I'm not
25 sure it matters that much, but I just want to note

1 my objections.

2 THE WITNESS: No, no, he said it
3 was trails. And we were not trying to sell it
4 someone when there is a trail.

5 THE COURT: Attorney Duensing,
6 can we put a time period on the sale?

7 ATTORNEY DUENSING: Yes exactly,
8 Judge.

9 BY ATTORNEY DUENSING:

10 Q. Can you tell us please, Ms. Bassil, when this
11 was that you're describing about the discovery of the
12 trails?

13 A. It was late 2020, I believe, early '21.

14 Q. All right. And who reported that to you?

15 A. Lisa Curreri.

16 Q. And that's the first you've learned of any
17 trails on the property?

18 A. Yes.

19 Q. All right.

20 ATTORNEY DUENSING: I have
21 nothing further, Your Honor.

22 THE COURT: Attorney Crain.

23 ATTORNEY CRAIN: Thank you, Your
24 Honor.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY CRAIN:

2 Q. Ms. Bassil, the parcel 2 D 12 that we're
3 talking about is undeveloped, correct?

4 A. Yes, correct.

5 Q. And it's -- I think you talked about how you
6 were at the state road and it was heavily vegetated and
7 you couldn't make it down; is that right?

8 A. Yes.

9 Q. All right.

10 A. Are we talking about 2015?

11 Q. 2000 -- when you were there with your sister,
12 I think you said it was 2012?

13 A. No, that's my friend. 2013 I had it with my
14 sister.

15 Q. Okay, I apologize.

16 A. That's no problem. And my daughter was there,
17 too.

18 Q. And when you -- You testified that it sounded
19 like one time you walked through the property; is that
20 right?

21 A. Not then.

22 Q. Okay, you never walked down?

23 A. Not in 2015. We did when we wanted to buy it.

24 Q. Okay so, prior to purchasing is the only time
25 when you walked through the interior of the property,

1 correct?

2 A. Yes, but even when I wanted to, I couldn't.
3 I went with Lisa, also once. We couldn't walk it; it
4 was too bushy.

5 Q. You heard your -- Mr. Anderson testify that he
6 was able to walk through, correct?

7 A. Yes.

8 Q. Did you have a caretaker for the property
9 Ms. Bassil overlooking -- caring for the property while
10 you were not there?

11 A. No because there was nothing to take care of
12 other than the bushes when we, you know, cleared some of
13 the bushes because it was just a land. I never thought
14 -- You take care of a house, I guess, and you do your
15 best to maintain. Maybe, we didn't maintain it enough
16 times, but that was all.

17 Q. Do you know whether the property ever had any
18 termite nests or any rodents on it?

19 A. No.

20 Q. Do you have any documents, Ms. Bassil, that
21 evidence your trips to Secret Harbor or to visit the
22 property?

23 A. I wish I could go back to all the tickets I
24 bought or I did contact Secret Harbor to give me, you
25 know, a list of the dates, I was there. They said they

1 don't have them.

2 ATTORNEY CRAIN: Let me object to
3 the hearsay, Your Honor, in her answer.

4 THE COURT: Sorry, Ms. Bassil.
5 Only testify as to what you said or did, okay.

6 THE WITNESS: Yes.

7 THE COURT: Thank you.

8 BY ATTORNEY CRAIN:

9 Q. All right. As you sit here right now, you
10 don't have any documents or receipts evidencing any
11 trips you may have made to the property, correct?

12 A. No.

13 Q. You said you were there to show it off to your
14 friends at times, or your family members. Do have you
15 any pictures of you showing it off to any of your
16 friends or family members?

17 A. You know what, I do have pictures that I could
18 not find on my phone. I have changed phones two or
19 three times already since. I asked my friend to show me
20 her pictures -- No, I don't -- now at this moment, I
21 don't.

22 Q. Okay. And do you recall the specific date of
23 any visit you made to St. Thomas or to the property?

24 A. Prior to 2000, like when?

25 Q. At any time after you purchased the property

1 do you know -- Can you identify a date when you were
2 actually on the property?

3 A. Several times, it was during Christmas. We
4 stayed as a family in Secret Harbor. Terry never
5 mentioned that. I went in April in 2012 and 2015. I
6 went in April as well because of the rush of the
7 holidays is off and out. And so it was easier to stay
8 at Secret Harbor at that time.

9 Q. After you purchased the property in 2002, did
10 you ever walk the exterior boundary of the property?

11 A. I would walk from Secret Harbor up pass the
12 parking, go up the road, come back to the entrance of
13 the property and to where Mr. Klein's property is. I'll
14 do it with them, you know, just walk the road up.

15 Q. Okay. So you would look at it from the road
16 is where you would look it at from?

17 A. From the beach where I would be, you cannot
18 miss it. You can't miss looking at it, and then also
19 when I would walk down off and, you know, from both
20 sides.

21 Q. And when you're at the beach looking the
22 property, you were a few hundreds yards away from the
23 property at that time?

24 A. As a matter of fact, we walked the beach and
25 reached the (What you call it?) The pier like of the

1 neighbor. And then, I will swim and get to where the
2 little, little beach that belongs to the property. I
3 will stand there, just walk it, and then go back in the
4 water. I mean, walk the beach and then back to where I
5 was swimming, you know, sitting with my friend.

6 Q. And where is that little beach located?

7 A. When you go down -- I mean, when you are
8 looking at the property, there is that small pier. It's
9 from, I don't know, cement and at some point. It was
10 broken and after that, they fixed it. So right next to
11 it, it's a little area not very big, but then you see
12 the water coming in and out. It's not very -- It's like
13 that.

14 Q. Okay. You never walked -- You testified that
15 your observations were from the beach and then also from
16 the estate road. So you never walked the side
17 boundaries of the property, correct?

18 A. Side -- you mean?

19 Q. Where it connects to the adjacent parcel.

20 A. You couldn't walk that path, either way you
21 couldn't walk that path. I mean, close to the property
22 from the water, but you couldn't go up. I mean, there
23 was no way you can do that.

24 Q. You were -- To your knowledge, Mr. Anderson
25 never walked the exterior boundaries of the property,

1 correct?

2 A. I don't know. I would die from that, I
3 wouldn't know.

4 Q. To your knowledge, has anyone at your request
5 walked the exterior boundaries of the property?

6 A. If anybody, it would be the surveyors.

7 Q. Okay. Other than the surveyors in 2021, are
8 you aware of anyone else walking the exterior boundaries
9 of the properties on your behalf at any point since you
10 purchased it?

11 A. I'm not sure if Lisa Curreri did that or not.

12 ATTORNEY CRAIN: All right. Can
13 we bring up?

14 Your Honor, do you have admitted
15 Exhibit 18 and I will find Exhibit 18. I think it
16 was a series of e-mails.

17 Thank you, that's helpful. Thank you
18 so much.

19 THE COURT: Thank you, Attorney
20 Seila.

21 BY ATTORNEY CRAIN:

22 Q. Ms. Bassil, do you recognize this
23 correspondence?

24 A. Yes.

25 Q. And if you can go -- Let me just find the

1 right spot. Okay, if you go to the second page,
2 Ms. Bassil. I think it is an e-mail dated 4/24/2008
3 about a third of a way down the page. It starts, *Mr.*
4 *Klein first of all.* Thank you. There you go.

5 A. Right.

6 ATTORNEY CRAIN: Thank you,
7 Attorney Seila.

8 BY ATTORNEY CRAIN:

9 Q. Is that an e-mail from you?

10 A. Yes.

11 Q. Okay. And in that e-mail, in that second
12 sentence, it talks about you would like to have a
13 surveyor come out as soon as possible and put the access
14 boundary flags back in to be flagged with the tape,
15 correct?

16 A. Yes.

17 Q. And so you were having a surveyor coming out
18 to survey the boundary lines of your property, correct?

19 A. Obviously.

20 ATTORNEY CRAIN: Attorney
21 Sauerwein, you can take it down.

22 THE COURT: Attorney Crain, based
23 on your questions of that document with Ms. Bassil,
24 the entire document is now in evidence.

25 ATTORNEY CRAIN: Okay.

1 BY ATTORNEY CRAIN:

2 Q. Ms. Bassil, you were not aware of ever asking
3 a surveyor to survey the interior portion of 2D 12,
4 correct?

5 A. I don't remember.

6 Q. You never did -- pull or request any building
7 permit on the property, correct?

8 A. Pardon me?

9 Q. Did you ever call or request any building
10 permits for the property?

11 A. No.

12 Q. And you never ask for building permits to
13 build a structure on the property, correct?

14 A. No. I mean, after my divorced, I -- It was
15 difficult.

16 Q. And you never did a topographical survey of
17 the property either, correct?

18 A. What is that, please?

19 Q. If you don't know, then just say I don't know;
20 it's okay.

21 All right. Do you identify about some bushes
22 that may have occurred at that time property at some
23 time?

24 A. It occurred twice.

25 Q. Okay. When did that occur?

1 A. I know for sure if the last five years this
2 happened. I know for sure because we talked about it
3 with Lisa. And prior to that, it may be two or
4 three years prior to that.

5 Q. And who did the work?

6 A. You have to ask Lisa, please.

7 Q. Where was the work done?

8 A. On the property.

9 Q. Where on the property?

10 A. Where the bushes are.

11 Q. Do you have any evidence that the work was
12 done?

13 A. I have the word of Lisa.

14 Q. You never observe them doing any work or
15 cutting any bush, correct?

16 A. No, I wasn't there.

17 Q. All right. And you said that you testified
18 you planned to walk the property in 2015, but you ended
19 up not doing that, correct?

20 A. Couldn't do it.

21 Q. If you're at the beach and you're walking up
22 towards your property by the pier, would you have to
23 step over so some rocks to get over to the property?

24 A. You would have to climb a little bit. It's
25 possible, but that's all. And then you couldn't because

1 of the bushes but you would have to climb this way.

2 Q. The last time you were at the property was
3 2015, correct?

4 A. Correct.

5 Q. Okay. You don't have any knowledge about who
6 cut the trails on the property, is that right?

7 A. No.

8 Q. And you don't know when they were cut either,
9 correct?

10 A. Say that again please.

11 Q. You don't know when they were cut either,
12 correct?

13 A. Around that time, no. And that time, sometime
14 after because we were going to put the property on sale,
15 as well. And then my daughter said please don't, I
16 might build one day. So that's around that time.

17 Q. You didn't witness anyone cut the trails,
18 correct?

19 A. No, sir.

20 Q. So you don't know when they were cut, correct?

21 A. That's when we talk about --

22 Q. Let me just make sure. You didn't see anyone
23 cut the trails; so, you don't know when they were made,
24 correct?

25 A. No.

1 Q. And you talked about potential sale --

2 THE COURT: I'm sorry.

3 Attorney Crain, that was a compound
4 question. What was she saying *no* to?

5 ATTORNEY CRAIN: Let me say this.

6 I'll go back, Your Honor. Let me go back and
7 clarify.

8 BY ATTORNEY CRAIN:

9 Q. Ms. Bassil, you didn't see anyone cut the
10 trails, correct?

11 A. No.

12 Q. And you don't know when they were cut,
13 correct?

14 A. I don't know when -- what?

15 Q. When the trails were cut, correct?

16 A. No.

17 Q. All right. You talked about going to the
18 property late 2020 or 2021. Is it still your intention
19 when this is resolved if you remain the owner of what
20 you claim -- Excuse me. Let me strike that.

21 Is it still your intention, Ms. Bassil, if
22 you are the owner of 2 D 12 as determined by a jury in
23 this case at some point in the future that you intend to
24 market the property for sale again?

25 A. Yes.

1 Q. And you don't know what the price of that sale
2 would be, correct?

3 A. I guess it depends on the market, but also
4 being the only property with the beach front, yes. It's
5 now. When I wanted to put it, I had a price on it.

6 Q. And you wouldn't give permission for anyone to
7 actually make trails on D 2, correct?

8 A. If I gave someone to make trails?

9 Q. Yes.

10 A. No.

11 ATTORNEY CRAIN: All right.

12 Nothing from me, Your Honor, at this time.

13 THE COURT: Thank you, Attorney
14 Crain.

15 Attorney Duensing, anything further?

16 ATTORNEY DUENSING: Just a couple
17 of brief follow-up questions, Your Honor.

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY DUENSING:

20 Q. Ms. Bassil, first of all just to clarify the
21 last bit of questioning.

22 When did you first learn of the existence of
23 these trails on your property?

24 A. I think it was early '21.

25 Q. Early 1921 -- 2021?

1 A. Yes.

2 Q. And how did you learn of the existence?

3 A. When Lisa went to put the signs *For Sale*, she
4 told me about that.

5 Q. All right.

6 ATTORNEY DUENSING: Thank you,
7 Your Honor, nothing further.

8 THE COURT: Attorney Crain.

9 ATTORNEY CRAIN: Nothing further
10 from me, Your Honor.

11 THE COURT: Ms. Bassil, the Court
12 has a few questions.

13 **EXAMINATION**

14 BY THE COURT:

15 Q. Did you ever have any permission to access, to
16 have any access through your property?

17 A. No.

18 Q. Did you ever discuss with Mr. Klein giving him
19 access through your property to the beach?

20 A. No, Your Honor.

21 Q. Did Mr. Klein ever ask you for permission for
22 his family or friends or customers or renters to have
23 access through your property?

24 A. No, Your Honor.

25 Q. Do you -- I think your mic is muted.

1 Why do you recall being here in April of 2012
2 and 2015? You're muted.

3 A. Because I went with my friend Keyvana to the
4 island for about maybe five days and in '15. I invited
5 my sister from England to go with me and we stayed
6 two weeks in Secret Harbor.

7 Q. And you were asked by the parties if you
8 walked the boundaries. Why didn't you walk the
9 boundaries of the property?

10 A. You couldn't, ma'am. You couldn't walk them
11 even if you wanted to, except walked out and walk from
12 the road. Look, I was actually showing -- to be honest
13 with you, showing where Mr. Klein -- his house. He has
14 a beautiful house. And then where -- It was one day my
15 sister asked how did he take 1,000 feet, you know. And
16 I said, no it wasn't 1,000 feet. No, it was 1,000 {sic}
17 feet. So I was showing her. I mean, what else do you
18 do when you are not there? I mean, you go to the beach.
19 You look at St. Thomas. You go around and that's about
20 what happened.

21 Q. Thank you, Ms. Bassil. My last question is,
22 why did you never follow Mr. Anderson down the path,
23 down through the property to the beach?

24 A. Do you really want me to answer that?
25 Because I don't want to get hurt going down.

1 THE COURT: Thank you,
2 Ms. Bassil.

3 Any questions from counsels on the
4 Court's questions?

5 ATTORNEY CRAIN: Not from me,
6 Your Honor.

7 THE WITNESS: He's more
8 courageous.

9 THE COURT: Attorney Duensing.

10 ATTORNEY DUENSING: Nothing
11 further, Your Honor.

12 THE COURT: Okay. Thank you,
13 Ms. Bassil.

14 There are no further questions for you.
15 Just mute your mic and you can stay in the meeting.
16 Thank you.

17 Attorney Duensing, your next
18 witness.

19 ATTORNEY DUENSING: Yes, Your
20 Honor. We call Rennix Charles to the stand.

21 THE COURT: Is he appearing or
22 logging in? How is he appearing, Attorney
23 Duensing?

24 ATTORNEY DUENSING: Yeah, he's
25 down in our conference room, Judge. And Attorney

1 Sauerwein is getting him on the link as we speak.

2 THE COURT: Okay. Is he going to
3 be a very long witness?

4 ATTORNEY DUENSING: I don't
5 believe so, Your Honor.

6 THE COURT: If we will go through
7 the testimony of Mr. Charles and then have a recess
8 for lunch.

9 ATTORNEY CRAIN: Judge, while we
10 are waiting, are you anticipating an hour recess
11 for lunch?

12 THE COURT: An hour or 45, not an
13 hour and 45 minutes. It's either an hour or 45
14 minutes.

15 ATTORNEY CRAIN: Thank you.

16 THE COURT: Depending on how long
17 Mr. Charles's testimony takes. As I indicated,
18 we'll be wrapping up at 4 o'clock today.

19 ATTORNEY CRAIN: Thank you, Your
20 Honor.

21 THE COURT: I see Mr. Charles on
22 the screen.

23 Madam Clerk, can you swear Mr. Charles
24 in?

25 THE CLERK: Mr. Charles, can you

1 raise your right hand?

2 **RENNIX CHARLES**, having been first
3 duly sworn as a witness, testified as follows:

4 MR. CHARLES: Yes, ma'am.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY DUENSING:

7 Q. Good morning, Mr. Charles. Would you state
8 your full name for the record, please?

9 A. Rennix Charles.

10 THE COURT: Mr. Charles, you can
11 put your hand down. Mr. Charles, is anyone else in
12 the room with you?

13 THE WITNESS: No, ma'am. Good
14 morning.

15 THE COURT: Good morning.

16 Attorney Duensing, would you have any
17 objections taking his mask off so we can hear him
18 clearly?

19 ATTORNEY DUENSING: Not at all,
20 Judge. Just as long as he is comfortable with
21 that.

22 Rennix, you can take your mask down if
23 that's okay with you. I know that Mr. Charles is
24 very afraid of the COVID.

25 THE COURT: And that's why I

1 asked if there is anyone else in the room.

2 Mr. Charles, the reason I'm asking you
3 to do that is that so the court reporter is able to
4 take down everything you say because the --

5 THE WITNESS: Yes, ma'am.

6 THE COURT: -- because the matter
7 is still being transcribed.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you,
10 Mr. Charles.

11 ATTORNEY DUENSING: Thank you.

12 BY ATTORNEY DUENSING:

13 Q. Mr. Charles, what is your profession?

14 A. I am a courier server. I own the best
15 messenger service and bonded process service.

16 Q. All right. And do you have an interest in the
17 operation of drones?

18 A. Yes, I got into drones from 2019 as a hobby.

19 Q. And can you explain to the Court a little bit
20 about your experience as a drone operator here on
21 St. Thomas?

22 A. Yes. I'm a licensed hobbieist pilot, and I
23 just enjoy flying drones as a hobby.

24 Q. All right. And do you do that as a commercial
25 operation?

1 A. No. Just for fun.

2 Q. All right. And did there come a time when we
3 asked you to -- Well, let me back up a second. When
4 you're operating the drone here on St. Thomas, does your
5 machine have the capability to video or photograph?

6 A. Yes, all of the drones.

7 Q. Very briefly, can you explain to the Court how
8 that works?

9 A. Yes. All my drones have cameras. They can
10 take still photos or they can do video.

11 Q. And what sort of device could you use to
12 control the drone and the photography?

13 A. Okay. You can use a storage chip like an S D
14 card or it actually records directly into the drone or
15 on the phone which is used as the camera.

16 Q. All right. And did there come a time when we
17 asked you to go out to Ms. Bassil's property and operate
18 your drone for us?

19 A. Yes, sir.

20 Q. And do you recall when that was?

21 A. Um, I could check. I think I will be able to
22 find out by looking. Can I check?

23 Q. That's up to the Judge. I would ask, was it
24 some time this year?

25 A. Yes, yes. I think it was couple months ago.

1 Q. All right. And --

2 A. -- Or couple weeks ago.

3 Q. And so within the last two months; is that an
4 accurate statement?

5 A. I would think so; I don't think it was that
6 long.

7 Q. Some time in 2021 in any event, correct?

8 A. Yes, sir.

9 Q. And how was it you located Ms. Bassil's
10 property?

11 A. I was brought there by Attorney Michael
12 Fitzsimmons and yourself. We all met there in the
13 morning.

14 Q. All right. And what did you do in terms of
15 your drone operations after you arrived?

16 A. I flew it over the property where -- next to
17 the hotel to get some shots of a trail, next to the
18 hotel.

19 Q. All right. And how were those shots stored on
20 your machine?

21 A. It was stored by SD card.

22 Q. All right.

23 A. The little card that you put in.

24 Q. And at some point, did you deliver that card
25 to us?

1 A. Yes.

2 Q. All right.

3 ATTORNEY CRAIN: Maybe I can
4 help, Judge. I am not objecting. I don't need
5 Mr. Charles to authenticate the photographs that he
6 took. We don't need to go through this science and
7 such.

8 ATTORNEY DUENSING: Thank you,
9 counsel.

10 Your Honor, we simply want to play the
11 still shots to just show the condition of the
12 property now. That's all we're wanting to do from
13 this witness.

14 THE COURT: Which photographs are
15 those?

16 ATTORNEY DUENSING: These are a
17 series of exhibits that we've labeled as Exhibit 8
18 and 9 with sub-lettering. Here we go.

19 THE COURT: Attorney Crain, are
20 those the photographs you're not objecting to?

21 ATTORNEY CRAIN: Correct, Your
22 Honor.

23 THE COURT: So Composite
24 Exhibit 8 and Composite Exhibit 9 are admitted
25 without objections.

1 ATTORNEY DUENSING: Thank you.

2 BY ATTORNEY DUENSING:

3 Q. Mr. Charles, I'm going to have Robin sort of
4 scroll through these photographs and perhaps you can
5 tell the Court first of all, what it is they show and
6 whether they accurately showed what you saw the day that
7 you operated your drone, all right?

8 A. Yes, sir. These are the ones next to the
9 hotel, right close to the path.

10 Q. Okay.

11 A. Yes, these are the ones that show the property
12 of your client right next to the hotel.

13 Q. Okay.

14 A. Adjacent to the water.

15 Q. Let me go to the next one. What does that
16 show, the next one?

17 THE COURT: Attorney Duensing,
18 for the record, can you refer to the exhibit
19 number?

20 ATTORNEY DUENSING: Yes, ma'am.
21 It jumped on me.

22 BY ATTORNEY DUENSING:

23 Q. Well here's 8 H, what does 8 H depict,
24 Mr. Charles?

25 A. This looks like the path, the little path on

1 the client's property, adjacent to the water.

2 Q. All right. Can we see the next one?

3 A. That looks like the hotel.

4 Q. That's 8 I. All right. What's the next one?

5 A. That's the property again.

6 Q. 8 G.

7 A. Next to the hotel. That's it again.

8 Q. 8 F.

9 A. That's the one showing -- you can see the path
10 in the bush. You can see the shortcut.

11 Q. Okay. And the next one?

12 A. The same thing.

13 Q. 8 E.

14 A. You can see it from a different view, yes.

15 Q. All right. I think this is sufficient,
16 Mr. Charles. We have, we have -- Do these photos,
17 Mr. Charles, fairly and accurately describe what you saw
18 the day you were out there?

19 A. Yes, sir.

20 ATTORNEY DUENSING: All right. I
21 have nothing further of Mr. Charles, Your Honor.

22 THE COURT: Attorney Crain.

23 ATTORNEY CRAIN: Okay. Thank
24 you, Your Honor.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY CRAIN:

2 Q. Just very briefly, Mr. Charles. You were paid
3 for your work by Mr. Duensing's office, correct?

4 A. No, I don't charge for that drone photography.

5 Q. All right. Were you paid at all for your
6 testimony today?

7 A. No, sir.

8 Q. Okay. So you did the whole thing gratis so to
9 speak?

10 A. Yes, sir.

11 Q. Okay. That's very generous of you. When you
12 were out there on property within the last month or two,
13 you didn't have any problem identifying where the trails
14 were, correct?

15 A. No, it was kind of clear.

16 Q. And in the pictures that you just went
17 through, you agree with me that bushes and such are
18 barren currently at the property, correct?

19 A. Yes, it's bushy, but you can still go through
20 the path, you know.

21 Q. And you were able to successfully walk through
22 the trails, correct?

23 A. Yes, sir.

24 ATTORNEY CRAIN: Nothing further
25 from me, Your Honor.

1 THE COURT: Attorney Duensing.

2 ATTORNEY DUENSING: Nothing
3 further.

4 **EXAMINATION**

5 BY THE COURT:

6 Q. Mr. Charles, where were you standing when you
7 put in drone over the property?

8 A. It was like in the road over, almost to the
9 dead end in front of Mr. Klein's house.

10 Q. So you were on the upper side of the property,
11 not the beach side.

12 A. No, not the beach side, in the road, just to
13 the dead end where you can turn around.

14 Q. And when you were in the road, without using
15 your drone, were you able to see the paths?

16 A. No, no. No, ma'am.

17 THE COURT: Thank you,
18 Mr. Charles.

19 Attorney Duensing, Attorney Crain, any
20 questions on the Court's questions?

21 ATTORNEY DUENSING: Nothing
22 further from us, Your Honor.

23 ATTORNEY CRAIN: Nothing further
24 from us, Your Honor.

25 THE COURT: May Mr. Charles be

1 excused?

2 ATTORNEY DUENSING: He may, Your
3 Honor.

4 THE WITNESS: Thank you. Have
5 nice day.

6 THE COURT: Okay Mr. Charles,
7 thank you.

8 THE WITNESS: You're welcome.

9 THE COURT: As always, you are
10 free to stay if you want to.

11 We're going to be on recess, but you
12 can come back in the afternoon if you want. And
13 stay safe out there. Good seeing you.

14 THE WITNESS: Thank you, my dear.
15 Have a nice day.

16 THE COURT: You, too.

17 THE WITNESS: Okay.

18 ATTORNEY DUENSING: Thanks,
19 Rennix.

20 THE WITNESS: You're welcome.

21 THE COURT: I guess that will
22 make it obvious to the parties that Mr. Rennix and
23 I know each other for a fairly long time.

24 ATTORNEY CRAIN: I think that's
25 common.

1 THE WITNESS: Thank you. You all
2 have a great day.

3 THE COURT: You too, Mr. Charles.

4 THE WITNESS: Thank you.

5 THE COURT: Attorney Duensing,
6 just before you wrap up for lunch break, how many
7 more witnesses do you anticipate calling?

8 ATTORNEY DUENSING: Your Honor, I
9 think we are going to have two at most, maybe only
10 one. It just depends on how this goes. So I
11 expect that we will be finished within an hour
12 after we resume this afternoon.

13 I have one, I guess one question for
14 Your Honor, one administrative matter. It's that
15 we have a series of photographs that were taken by
16 Don Hebert in 2015 of the property. It's exhibits
17 1 through 1 E and they're photographs that were
18 commissioned by Calypso Realty, Sharon Hupprich.
19 Both witnesses who would be available to lay the
20 foundation for those photographs are off island on
21 vacation, both Ms. Hupprich and Mr. Hebert.

22 We would ask the Court's indulgence to
23 either withhold to submitting those photos into the
24 record until we can do a follow-up. Basically, in
25 deposition just for purposes of laying a foundation

1 or we can submit them to the Court today and then
2 the Court, you know, not consider the photos until
3 we have taken either the deposition of Ms. Hupprich
4 or Mr. Hebert upon their return to the island.
5 With Mr. Hebert, his testimony will be that of the
6 actual aerial photographer. He took the
7 photographs we understand from a helicopter as part
8 of an M L S listing in 2015.

9 The alternative will be Sharon Hupprich
10 would be the custodian of record for Calypso Realty
11 which was the agency that actually engaged
12 Mr. Hebert to take the photos. Basically, they're
13 just aerial photos that show what the property
14 looked like in 2015.

15 THE COURT: Attorney Duensing,
16 why wasn't this raised prior to the hearing?

17 ATTORNEY DUENSING: Because we
18 were of the impression that were going to have
19 Sharon Hupprich as a custodian witness. Then, we
20 learned that she's not back from vacation and we
21 did not want to seek a continuance for that purpose
22 alone.

23 THE COURT: And when did -- well
24 her failure to testify will continue this matter
25 anyway. So why wasn't the Court just made aware of

1 that prior to the hearing?

2 ATTORNEY DUENSING: Well, I'm
3 making it aware as soon as I know. I thought that
4 she was going to be available today, Your Honor,
5 but apparently that's not the case.

6 THE COURT: And she can't appear
7 by zoom wherever she is for whatever brief
8 testimony is necessary? Does she still work at
9 Calypso Realtor?

10 ATTORNEY DUENSING: Yes, she's
11 the owner of Calypso Realty, Your Honor. And we
12 understand that Don Hebert is up in Michigan on
13 vacation. We spoke with him -- actually, Rennix
14 Charles attempted to subpoena him for the hearing.
15 And learned that he had left island and would not
16 be back on island until after the hearing.

17 THE COURT: And why would it be
18 necessary to take a deposition rather than continue
19 this hearing for their testimony?

20 ATTORNEY DUENSING: That's fine
21 too, Your Honor. We simply wanted an opportunity
22 to lay the foundation to get those in evidence and
23 that would be the only thing that we will not be
24 able to address today.

25 THE COURT: Attorney Crain,

1 what's your position on the photographs?

2 ATTORNEY CRAIN: Well, my
3 position is that I do think -- I think -- I feel
4 that I've been fairly generous in trying to admit
5 these into evidence to speed things along. These
6 are not ones that I'm willing to stipulate to and I
7 guess what I would raise with the Court is -- The
8 Court has already raised the concern about, you
9 know, why are we learning about this at noon? But
10 what I'd also say, that we pushed to get this
11 hearing set and now we're pushing it off,
12 essentially. And so I don't see a reason to
13 continue the hearing. I think we can do what we
14 can do today and the Court should rule.

15 THE COURT: Attorney Duensing,
16 why aren't your witnesses -- I mean, has your
17 office contacted Ms. Hupprich to see if she can
18 appear via zoom? It doesn't sound like her
19 testimony will be that long. You've known about
20 this hearing for a while to make arrangements for
21 these photographs to come in.

22 ATTORNEY DUENSING: We have been
23 attempting to do that, Your Honor, and we have not
24 been able to get her successful participation in
25 today's hearing thus far. It is my understanding

1 that she may actually be traveling today and could
2 be back on island possibly tomorrow, but I just
3 haven't confirm that as yet.

4 We do not know when Mr. Hebert will be
5 available. We thought he would be available. We
6 attempted to subpoena him. He told Attorney Seila
7 that he had been retained by Mr. Klein and had
8 spoken with Mr. Crain and was leaving island and
9 will not be back until after the hearing.

10 THE COURT: Attorney Crain, did
11 you have knowledge of Mr. Hebert's departure from
12 the territory?

13 ATTORNEY CRAIN: I did know, yes.
14 I spoke to him about three weeks ago or so and I
15 did understand that he was going to be traveling on
16 vocation. I didn't know exactly what his schedule
17 was, but I did understand that he would have been
18 off-island, yes.

19 THE COURT: Attorney Duensing, we
20 are going to be on recess for lunch for 45 minutes.
21 I suggest maybe reaching out to Ms. Hupprich. I
22 think she's on Facebook if you don't have a number
23 for her. Try to reach her and see if she can make
24 herself available or her brief testimony on these
25 exhibits.

1 The Court is not inclined to grant a
2 continuance of this matter. We are scheduled for
3 tomorrow. I don't know how the defense feels about
4 breaking up their case, but all the evidence and
5 testimony is going to be received by this Court by
6 tomorrow, by the end of tomorrow. There's not
7 going to be any depositions of witnesses that were
8 known to the parties that were needed for this
9 hearing.

10 ATTORNEY DUENSING: That's fine,
11 Judge. We'll do our best. We've been doing our
12 best. As I said, we'd hope to have the foundation
13 laid by Mr. Hebert, but he left.

14 Mr. Charles attempted to subpoena him,
15 without success and so we then did some further
16 investigation and we were able to locate an invoice
17 that identify Calypso Realty as the party that
18 actually contracted with Mr. Hebert, attempted to
19 get Sharon Hupprich the sole owner of Calypso
20 Reality and the custodian of records to testify and
21 learn that she's also off-island on vacation.

22 I believe that she may be traveling
23 back today from the last that I heard. So you
24 know, we will do what we can do reach out and then
25 produce her tomorrow morning if at all possible,

1 Judge.

2 THE COURT: Did you know that
3 when you filed your witness list on Friday that she
4 was unavailable and attempts to serve Mr. Hebert
5 had gone unsuccessful?

6 ATTORNEY DUENSING: We knew that
7 attempts to serve Mr. Hebert had gone unsuccessful.
8 We did not know that Ms. Hupprich will not be back
9 on island and unavailable today.

10 THE COURT: When did you learn
11 that?

12 ATTORNEY DUENSING: She may be
13 back on island today. I really don't know. I
14 think she will be traveling today was the best
15 information that we had about her.

16 THE COURT: Okay. We'll see what
17 we can find out on the break.

18 Court will stand in recess until 1:00
19 p.m.

20 ATTORNEY DUENSING: Thank you,
21 Your Honor.

22 ATTORNEY CRAIN: Thank you, Your
23 Honor.

24 **(RECESS TAKEN.)**

25 **(HEARING RESUMED.)**

1 THE COURT: Good afternoon
2 everyone.

3 ATTORNEY DUENSING: Good
4 afternoon.

5 THE COURT: I have been advised
6 by the clerk's office that a subpoena was e-mailed
7 back to you.

8 ATTORNEY DUENSING: Yes. I just
9 received it, Judge.

10 THE COURT: Reviewing the request
11 made in this file the only subpoena you've ever
12 asked for was for Mr. Hebert, correct?

13 ATTORNEY DUENSING: That's
14 correct.

15 THE COURT: I guess what I'm
16 getting at is why wasn't, Ms. Hupprich, a subpoena
17 ever requested for her?

18 ATTORNEY DUENSING: Because we
19 understood, that she was off island, Judge, and we
20 would not be in a position to serve it.

21 THE COURT: How do you expect to
22 have her testify then?

23 ATTORNEY DUENSING: We were
24 hoping to subpoena her as soon as she return back
25 on island which I thought was going to be tomorrow,

1 but apparently, she got back sooner.

2 THE COURT: Okay, because this
3 hearing was set at our last conference in June.

4 All right. I'm not going to belabor
5 the point anymore. We need to continue.

6 ATTORNEY DUENSING: As I said,
7 Judge, Don Hebert was the witness that we had hoped
8 to get the photographs in through. That's why we
9 requested the subpoena for Don Hebert. Mr. Charles
10 tried to serve him, he was told he was away on
11 vacation. We then scrambled to find some kind of
12 connection to get it into evidence and learned late
13 in the day that it was the business record from
14 Sharon Hupprich at that point in time, we also
15 understood that she was also off island so we've
16 been trying our best to get some kind of witness to
17 lay the foundation and unfortunately, we have not
18 been successful.

19 THE COURT: But with the
20 representations made currently you don't even know
21 if Ms. Hupprich is going to be that person?

22 ATTORNEY DUENSING: We understand
23 that Ms. Hupprich is avoiding service. So, I don't
24 know whether we're going to be able to get her in
25 or not, Judge.

1 THE COURT: Okay. Good
2 afternoon. Madam Clerk, if you can recall the
3 calendar.

4 THE CLERK: Civil calendar
5 Madeline Bassil versus John Klein.

6 THE COURT: Counsels put your
7 appearances on, please.

8 ATTORNEY DUENSING: Good
9 afternoon, Your Honor. Matthew Duensing and Robin
10 Seila here for the plaintiff, Madeline Bassil.

11 THE COURT: Good afternoon,
12 Attorney Duensing.

13 ATTORNEY CRAIN: Good afternoon,
14 Your Honor. David Crain here on behalf of
15 defendant, John Klein.

16 THE COURT: Good afternoon,
17 Attorney Crain.

18 I believe your next witness is ready.

19 ATTORNEY DUENSING: Thank you,
20 Your Honor. The plaintiff calls Ms. Lisa Curreri
21 to the stand.

22 THE COURT: Madam Clerk, can you
23 swear Ms. Curreri in, please?

24 THE CLERK: Ms. Curreri, could
25 you please raise your right hand?

1 **LISA CURRERI**, having been first
2 duly sworn as a witness, testified as follows:

3 THE CLERK: I can't hear you.

4 THE COURT: You are muted,
5 Ms. Curreri. You're muted.

6 MS. CURRERI: Can you hear me
7 now?

8 THE COURT: Yes, we can. Thank
9 you.

10 MS. CURRERI: Yes, I do.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY DUENSING:

13 Q. Good afternoon, Ms. Curreri. How are you?

14 A. I'm fine Attorney Duensing, and you?

15 Q. I'm doing well, thank you.

16 Would you state your full name for the
17 record, please?

18 A. Yes, it's Lisa S. Curreri C-U-R-R-E-R-I.

19 Q. Thank you. And what is your profession,
20 Ms. Curreri?

21 A. I'm a real estate broker.

22 Q. And do you practice here on St. Thomas?

23 A. I do. I'm always on St. Thomas.

24 Q. All right. And as we indicated earlier, our
25 client is Madeline Bassil who in this case has been

1 shown. She is the owner of Parcel 2 D - 12 Estate
2 Nazareth.

3 First of all, are you familiar with that
4 particular piece of property?

5 A. Yes I am, sir.

6 Q. All right. And secondly, have you had an
7 opportunity to have a professional relationship with our
8 client, Ms. Bassil?

9 A. Yes, I have.

10 Q. And can you tell the Court how that
11 professional relationship began?

12 A. I met Ms. Bassil and her then husband, Terry
13 Anderson, I believe it was in late 2001 or 2002.

14 Q. All right.

15 A. And I sold them the piece of property that you
16 just mentioned 2 D - 12 Estate Nazareth.

17 Q. Thank you. And when you made the sale of that
18 property, did you have an opportunity to actually view
19 the property at that time?

20 A. By viewing it, do you mean walking it?

21 Q. Well, observing it from either above or below
22 or walking it?

23 A. I have never walked the property. I have
24 observed it from the estate road on the top of the
25 property, and I have observed it from the rocky shore

1 line on the bottom.

2 THE COURT: Attorney Duensing,
3 can we put a time frame on her observations?

4 BY ATTORNEY DUENSING:

5 Q. I'm beginning at the moment at 2002; is that
6 correct, Ms. Curreri?

7 A. That's correct.

8 Q. And is there any particular reason why you
9 were not able to walk the property at the time?

10 A. Yes, it was bush, really hard. You couldn't
11 -- you couldn't walk into it unless the path was
12 cleared.

13 Q. All right. And following that transaction in
14 2002, did you have a continuing connection with
15 Ms. Bassil either professionally or friendly?

16 A. Both professionally and friendly.

17 Q. Could you describe that for the Court, please?

18 A. Certainly, I listed that property when
19 Ms. Bassil was given ownership to the property. When
20 she divorced Mr. Anderson, she got the property in the
21 divorce settlement and she has listed it for sale on
22 four occasions. If you want those dates, they are in
23 2014, 2015, 2017.

24 THE COURT: Ms. Curreri, are you
25 testifying from notes?

1 THE WITNESS: Yes. I was just
2 looking at those numbers. If you'd like me to
3 remove any paper, I will be certainly be happy to.

4 THE COURT: Yes, ma'am. I need
5 you to testify from your memory or any documents
6 that Attorney Duensing may be able to use to
7 refresh your recollection.

8 THE WITNESS: Sure certainly,
9 Your Honor.

10 THE COURT: Thank you.

11 BY ATTORNEY DUENSING:

12 Q. Ms. Curreri, just your best recollection of
13 those years if you could?

14 A. Well 2014, I believe the property was listed
15 at maybe 595 -- 595,000.

16 Q. All right. Let's start with that year if I
17 may interrupt and I apologize, but in 2014 with that
18 listing, did you have an opportunity to observe the
19 property?

20 A. Just from the top road, the estate road.

21 Q. All right. Go ahead, I'm sorry.

22 A. Okay. I could add a little bit to that if you
23 want. There is only one place where you can enter that
24 property and that is at that top of the estate road
25 where a driveway could be built.

1 Q. All right. And in 2014, when you observed
2 where you just described, did you observed any
3 established trails onto or across the property?

4 A. No.

5 Q. And you described earlier the difficulty in
6 walking the property, how would you describe that
7 situation in 2014?

8 A. Virtually impossible, for me to walk the
9 property, it's catch-n-keep and Jack Spaniards and vines
10 and thorns.

11 Q. All right.

12 A. And it will require a path.

13 Q. And there was none at the time, correct?

14 A. No, none.

15 Q. How about, when was the next listing,
16 Ms. Curreri?

17 A. It was in 2015.

18 Q. And what can you tell us about that listing?

19 A. If memory serves me, I believe, we may have
20 listed it at somewhere in the 500 range, I really can't
21 remember without notes.

22 Q. Okay, that's fine. And just to backtrack a
23 moment, when the property was listed in 2014 and then
24 again in 2015, do you recall whether any purchase offers
25 were presented by Mr. John Klein?

1 A. Mr. Klein made an offer on the property for
2 \$300,000 and I believe that was 2014.

3 Q. All right.

4 A. And I think it was 2014.

5 Q. All right. And was there a point where
6 Mr. Klein made a second offer for the property?

7 A. If memory serves me, it may have been
8 Mr. Klein, it may have been another person, but there
9 was another offer for \$400,000.

10 Q. All right, thank you. And what was the result
11 of those two offers?

12 A. They were countered and they went no further.

13 Q. All right, thank you. Now, was there a third
14 occasion on which Ms. Bassil listed her property for
15 sale with you?

16 A. She listed it in 2017 and that was prior to
17 the hurricanes.

18 Q. All right. And did you have an opportunity
19 in 2017 and by that, you mean Hurricanes Irma and Maria
20 that occurred in 2017, correct?

21 A. Correct, correct.

22 Q. All right. So sometime in 2017 before
23 September, did you have an opportunity to observe her
24 property as part of that listing?

25 A. I did, but again it was the same situation, it

1 was just from the top road of the estate road at the top
2 of the property.

3 Q. Again, was that in the same condition of the
4 property as you described before?

5 A. Absolutely.

6 Q. All right. And was there a fourth occasion on
7 which you listed Ms. Bassil's property for sale?

8 A. Yes, that was in 2020.

9 Q. All right. Can you give us an approximate
10 time within the year?

11 A. I loose track of time with COVID. I believe
12 it was in the fall of 2020, Autumn of 2020.

13 Q. Again, at the time of that late 2020 listing,
14 did you have an opportunity to observe Ms. Bassil's
15 property?

16 A. Yes, I did.

17 Q. And what did you see?

18 A. The same situation. That stretch that you
19 could enter into the property was overgrown.

20 Q. Any established trails at that time?

21 A. No, sir.

22 Q. All right. Was that the last time that you
23 listed the property for sale, for Ms. Bassil?

24 A. Correct.

25 Q. All right. Did there come a time when you

1 learned that trails actually had been cut upon
2 Ms. Bassil's property?

3 A. Yes, I did and that was in, I believe autumn
4 of 2020.

5 Q. And how did you learn about that?

6 A. I was given a call and they said in --

7 ATTORNEY CRAIN: Objection, Your
8 Honor. Hearsay.

9 THE COURT: Yes, Ms. Curreri, you
10 can't testify as to what someone told you.

11 A. All right. I did not see the trails until I
12 got down to St. Thomas. I was off island at the time
13 when I was told.

14 Q. All right. Can you tell us who -- I don't
15 want to hear what they said to you. But can you tell us
16 who it was that gave you that call and alerted you about
17 trails that had been cut on the property?

18 A. I would rather not, sir.

19 Q. All right. That's fine. Was it someone
20 working for you or just an acquaintance?

21 A. An acquaintance.

22 Q. All right. And in response to your receiving
23 that information, what if anything did you do?

24 A. I made a lot of calls to various people
25 saying, *Is this the case?* And they said, Yes. And I

1 believe I called Ms. Bassil at that time or might have
2 e-mailed her.

3 Q. All right. And upon learning about the
4 trails, were you able to try to remedy the situation?

5 A. Well, when I spoke to Ms. Bassil, I think we
6 discussed --

7 ATTORNEY CRAIN: Your Honor,
8 objection.

9 A. -- what to do. In other words, what could
10 Ms. Bassil do?

11 Q. And what options if any, did you present to
12 her?

13 A. I think I said, we have to find out who did
14 this.

15 Q. All right. Did you make any -- did you make
16 any attempt to secure the properties through fencing or
17 otherwise?

18 A. Yes, that was later on. That was in the
19 spring of 2000 -- this spring 2021.

20 Q. All right. So between the time in late 2020,
21 that you learned about the situation with the trails and
22 the spring of 2021 when you attempted to engage some
23 fencing, what if anything occurred with regard to these
24 trails on the property and your involvement on behalf of
25 your client, Ms. Bassil?

1 A. Well, we ordered fencing and when the fencing
2 owner of the property -- I mean, of the company went out
3 to measure, he called me later that day and said --

4 ATTORNEY CRAIN: Objection, Your
5 Honor. Hearsay.

6 THE COURT: Ms. Curreri, you
7 can't testify as to what someone told you.

8 ATTORNEY DUENSING: Your Honor,
9 in this particular case, it's my understanding it
10 was an excited utterance, and we will submit it on
11 that basis.

12 THE COURT: Lay the foundation,
13 Attorney Duensing; I haven't heard one.

14 ATTORNEY DUENSING: All right.
15 BY ATTORNEY DUENSING:

16 Q. Who is the individual that you're referring
17 about?

18 A. The owner of the fence company.

19 Q. All right. And was he at the property when he
20 called you?

21 A. Yes, he was.

22 Q. And was he in --

23 THE COURT: Attorney Duensing.

24 Q. What state was he in when he called you?

25 THE COURT: Attorney Duensing,

1 please rephrase your question.

2 ATTORNEY DUENSING: I will, Your
3 Honor.

4 Q. Was there anything unusual about the nature of
5 his call to you at anytime?

6 A. Yes, he said he felt intimidated by Mr. Klein.

7 ATTORNEY CRAIN: Objection, Your
8 Honor. Hearsay.

9 THE COURT: Attorney Duensing,
10 you've not laid the foundation for an excited
11 utterance exception.

12 Q. And what was the -- Do you know the basis for
13 the supposed intimidation?

14 THE COURT: Calls for
15 speculation, Attorney Duensing.

16 ATTORNEY DUENSING: That's fine,
17 Judge. We'll move on.

18 Let's just stick to the facts on what occurred.

19 BY ATTORNEY DUENSING:

20 Q. Did the fencing project get a full word after
21 you received that call?

22 A. No, it did not.

23 Q. In fact have you ever been able to arrange
24 the fencing on Ms. Bassil's property since that
25 occurrence?

1 A. No.

2 Q. All right. So what happened next in your
3 professional relationship with Ms. Bassil with respect
4 to that property?

5 A. I am sort of lost as to where we are. We
6 ordered signage.

7 Q. All right.

8 A. No trespassing signage.

9 Q. And was that place on the property?

10 A. Yes, it was; I placed it myself.

11 Q. All right. Any other steps taken in response
12 to the discovery of the trails?

13 A. We ordered cameras to be installed and that
14 was noted on the signage that was placed on the property
15 that a video surveillance was in place.

16 Q. All right. Can you describe for the Judge the
17 nature of the surveillance and how the program operated?

18 A. It's a program called Blink where it's an app.
19 I'm technically not proficient. So it's an app and the
20 cameras were placed in two places on the property and
21 when movement goes by the camera, the camera records and
22 is stored and you can on the Blink app pull up the
23 various pieces of video that have been taken.

24 THE COURT: Can you clarify when
25 these cameras and signs were installed?

1 THE WITNESS: Yes, the signs were
2 installed in the spring of this year, and the
3 camera -- the cameras were installed in autumn,
4 autumn of this year.

5 THE COURT: Ms. Curreri, just so
6 that I'm clear as to the time period. You don't
7 have to give a date. You can give me some months
8 you're calling spring and the months you are
9 calling autumn.

10 THE WITNESS: I guess, I get so
11 confused with COVID.

12 THE COURT: Take your time. Like
13 are you saying spring is March and April.

14 THE WITNESS: March and April
15 um-hum, um-hum.

16 THE COURT: And when you say
17 autumn, you're talking about --

18 THE WITNESS: I would say autumn
19 is more like September/October.

20 THE COURT: Okay. Thank you for
21 that clarification.

22 Attorney Duensing, you may proceed.

23 ATTORNEY DUENSING: Thank you,
24 Judge.

25 BY ATTORNEY DUENSING:

1 Q. Ms. Curreri, are you a recipient of the video
2 images as part of that program?

3 A. I can pull them up, yes by going on that app.
4 I have that app on my phone.

5 Q. And have you, in fact, observed those images
6 produced by the security camera?

7 A. Yes I have, sir.

8 ATTORNEY DUENSING: Robin -- we
9 are going to cue a video which is Plaintiff's
10 Exhibit 7. And Ms. Curreri, if you can identify
11 this for us we would appreciate it.

12 THE COURT: Attorney Duensing,
13 did you ask permission of the Court to use video or
14 to authorize?

15 ATTORNEY DUENSING: I'm sorry,
16 Your Honor. This was listed as part of among our
17 exhibits and was produced to the Court and counsel.
18 It is my understanding -- I'm not as proficient
19 with zoom as Robin is, but it is my understanding
20 that you load the video in the same manner that you
21 load a document.

22 THE COURT: Okay. If we were in
23 the courtroom, would you not have to ask for
24 permission to use the audio/video equipment?

25 ATTORNEY DUENSING: Well, Judge I

1 mean, that's the very nature of this proceeding. I
2 apologize. I didn't even mean that there will be a
3 special feature when we're already in the middle of
4 a pure audio video hearing; I apologize. I mean, I
5 don't know what else to say about it.

6 THE COURT: I don't believe, I'm
7 not sure if this was the video that was uploaded to
8 the C-track, so.

9 ATTORNEY CRAIN: I was going to
10 object, Your Honor on the grounds that we also had
11 not seen it, to my knowledge. There is a place
12 holder where we hadn't seen it. Essentially what
13 this is, is a silent witness without an adequate
14 foundation for it. Ms. Curreri kind of suggested
15 that she's not an expert in the use of these
16 gadgets. So, I don't think there is a foundation
17 for this to come in.

18 ATTORNEY DUENSING: Well, this
19 not difficult science and, first of all, we did
20 provide this to you, counsel last Friday with all
21 of our other exhibits. It's simply a video image
22 produced by a security camera showing your client's
23 trespassers going across the property.

24 Ms. Curreri gets these images on her
25 phone. She observes the images and now we're

1 simply asking her if this is what she observed when
2 she received it from her phone. I mean, if any of
3 us have to explain technically how phone apps work,
4 I think nothing is ever going to come into
5 evidence.

6 THE COURT: Attorney Duensing,
7 the concern is, while this may purport to be a
8 video and she can identify this was the video that
9 was downloaded to her phone or she downloaded it to
10 her phone from the Blink app, how is Mr. Curreri
11 able to testify, but what appears presently before
12 the Court on the video is two individuals. That
13 these two individuals were sent there by Mr. Klein
14 or Mr. Klein's permission to be there and are not
15 guests at the hotel.

16 ATTORNEY DUENSING: I have not
17 made that next -- I haven't tried to get her to lay
18 a foundation that they are guests of the hotel.
19 Although, I think I can certainly argue that freely
20 and I think that the Court is entitled to draw a
21 fair inference that they are. I'm simply asking
22 her if these are the trespassers that she observed
23 as shown by the security camera.

24 THE COURT: But that's a concern
25 of the Court, Attorney Duensing. How is

1 Ms. Curreri able to say that these are trespassers?
2 That's a legal conclusion. She can testify that
3 this is a video that she received from the Blink
4 App that downloads it. She can describe if she's
5 familiar with the property, what the fence is, that
6 she may not know these individuals. But how can
7 she draw a legal conclusion that they are
8 trespassers?

9 ATTORNEY DUENSING: Well, they're
10 not owners. We've already gotten evidence as to
11 who the owner of the property is. I can certainly
12 ask her if she has knowledge about whether
13 Ms. Bassil gave these people permission to trapes
14 across her property.

15 THE COURT: Again, that will be
16 hearsay. She doesn't know who these individuals
17 are.

18 ATTORNEY DUENSING: Well, then we
19 can call Ms. Bassil back to say she didn't give
20 these people permission. We know that they're not
21 the owner. The only owner is Ms. Bassil although
22 Mr. Klein seems to think otherwise.

23 THE COURT: Okay, Attorney
24 Duensing, you can lay the foundation for the video.

25 BY ATTORNEY DUENSING:

1 Q. Well, Ms. Curreri, again to repeat what we
2 said earlier, were you involved in the installation,
3 arranging the installation of the security camera?

4 A. That is correct.

5 Q. All right. And the name of the program is?

6 A. Blink.

7 Q. And does this program -- Do the cameras
8 transmit the video to your phone through an app?

9 A. That is correct.

10 Q. And are you able to view the videos on your
11 phone through the app?

12 A. Yes.

13 Q. And if you see the video presented to you here
14 today, would you be able to tell the Court whether that
15 is the same video that you previously observed on your
16 phone?

17 A. Yes.

18 Q. All right.

19 ATTORNEY DUENSING: Your Honor --

20 ATTORNEY CRAIN: I just want to
21 renew my objection.

22 THE COURT: Attorney Duensing, is
23 Ms. Curreri able to say what day this was?

24 THE WITNESS: I would have to
25 look that up on the phone.

1 BY ATTORNEY DUENSING:

2 Q. Ms. Curreri, is it something that occurred
3 during 2021?

4 A. Yes.

5 Q. Is it something that occurred within the last
6 month, that being well let's just say within June or
7 July of 2021?

8 A. Where are we now? I'm so confused. Excuse me
9 but these --

10 Q. We're in July now. So, basically within the
11 last two months.

12 A. Within the last two months, yes.

13 Q. All right.

14 ATTORNEY DUENSING: Is it all
15 right that we play the video now, Judge?

16 THE COURT: Since the Court has
17 not had an opportunity to review the video as it is
18 not something that was downloaded on C-Track, the
19 Court will allow you to play it, and I'll reserve
20 my ruling after I have seen the video.

21 **(VIDEO WAS PLAYED) .**

22 Q. Ms. Curreri --

23 THE COURT: Attorney Duensing,
24 the Court is not finished with the video. It is
25 obvious from the Court that this is not one

1 continuous video and spans over what appears to be
2 over different times of days and days.

3 Can you explain why this is being
4 present as one single event?

5 ATTORNEY DUENSING: Your Honor,
6 because we were trying to keep it brief. We have
7 literally hours on end, this is continuous, this
8 runs continuously as do most security camera on a
9 24-hour basis, and basically we just try to give
10 the Court a small sampling of what we're seeing.
11 Particularly, the first trespasser who fell and
12 almost fell off the cliff to highlight our concerns
13 about liability. I was going to ask Ms. Curreri
14 based upon her knowledge of the property, if she
15 can tell us what this view is in particular of the
16 area on the property.

17 THE COURT: We'll allow the video
18 in for the purpose of showing that it was a camera
19 that Ms. Curreri either installed or had installed
20 that she received some notifications on her phone
21 through an app called Blink and that she downloaded
22 it. That it represents a series of events and is
23 not one single continuance event. And there is in
24 these what appears to be snippets that were run
25 together to appear to make it like one video as

1 various people are traversing towards the beach and
2 up the hill.

3 ATTORNEY DUENSING: Thank you,
4 Your Honor.

5 ATTORNEY CRAIN: You just noted
6 my exception, Your Honor.

7 THE COURT: Yes, it is noted.

8 ATTORNEY CRAIN: Thank you, Your
9 Honor.

10 ATTORNEY DUENSING: Robin, you
11 can clear the screen if you would.

12 BY ATTORNEY DUENSING:

13 Q. Ms. Curreri, as a result of the discovery of
14 these trails on the property and the other events that
15 we've asked you about, how in any way has that impacted
16 Ms. Bassil's listing of this property for sale?

17 A. Well, we removed it from the M L S because
18 there was what was called a lawsuit in question. I
19 believe a T R O as I remember was asked for. And then
20 after that, this hearing has come about.

21 Q. So the property is not --

22 A. You had to take it off the M L S because
23 obviously there was something at issue between Mr. Klein
24 and Ms. Bassil.

25 Q. All right. Thank you.

1 ATTORNEY DUENSING: I have no
2 further questions of Ms. Curreri.

3 THE COURT: Attorney Crain.

4 ATTORNEY CRAIN: Thank you, Your
5 Honor.

6 **CROSS-EXAMINATION**

7 BY ATTORNEY CRAIN:

8 Q. Ms. Curreri, just to be clear, you talked
9 about a couple of different times when you went to the
10 estate road, with regard to sort of a listing you talked
11 about '14 and '15 and such just to be clear, each time
12 you went, you never traversed the property, correct?

13 A. Correct.

14 Q. And you've never walked around the exterior
15 boundaries of the property, correct?

16 A. No, it is rocky. It is on the shoreline and
17 the rest abuts Mr. Klein's property.

18 Q. And when you testified that you sold the
19 property to Ms. Bassil and Mr. Anderson in 2002,
20 correct?

21 A. Um, um.

22 Q. Or served as their agent when they bought the
23 property?

24 A. Well, the property was my listing at that
25 particular time when it was owned by the Boynes.

1 Q. Did you go to the premises with Ms. Bassil and
2 Mr. Anderson in their lead up to the purchase of the
3 property?

4 A. I probably went and showed them where it was
5 along the estate road, but I did not traverse the
6 property.

7 Q. And did you see them traverse the property
8 when you took them to the property?

9 A. I do not remember that, sir.

10 Q. Are you aware of -- Has anyone made you aware
11 that Ms. Bassil or Mr. Anderson ever traversed through
12 the property?

13 A. I don't believe so.

14 Q. So you never went down, you never went down
15 Mr. Klein's driveway to look at the side of the
16 property, correct?

17 A. Mr. Klein's driveway?

18 Q. Yes, ma'am.

19 A. What year? I mean --

20 Q. At any point.

21 A. No, I don't traverse on someone else's
22 property.

23 Q. You never went down next to Mr. Klein's side
24 of the property to look at the property?

25 A. What do you mean *next to*?

1 Q. Immediately adjacent to.

2 A. No.

3 Q. And you are not aware of Ms. Bassil and/or
4 Mr. Anderson doing that, correct?

5 A. No. Ms. Bassil and I have gone in the water,
6 walked in the water, but not on the property.

7 Q. Now, you testified when you were on your
8 estate road, you didn't observe any trails, but you
9 don't know how the interior of the property looked like
10 at any time at point you were there, correct?

11 A. No, because I've never been to the interior of
12 the property.

13 Q. All right. And who is it that identified for
14 you the existence of the trails?

15 A. I said that I would rather not say.

16 Q. I understand, Ms. Curreri, but you're under
17 oath?

18 A. Well, there have been a number of people. Do
19 you want names?

20 Q. Who initially told you?

21 A. It was, I think it was Bob Ayres.

22 Q. The video that we just watched, do you know if
23 that is video of a part of 2 D 12 or 2 D 13?

24 A. That's a part of that particular -- those
25 stairs that you see cut, in the round, you know, they

1 were earthen, that is actually within the high water
2 mark of both of 2 D -- of 2 D 13.

3 Q. So, it's not what we witnessed was not on what
4 Ms. Bassil claim is her property, correct?

5 A. The path comes down through Ms. Bassil's
6 property through the stairway that is cut in the land.

7 Q. And you didn't witness those -- what was shown
8 on the video, you didn't actually first-hand see it?
9 You got a video clip and then later watched it?

10 A. Correct, correct, correct.

11 Q. And to your understanding, there were
12 selections made from a variety of videos to make up that
13 compilation, correct?

14 A. Yes, there were hours of videos unless the
15 Court -- as Attorney Duensing said, it was to make it
16 easy for the Court.

17 Q. When you went in 2015 to visit the property,
18 were you there with anyone other than yourself?

19 A. I can't remember back that far, sir.

20 Q. Do you have any notes or records to indicate
21 the dates upon which you visited the property?

22 A. No, because a lot of my notes that I have -- I
23 have some notes, but most of them I lost in the
24 hurricane when the roof came off my house.

25 Q. So you don't have any notes reflecting what

1 you saw or didn't see when you were out there on the
2 property?

3 A. No.

4 Q. Was there a time where you -- let me strike
5 that.

6 Did Ms. Bassil testify she didn't have
7 someone taking care of the property for her on a regular
8 basis, but there were times when you tried to get
9 someone to cut bush?

10 A. That's correct. But it was not accomplished.

11 Q. Okay. So if someone testified that it was
12 accomplished, they were wrong, correct?

13 A. I don't know, they were, yeah.

14 Q. And you tried -- where was the area you were
15 attempting to cut the bush from?

16 A. Right at where -- between Klein's driveway,
17 his weatherhead which is at the end of his driveway and
18 the telephone pole, the utility pole which is to the
19 side. It almost abuts 2 D - 13. There is only a very
20 small space where the driveway would go in and that's
21 where we would always stand to view the property.

22 Q. And that's from the estate road is what you
23 are talking about?

24 A. Correct, the estate road at the top of the
25 property.

1 Q. Do have you any records indicating any
2 attempts to cut through the bush or vegetation from the
3 estate road?

4 A. No, no records. There was a Haitian guy that
5 I hired. He has gone back to Haiti, and he did not do
6 it. He said it was too much for one person to do.

7 Q. Did you ever take any pictures of the dense
8 vegetation or any attempts to cut it?

9 A. Not to cut it, but I have taken pictures of
10 the dense vegetation, yes.

11 Q. You agree with me that the work was doable in
12 the sense that it is your the position now is that there
13 are now trails on the property that someone cut,
14 correct?

15 A. Someone I would say spent a lot of money
16 cutting those trails.

17 Q. All right. You don't have personal knowledge
18 Ms. Curreri of who cut those trails, correct?

19 A. No, I do not.

20 Q. Or when they were cut, correct?

21 A. No I -- well, they certainly was in the last
22 year, year and a half.

23 Q. Ms. Curreri, you testified earlier that you
24 don't know what the interior of the property looks like
25 at any point, is that correct?

1 A. Correct, only by video.

2 Q. So you only knew what the property looked like
3 from standing on the estate road, correct?

4 A. I'm not sure I understand the question, then.

5 Q. Your only observation of the property at any
6 point is from standing on the estate road?

7 A. No, I've seen the video of the paths that have
8 been cut. Does that constitute that I was there? No.

9 Q. Okay.

10 A. I have seen the picture.

11 Q. Okay, your only personal knowledge of the
12 status of the property any point when you went to the
13 property was what you saw from the estate road, correct?

14 A. Correct. And I could go no further into the
15 property.

16 Q. Is the area to -- if you're approaching
17 Mr. Klein's driveway to the -- is the area in front of
18 that driveway landscaped in any way?

19 A. His gate is landscaped.

20 Q. What about prior to the gate?

21 A. No. There's the estate road and you come
22 along the estate road and on your right, is the fencing
23 and landscape to 2 D - 13. Then you come to 2 D - 12
24 where there is a small space where Ms. Bassil's driveway
25 would go in if you were to make driveway, and then you

1 come to Mr. Klein's gate and weather head.

2 Q. Do you know how long that path, vegetation
3 extends from 2 D 13 to get to 2 D 11?

4 A. I could look at a map. I mean, I can look at
5 a picture and probably I could tell you that it's 50,
6 60 feet, at best because of the power pole.

7 Q. All right. You testified, I think that you
8 removed the listing most recently due to the skew of the
9 property; is that right?

10 A. Correct.

11 Q. You would agree with me I think that you need
12 to clear title in order to sell the property; is that
13 right?

14 A. Yes.

15 Q. And that there won't be a decision on the
16 clear title in this case whether it's favorable by
17 Mr. Klein or otherwise until a jury renders a verdict,
18 correct?

19 A. That's what you're saying; I don't know.

20 Q. You have no reason to dispute that?

21 A. I'm not saying that.

22 Q. Okay. Do you know, Ms. Curreri, what a
23 preliminary injunction is?

24 A. A preliminary injunction?

25 Q. Yes, ma'am.

1 THE COURT: Attorney, where are
2 you going with these questions?

3 ATTORNEY CRAIN: Your Honor, I'm
4 trying to get to the point that even if the result
5 is favorable to Ms. Bassil today, it doesn't change
6 the real complaint which is that she can't sell the
7 property. It doesn't matter.

8 ATTORNEY DUENSING: I would
9 object.

10 THE WITNESS: I have a question,
11 Your Honor.

12 THE COURT: Ms. Curreri, we'll
13 get to you.

14 But Attorney Crain, why do we need
15 Ms. Curreri to answer any questions regarding that?

16 ATTORNEY CRAIN: Fair enough,
17 Your Honor; I'll move on.

18 THE COURT: Thank you.

19 BY ATTORNEY CRAIN:

20 Q. Ms. Curreri, ultimately if the claim results
21 favorably for your client, your intention would be to
22 put the house back on the market; is that right, or the
23 property?

24 THE COURT: What is the
25 relevance, Attorney Crain?

1 ATTORNEY CRAIN: Again, Your
2 Honor I think it gets to whether there is actual
3 irreparable harm here, if they can sell the
4 property. They can sell the property at a later
5 date.

6 A. So would you like to rephrase the question?
7 What am I answering?

8 Q. Sure, I will make the point later,
9 Ms. Curreri. I will move on.

10 A. Okay.

11 Q. Did you receive any actual offer for the
12 property in 2021?

13 A. Not offers, no. Interest, yes.

14 Q. All right. And have you reviewed any surveys
15 in this case, Ms. Curreri?

16 A. Yes, sir.

17 Q. And have you reviewed the most recent survey
18 from 2021?

19 A. Yes, I have.

20 Q. And that shows the paths on the interior of
21 the property; does it not?

22 A. Yes, it does.

23 ATTORNEY CRAIN: No further
24 questions, Your Honor, from me.

25 THE COURT: Attorney Duensing.

1 ATTORNEY DUENSING: Nothing from
2 me, Your Honor.

3 THE COURT: Counsels, the Court
4 just has some questions for clarification.

5 **EXAMINATION**

6 BY THE COURT:

7 Q. Ms. Curreri?

8 A. Yes.

9 Q. Thank you. You testified that you removed the
10 M L S listing because of the T R O. What T R O are you
11 referring to?

12 A. Well, I believe there was one when this all
13 came about.

14 Q. In this matter or another matter?

15 A. No, I believe it was in this matter.

16 Q. And did you ever attempt to hire another
17 fencing company to install a fence?

18 A. No.

19 Q. And do you know who pays the property taxes
20 for 2 D?

21 A. For 2 D - 12? Ms. Bassil.

22 Q. Have you ever been contacted for permission to
23 look at the property or did Ms. Bassil ever give you
24 permission or ask you to give permission to Mr. Klein to
25 traverse her property?

1 A. Absolutely not.

2 THE COURT: Okay. Attorney
3 Duensing, with Attorney Seila's assistance, can you
4 put that video back up please?

5 ATTORNEY DUENSING: Sure, Your
6 Honor.

7 THE COURT: That's Exhibit 7.
8 Okay, you don't need to run it, just still
9 actually, if you can stop it.

10 BY THE COURT:

11 Q. Ms. Curreri, there appears to be a yellow rope
12 and a sign above what I guess you described as earthen
13 steps?

14 A. Yes.

15 Q. And did you place that sign there?

16 A. No, I did not.

17 Q. Is that your rope?

18 A. No, it is not.

19 Q. Okay. So are those the steps that you say
20 belong to 2 D - 13 or those earthen steps?

21 A. If you see where the fence, the little
22 picketty black iron fence is, the right hand side of the
23 screen?

24 Q. Lower down.

25 A. That fence back to 2 D - 13. And is this what

1 I would say between the tall fence and the sand or
2 rocky, that's I believe surveyors would tell you that's
3 where the high water mark is.

4 THE COURT: Okay, so that's the
5 area that you referred to when you say the high
6 water mark?

7 A. Um-hum. It is shown on some of the surveys.

8 THE COURT: Okay. Just for
9 clarification then, if we were at the post of the
10 larger fence that's not quite in the middle of the
11 screen and went directly out towards the water
12 toward the tree.

13 A. Um-hum.

14 Q. Whose property is that? Or what property does
15 it block?

16 A. I would submit it may be well, the Virgin
17 Islands Government because that is the high water mark.
18 A surveyor would have to actually pinpoint that for you.

19 Q. Now using what is known as Exhibit 7, paused
20 at the first four seconds for the record.

21 There is that yellow sign that we talked
22 about and the two black fences, the earthen steps and
23 the unidentified individuals on the screen, where does
24 the path begin to Ms. Bassil property's?

25 A. Just at the top of the steps. It is shown on

1 the survey, Your Honor.

2 Q. Right, I'm just wondering if we can view it in
3 this video.

4 A. The camera I believe is set, I don't think --
5 the camera doesn't some way, but you can try if you ran
6 it again if you see a little further up to the left-hand
7 side of the screen.

8 Q. Okay, so her property will be further down on
9 the screen?

10 A. It will be further on the upper left-hand but
11 right where the steps are again it would show on the
12 survey. The latest survey, it should show.

13 THE COURT: Okay. Thank you.
14 Does either counsel have any questions?

15 Thank you, Attorney Seila.

16 Any questions, Attorney Duensing?

17 ATTORNEY DUENSING: Nothing
18 further, Your Honor.

19 THE COURT: May Ms. Curreri be
20 excused?

21 ATTORNEY DUENSING: She may as far
22 as the plaintiff is concern, Your Honor.

23 ATTORNEY CRAIN: She may as far
24 as the my perspective as well, Your Honor.

25 THE COURT: Ms. Curreri, you've

1 been excused by counsels and the Court. You can
2 remain as public and continue to view. I would ask
3 that you mute your microphone or you may leave the
4 meeting, thank you.

5 ATTORNEY DUENSING: Thank you,
6 Ms. Curreri.

7 THE COURT: Counsels, the Court
8 needs a five minute recess.

9 Attorney Duensing, are you resting
10 until Ms. Hupprich?

11 ATTORNEY DUENSING: We have one
12 additional witness very brief, Jackie Marin, Your
13 Honor.

14 THE COURT: I do not see her in
15 the witness room.

16 ATTORNEY DUENSING: I will check
17 on that and if not, then yes. We will be resting
18 subject to the other issue that have already been
19 discussed, Judge.

20 THE COURT: All right. We will
21 have her available within the next five minutes and
22 we will recess for the next five minutes.

23 ATTORNEY DUENSING: Thank you.

24 THE COURT: Thank you.

25 **(HEARING IN RECESS) .**

1 **(HEARING RESUMES) .**

2 THE COURT: Attorney Duensing,
3 are you there? Ms. Marin has appeared.

4 Attorney Seila, are you there?

5 ATTORNEY SEILA: Yes, Your Honor.

6 THE COURT: Madam clerk, can you
7 swear Ms. Marin in?

8 THE CLERK: Ms. Marin, could you
9 please raise your right hand?

10 **JACQUELINE MARIN**, having been
11 first duly sworn as a witness, testified as
12 follows:

13 THE COURT: You need to unmute
14 your mic, Ms. Marin. You are still muted.

15 MS. MARIN: Okay. Yes, I do.

16 THE COURT: Thank you.

17 Attorney Duensing, Ms. Marin is not on
18 your witness list. What capacity is she testifying
19 here today?

20 ATTORNEY DUENSING: Um, she is
21 another realtor who has been involved in the
22 property, Your Honor. I thought we did have her on
23 our witness list, actually.

24 She is the representative of Island --
25 excuse me, of Blue Water Realty, Your Honor, which is

1 listed as No. 8.

2 THE COURT: Okay, but you would
3 agree that is not what the Court put on there.
4 It's set as Jackie Marin's testimony, correct?

5 ATTORNEY DUENSING: Yes, it is
6 Your Honor but again, we're calling her in the
7 professional capacity on behalf of Blue Water.

8 THE COURT: Okay. How is her
9 testimony relevant?

10 ATTORNEY DUENSING: She has
11 considerable knowledge of Ms. Bassil's property and
12 the conditions thereon. That's my understanding.

13 THE COURT: Okay, let's proceed.

14 ATTORNEY DUENSING: Thank you.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY DUENSING:

17 Q. Ms. Marin, good afternoon. How are you?

18 A. Good afternoon. I am well, thank you.

19 Q. I'm Matthew Duensing. I'm one of the
20 attorneys together with Robin Seila representing our
21 client, Madeline Bassil in this case, okay.

22 A. Yes.

23 Q. I just have a few questions. First of all,
24 can you tell the Court what your profession is?

25 A. I am a real estate broker for Blue Water

1 Realty; I'm the owner/broker there.

2 THE COURT: Can we have her put
3 her name on the record please?

4 ATTORNEY DUENSING: Yes.

5 BY ATTORNEY DUENSING:

6 Q. State your full name please.

7 A. Jacqueline Marin.

8 Q. And again, what is your professional
9 affiliation here on St. Thomas?

10 A. I'm the owner/broker of Blue Water Realty.

11 Q. All right. And as the owner/broker of Blue
12 Water Realty, do you have -- gained any familiarity with
13 the piece of property known as parcel 2 D - 12 Estate
14 Nazareth that is the subject of this litigation?

15 A. 2 D - 12 is the property that's located
16 immediately adjacent to another property that I have
17 sold. First, I was the selling agent for and then
18 again, I was the listing agent for.

19 THE COURT: For which property?

20 THE WITNESS: For 2 D - 13 is the
21 property that I sold and I was the selling agent
22 for it, and then listing agent for it again.

23 Q. Am I correct in understanding that that's the
24 property sort of on the Secret Harbor Resort side of
25 Ms. Bassil's property?

1 A. Yes, you're correct.

2 Q. And when did you first become involved with
3 the adjacent property that you just described?

4 A. The first time was this 2002 and the second
5 time was in 2005.

6 Q. All right. In the course of your
7 representation of parcel 2 - D -- 2 D - 13, have you had
8 occasion to observe Ms. Bassil's parcel next door?

9 A. Well, I have been to the property several
10 times and not on that property, but on 2 D - 13 and
11 looking back towards the property and obviously up at
12 the top of the property. That's the best I can say.

13 Q. Can you give us a time frame for those
14 observations?

15 A. Well, many times in 2002 and also in 2005, but
16 I'm sure, I mean, I've shown property out in that area
17 you know, all these years. So I can't tell you the
18 number of times that I have been out there.

19 Q. What would have been the most recent time that
20 you were out there and had an opportunity to observe
21 Ms. Bassil's property?

22 A. Honestly, I can't recall. I can't recall a
23 date. I'm sorry.

24 Q. All right. During the times that you, you
25 directly observed Ms. Bassil's property, did you ever

1 observe the existence of any established trails on her
2 property?

3 A. No, I have never seen a trail there.

4 Q. All right. How would you describe the
5 condition of Ms. Bassil's property generally based on
6 your observations?

7 A. Unimproved property.

8 Q. All right. And would you say that based upon
9 your observation of that property that it would be easy
10 to traverse in the condition that you observed?

11 ATTORNEY CRAIN: Objection,
12 leading.

13 THE COURT: Attorney Duensing,
14 can you rephrase your question?

15 ATTORNEY DUENSING: Right.

16 Q. Tell me again, the locations from which you
17 observed Ms. Bassil's property on your times out there?

18 A. From the top of the property that is the road
19 side from the -- I would say, I guess -- let's see, if
20 I get my directions from -- from the water side and I
21 guess from the south eastern side -- yes.

22 Q. All right. Let's start from the top of the
23 property. That's where you are talking about where the
24 Secret Harbor estate road terminates?

25 A. Yes.

1 Q. All right. In your observations of
2 Ms. Bassil's property from that location, did you ever
3 observe any trails or established paths on Ms. Bassil's
4 property?

5 A. No, no I haven't.

6 THE COURT: Again, Attorney
7 Duensing, she testified about the property in 2002,
8 2005. So can we put a time frame on these
9 observations that she is now talking about?

10 ATTORNEY DUENSING: Sure, Judge.

11 BY ATTORNEY DUENSING:

12 Q. Coming forward from 2005 Ms. Marin, can you
13 give us a time frame as to the observations that you're
14 describing?

15 A. I don't know. I don't know. I can imagine --
16 I don't know. I can't be sure when I would have gone
17 out there, but I am sure that I went out there many
18 times over the years from 2005 up until 2019, but I
19 can't tell you how many times or when in that time
20 frame.

21 Q. Well, let's look at 2019, why would you have
22 been out there in 2019?

23 A. Well, I've shown other properties out in that
24 area all for the 30 years I have been doing real estate
25 on St. Thomas. So I can't pinpoint them on the exact

1 time. But I did look at map GEO on that property, just
2 this year. And from map GEO, you certainly can't see
3 any --

4 ATTORNEY CRAIN: Your Honor, I
5 will object to this.

6 ATTORNEY DUENSING: We
7 understand, Judge, that there's no foundation for
8 that.

9 Q. Ms. Marin, if it's not a document that you've
10 created or have specific familiarity with, then, we'd
11 rather you not discuss it, okay?

12 A. Okay.

13 THE COURT: Ms. Marin, is that
14 the only document that's in front of you right now?

15 THE WITNESS: Yes.

16 THE COURT: Okay. The Court is
17 going to ask that you testify -- that your answers
18 to questions of your testimony be consistent with
19 what you remember or any document what Attorney
20 Duensing or Attorney Crain refresh your
21 recollection with. If have you any other document
22 or anything in front of you, I ask that you turn
23 them over and not read from them.

24 THE WITNESS: I have no other
25 notes.

1 THE COURT: Okay, thank you.

2 BY ATTORNEY DUENSING:

3 Q. So, based upon your most recent recollection
4 of being out there on the property in 2019, what if
5 anything can you tell us about what you observed with
6 regard to Ms. Bassil's property?

7 A. Well honestly, I wasn't looking for anything.
8 So, I can't say that I've notice any difference or
9 anything about the property, but I certainly wasn't
10 looking for any difference. But there was never any
11 improvements on the property. That's all I can say.

12 ATTORNEY DUENSING: All right.
13 We have no further questions of this witness,
14 Judge.

15 THE COURT: Attorney Crain.

16 ATTORNEY CRAIN: Yes, Your Honor.
17 Thank you.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY CRAIN:

20 Q. Ms. Marine, you testified you've seen 2 D 12
21 in 2002 and 2005 sort of from the street level
22 so-to-speak. Did you ever walk down the exterior sides
23 or the boundaries of the property?

24 A. No, I only walked on the front of 2 D 13.

25 Q. And you've never walked through the property

1 of 2 D 12, correct?

2 A. Absolutely not.

3 Q. You don't know what's on the interior of the
4 property; correct?

5 A. No, if I couldn't see it from the road or from
6 the sides or from the water, no.

7 Q. And then subsequent to your 2005 visits to
8 2 D 13, you didn't show 2 D 12 to anyone, correct?

9 A. No.

10 Q. Okay. So your observations would had been
11 based on you happening to be driving by to show another
12 property, correct?

13 A. Absolutely, yeah.

14 Q. Did you ever walk in any way on 2 D 11 either
15 on the driveway or next to the meter base or anything
16 down the side on 2 D 11?

17 A. I don't know. Maybe, I don't know.

18 ATTORNEY CRAIN: Okay. Nothing
19 further from me, Your Honor.

20 THE COURT: Attorney Duensing,
21 any redirect?

22 ATTORNEY DUENSING: No. Nothing
23 further from me, Your Honor.

24 THE COURT: May Ms. Marin be
25 excused?

1 ATTORNEY DUENSING: She may as
2 far as I'm concerned, Judge.

3 ATTORNEY CRAIN: Yes, Your Honor.

4 THE COURT: Ms. Marin, thank you
5 for your testimony. You may be excused or you can
6 stay and observe the rest of the hearing. I'd just
7 ask that you mute your microphone. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Attorney Duensing.

10 ATTORNEY DUENSING: Your Honor, I
11 understand that we subpoenaed Sharon Hupprich for a
12 3:00 P M appearance whether she actually joins us
13 at 3:00 P M, your guess is as good as mine, but
14 other than that, we have completed our case.

15 THE COURT: Attorney Crain, do
16 you have any objections to starting your case in
17 chief and if Ms. Hupprich appears that we can
18 address her testimony or her failure to appear if
19 she does not appear.

20 ATTORNEY CRAIN: Normally, Your
21 Honor, I hate to do that. But I also don't want to
22 waste someone's time. And I've got my witnesses
23 waiting and so I prefer to go ahead to try to
24 expedite things as much as possible.

25 THE COURT: Okay. I have a

1 Mr. Bennett, a Mr. Black.

2 ATTORNEY CRAIN: Mr. Black,
3 please. Mr. Ken Black.

4 THE COURT: What I was going to
5 do is give me a preview of your first three
6 witnesses.

7 ATTORNEY CRAIN: Absolutely, Your
8 Honor. Mr. Black, Frank Saunders and intention for
9 Sydney Bennett.

10 THE COURT: Admitting Mr. Black.

11 MR. BLACK: Hello?

12 THE COURT: Hi. Good afternoon,
13 Mr. Black. I'm going to have the clerk swear you
14 in.

15 MR. BLACK: Okay. I've been
16 waiting on hold for a while.

17 THE COURT: Madam clerk, could
18 you please swear the witness in?

19 THE CLERK: Good afternoon,
20 Mr. Black, can you raise your right hand?

21 **KENNETH BLACK**, having been first
22 duly sworn as a witness, was examined and testified
23 as follows:

24 MR. BLACK: I do.

25 THE CLERK: Thank you.

1 THE COURT: You may proceed.

2 ATTORNEY CRAIN: Thank you, Your
3 Honor.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY CRAIN:

6 Q. Mr. Black, could you please state your name
7 for the record?

8 A. Kenneth Black.

9 Q. Mr. Black, do you know John Klein?

10 A. I do.

11 Q. How do you know Mr. Klein?

12 A. I have known him for about 50 years; he's my
13 good friend.

14 Q. Have you ever had an occasion to visit
15 Mr. Klein in the Virgin Islands?

16 A. Yes, many times.

17 Q. And are you aware of where Mr. Klein resides
18 currently?

19 A. Yes.

20 Q. Where is that?

21 A. In St. Thomas.

22 Q. Can you be more specific about his residence?

23 A. Secret Harbor, I don't know; I don't know,
24 Nazareth. I forget the exact geographical location, but
25 basically Secret Harbor.

1 Q. Do you know whether that is the only house
2 that Mr. Klein resides in at Secret Harbor?

3 A. That is his primary residence, Secret Harbor;
4 that's correct.

5 Q. Did he live anywhere before that?

6 A. Yes, on Secret Harbor, yes he did. On the
7 other side of Harbor Bay, he had a house for several
8 years.

9 Q. Excuse me, Mr. Black. I'm sorry. Mr. Black,
10 go ahead.

11 A. I think you were going to ask the question
12 that I was going to answer; so go ahead.

13 Q. Did you have an occasion to visit
14 Mr. Klein at his prior residence at Secret Harbor?

15 A. Yes.

16 Q. And approximately when was that?

17 A. The first time was probably about 2000, 2001.

18 Q. Did you ever come back regularly to visit
19 Mr. Klein?

20 A. Yes, I have been to U.S. Virgin Islands on
21 many occasions. I have been to Secret Harbor on both
22 locations where John resided, at least a dozen times,
23 ten -- 12 times.

24 Q. And did any of those occasions come prior to
25 John's purchase of his current residence?

1 A. Have I been to Secret Harbor prior to John's
2 owning any residence?

3 Q. Had you been to visit him prior to his
4 purchase of his current residence?

5 A. Yes.

6 Q. And when you went to visit him, did you have
7 occasion to walk to his current residence?

8 A. Yes, you're asking if -- I'm trying to clarify
9 your question. You're asking, if before his current
10 residence was constructed, did I walk there?

11 Q. Yes.

12 A. Well, the answer is yes. I visited the site
13 before he actually even purchased the site.

14 Q. Okay, tell me about that visit.

15 A. I recall it was visited in July of 2003 and I
16 remember he was contemplating on his property on the
17 other side of the Secret Harbor Bay. And we walked
18 around the beach part, all the way around past Secret
19 Harbor and then there was a path that we took, that we
20 walked up, this path was, you know, it was pretty rough
21 at times, but it was a clear path. And we walked that
22 and it took us up to the top where his site was that he
23 was contemplating on buying. And we walked around the
24 site. You know, that was the first time I walked up
25 that -- I went on that path.

1 Q. And where did you enter that path?

2 A. I entered that path from the -- call it the
3 beach, at that point, after a pier there are some stones
4 and rocks there. And once you're at that point, you can
5 look and you can see that there is a clear entrance into
6 the foliage of the path. They just walk up the winding
7 path which meandered around to the top of the hill and
8 that's where the property was.

9 Q. And where did the -- did the path drop you out
10 anywhere?

11 A. The path at the top of the hill dropped us off
12 -- there was a house that was there and there was a
13 meter post, like concrete type of -- actually, it was a
14 trapezoidal kind of shape. There was a meter set in
15 it. And there was a white house that was there and
16 there was John's property that he was contemplating
17 buying was past that, further on the point.

18 Q. And did you have an occasion to visit John
19 again to 2004?

20 A. I don't think I came in 2004.

21 Q. Did you have occasion to visit Mr. Klein again
22 at some time after 2003?

23 A. Yes, many times.

24 Q. And when you visited the next time, was his
25 house completed?

1 A. I don't think it was fully completed, you
2 know. It took several years to complete, but I believe
3 I stayed at his house on the other side of the bay which
4 he is still occupying. We walked over or maybe even
5 drove over because he had the drive way kind of access
6 around it. You can drive and pass Secret Harbor, go up
7 a hill, and it took you around to where the construction
8 was taking place.

9 I think his house -- I can't remember
10 exactly when it was finished. It might have been
11 finished in 2006. I'm guessing. I am not 100 percent
12 positive exactly the date in which the house was fully
13 completed.

14 Q. When you returned to that plot of land that
15 Mr. Klein had purchased the second time, did you see any
16 trails?

17 THE COURT: Would you put a time
18 frame on that, Attorney?

19 ATTORNEY CRAIN: Sure, Your
20 Honor.

21 BY ATTORNEY CRAIN:

22 Q. Mr. Black, can you give me your best
23 recollection of when that second visit was after the
24 2003 visit?

25 A. I think it was 2006 and 2007 and I can't

1 recall if I took the trail up at that time.

2 Q. When you came the 2006 and 2007, did you see
3 any trails?

4 A. You could see it at the beginning of his
5 driveway. There was a trail that headed down which was
6 the same trail that came up. I originally came up in
7 2003 because I recognize the meter pole that was there.

8 Q. How would you describe the trail that you
9 walked in 2003?

10 A. It was, you know, it had a lot of foliage
11 around it. It had a kind of canopy of trees above it
12 and it was kind of rocky. It could -- I couldn't do it
13 bare foot if that's what you're asking. You had to have
14 shoes or keep a kind of sandals that have straps on it.
15 It was a little bit rugged, but it was a clear path.
16 You followed it all the way up. It meandered a little
17 bit and it ended up going straight up and it came out
18 where the meter was at the top of the hill.

19 Q. Subsequently, the 2006 or 2007 visit to
20 Mr. Klein, have you been back to visit him again?

21 A. Yes, many times.

22 Q. Okay. And approximately how frequently would
23 you visit Mr. Klein since 2006 or 2007?

24 A. Maybe every two or three years.

25 Q. During the subsequent visits every two or

1 three years, have you seen the existence of any trails?

2 A. Yes.

3 Q. Is it in the same location, where it was when
4 you took it in 2003?

5 A. The answer is a yes, it was at the top of the
6 hill where you can see it.

7 THE COURT: Mr. Black, you've
8 frozen.

9 ATTORNEY CRAIN: I thought it was
10 me for a minute, Your Honor.

11 THE COURT: Mr. Black, can you
12 hear us? If you can, we can no longer hear you.
13 You may have to move or adjust your connection.

14 Now, we lost -- Mr. Black, if
15 you're still able to hear us, I think you have to
16 still reconnect.

17 Attorney Crain, do you have
18 anyone who can assist and maybe contact Mr. Black
19 by phone?

20 ATTORNEY CRAIN: I'm working on
21 that as we speak, Your Honor.

22 His name popped back up. So,
23 maybe we're in luck.

24 THE COURT: Mr. Black, are you
25 with us? Mr. Black, are you there?

1 ATTORNEY CRAIN: I understand,
2 Your Honor, he's trying to reconnect. If you can
3 bear with us for one moment, so I can finish him
4 up.

5 THE COURT: Sure.

6 Are there any exhibits that you want to
7 use with the witness, Attorney Crain?

8 ATTORNEY CRAIN: I do, Your
9 Honor, just a couple of photographs.

10 THE COURT: Can you -- I guess
11 just identify them so we can --

12 ATTORNEY CRAIN: I'm thinking
13 Exhibit 10 through 12. I don't know if I need them
14 all. They're basically photographs of Mr. Black.

15 THE COURT: Their relevance?

16 ATTORNEY CRAIN: Just
17 corroborating that he visited at that time period;
18 that's all.

19 THE COURT: Preliminarily, it
20 shows that he may be on St. Thomas, but they're not
21 time-stamped, correct?

22 ATTORNEY CRAIN: They're not, but
23 he can talk about these extra pictures taken
24 during his trip in July of 2003, I believe.

25 If he doesn't come back in 30 seconds,

1 is it all right by the Court to move to another
2 witness and come back to him when he reconnects?

3 THE COURT: Are your final
4 questions for Mr. Black these photographs?

5 ATTORNEY CRAIN: I had a couple
6 more, Your Honor, but I'm not sure they're 100%
7 necessary. But I mean, if Mr. Duensing also has to
8 cross-examine -- but he might be in the waiting
9 room.

10 THE COURT: No, he's not. I've
11 got a Mr. Alfred, Frank, Kevin, Sidney and Afre,
12 A-F-R-E; that's all who are in the waiting room.

13 ATTORNEY CRAIN: Okay. Why don't
14 I take Mr. Saunders? If the Court will indulge me,
15 and see if we can finish up Mr. Black.

16 THE COURT: Attorney Duensing.

17 ATTORNEY DUENSING: We have no
18 objection, Judge.

19 **(TOOK A WITNESS OUT OF TURN.)**

20 THE COURT: I'm sorry. You said,
21 Mr. Saunders?

22 ATTORNEY CRAIN: Yes, Your Honor.

23 THE COURT: Mr. Saunders, if you
24 could turn on your video feed, please?

25 MR. SAUNDERS: Yes, let me turn

1 off the road first. Okay. All right.

2 How do I turn on the video feed?

3 ATTORNEY CRAIN: Click the button
4 that says start video.

5 MR. SAUNDERS: Start video, there
6 we are. Okay.

7 THE COURT: Mr. Saunders, are you
8 parked?

9 MR. SAUNDERS: Yes, I am with my
10 flashes on.

11 THE COURT: Attorney Crain, can
12 you insure that your other witnesses are in place
13 where they can testify, and are not testifying in a
14 vehicle.

15 ATTORNEY CRAIN: I will do my
16 best Your Honor, yes.

17 THE COURT: Okay.

18 Mr. Madam Clerk, can you swear
19 Mr. Saunders in.

20 THE CLERK: Mr. Saunders, can you
21 please raise your right hand?

22 **FRANK SAUNDERS, JR,** having been
23 first duly sworn as a witness, testified as
24 follows:

25 MR. SAUNDERS: Yes, I do.

1 THE COURT: You may proceed.

2 BY ATTORNEY CRAIN:

3 Q. Mr. Saunders, could you please state your full
4 name for the record?

5 A. Frank Wendell Saunders, Jr.

6 Q. Mr. Saunders, can you just give the Court a
7 ten-second background on your navy history and your
8 career? Very short.

9 A. Yes, I'm a 20-year navy veteran. I flew
10 helicopters for 17 years and fixed wings for three
11 years. Fifteen of my years were in the Norfolk,
12 Virginia Beach area and the other five were in
13 Pensacola, Florida area.

14 Q. And do you know John Klein?

15 A. Yes.

16 Q. How do you know John Klein?

17 A. I met John at a lighting show. I'm in -- I
18 have a commercial lighting company and it was NFMT
19 Conference in Baltimore in 1998. And I remember that
20 because that's the only one I ever went to. And John
21 came up and asked me if we had a certain type of light
22 bulb and I said, yeah. And he told me what it was going
23 to be used for which was a house in Jose Van Dyke. And
24 I said, by golly, we were there last week when my wife
25 and I had been on vacation. And I asked him who owned

1 the big house up there? And he said, I did or I do and
2 I said, no, really? Who owns it? He said, I do. We
3 just struck up and he's been a customer first and then a
4 friend after that.

5 Q. And are you familiar with Mr. Klein's current
6 residence in St. Thomas?

7 A. Yes.

8 Q. And do you know whether that was his first
9 residence in Secret Harbor or whether he lived some
10 where else prior to that?

11 A. He lived right across the water in Secret
12 Harbor, first.

13 Q. Did you have occasion to visit Mr. Klein at
14 any point, prior to his residence in Secret Harbor?

15 A. Yes, several times.

16 Q. Okay. And while visiting him at his prior
17 current residence, did you have occasion to travel to
18 what is now the new residence, the property that he
19 purchased?

20 A. Yes.

21 Q. Now, tell me when is the first time you recall
22 doing that?

23 A. The first time as I remember, it was 2004
24 because that was the year that we changed the name of
25 our company from Pen & Lighting Solutions to Southern

1 Lighting Company & Solutions and I have customers in
2 St. Thomas and John was nice enough to let me stay at
3 his house and he says come on, let me show you my new
4 property.

5 Q. And how did you access the new property?

6 A. The first time, we walked along the beach and
7 then we went up. There's a little path that goes up
8 from the base of the hill that kind of goes up to his
9 house and then we went along this little path up there,
10 that's how we got there the first couple of times.

11 Q. Okay. You said the first couple of times,
12 when was the second time at best?

13 A. Well, every time I went to see John which was
14 when I had -- we had as I said customers there and I
15 would go four to five times a year. Each time, I'll
16 come and it was obviously, a work in progress. So he'd
17 show me how along -- how far along the house had come.

18 Q. Can you describe the path of where it dropped
19 you off at?

20 A. It was -- if you're on the water, walking
21 along the water, and looking up the hill, there's a
22 house right on the left that borders the lot, and I used
23 that term loosely because it's the hill and in between a
24 bunch of trees there's an opening there and you climb
25 over some rocks, step off some rocks, and when you go

1 over the path, it was like two feet wide, four feet
2 wide, just your basic run of the mill path. You know,
3 nothing was growing on it because evidently people were
4 walking on it.

5 Q. All right. And have you visited Mr. Klein --
6 You said -- Did I hear you correctly that you came four
7 to five times a year?

8 A. Yes.

9 Q. Have you had further occasions to walk on the
10 path?

11 A. Yes.

12 Q. Okay. How often would you say you walk on the
13 path to visit Mr. Klein?

14 A. I would say going down to the beach, if I walk
15 down to the beach ten times, probably eight times
16 because it dumps you out right at the beach. The other
17 times, I will walk down the hill and that dumps you out
18 at the restaurant which is where we would go eat
19 sometimes.

20 Q. All right. And does your visits to Mr. Klein
21 continue pass the 2004 to 2005 time frame?

22 A. Yes.

23 Q. You said the frequency is four to five times a
24 year. Is that true within the last five to seven years?

25 A. Not with COVID. Because of the pandemic, I

1 went -- I went probably 14, 15 months without going down
2 there, but I have been back twice in the past
3 six months.

4 Q. And in the past six months, was the path
5 present still?

6 A. Yes, I used it.

7 Q. Does it look different or the same as it did
8 when you first used it -- when you last used it?

9 A. It looks pretty much the same. The path would
10 also vary in terms of lushness depending upon whether
11 you are there in the rainy season or whether you are
12 there in the dry season.

13 Q. Okay, all right. And again, how would you
14 describe the path when you first took it in 2004?

15 A. Again. It was two to four feet wide, some
16 places were narrower and depending upon the time of
17 year, in the weather season, the canopy was thicker
18 above. There were some places where you couldn't see
19 the sky. It obviously wasn't dark and other places you
20 could see the sky. When it was dryer season, you can
21 see more of the sky, and there was less under brush and
22 less growth along the path there.

23 ATTORNEY CRAIN: Nothing further,
24 Your Honor for this witness from me.

25 THE COURT: Thank you, Attorney.

1 ATTORNEY DUENSING: Yes, I have a
2 couple of questions.

3 **CROSS-EXAMINATION**

4 BY ATTORNEY DUENSING:

5 Q. Good afternoon, Mr. Saunders?

6 A. Good afternoon.

7 Q. I'm the attorney for Madeline Bassil in this
8 case. Do you still have a commercial relationship with
9 Mr. Klein?

10 A. A very small commercial relationship. I sell
11 him maybe one case of bulbs a year. So he's not what I
12 would consider a big customer.

13 Q. Do you sell lighting fixtures to Mr. Klein
14 over the years also or only bulbs?

15 A. Yes, fixtures and bulbs, anything pretty much
16 lighting related, fixtures, bulbs, controls that kind of
17 stuff.

18 Q. Did you sell Mr. Klein the fixtures for the
19 house that he constructed there on the point at Secret
20 Harbor?

21 A. Yes, I did.

22 Q. All right. And have you sold to Mr. Klein
23 lighting fixtures for his -- He has property over on
24 Jose Van Dyke, correct?

25 A. Yes, that's correct.

1 Q. What properties -- Have you visited those
2 properties of Mr. Klein's on Jose Van Dyke?

3 THE COURT: Attorney Duensing,
4 relevance?

5 ATTORNEY DUENSING: Just trying
6 to determine the nature of his commercial
7 relationship as a possible bias, Your Honor.

8 THE COURT: Okay.

9 BY ATTORNEY DUENSING:

10 A. Yes, I have very few. I sold some fans and I
11 haven't seen those fans in the places over there. And I
12 really have no idea where the fixtures go when I sell
13 them to John. He'll say I need "X" amount and I get him
14 those fixtures. I really don't know where they go.

15 Q. All right. And when did you say was the last
16 time you visited Mr. Klein and use the path down to the
17 beach?

18 A. About two to three months ago.

19 Q. Would you agree that the path that is there
20 now is more well established than the path that you saw
21 back in your first visit?

22 A. I would say that the path because of the
23 continued use over the years has maintained a certain
24 primitiveness and I can't really say whether you know --
25 to me it looks pretty much the same, but I don't know

1 what work if any really has been done on the path; it
2 didn't look like it.

3 Q. Did you only see one path when you were there
4 on Mr. Klein's property?

5 A. No, there's another path that hooks into that
6 path that comes from where the power meter is in front
7 of John's gate. It goes down about halfway down or so
8 there's another path that goes across to the bedroom
9 area of his house. Sometimes we would go down that path
10 if we were going over, I guess the west end of this
11 property but usually we will go down by the power gate.

12 Q. So, when did you first see the second path?

13 A. Shasha was about -- his daughter was maybe
14 five or six, probably about 15 years ago, give or take.
15 We didn't use that much. So I don't know, it wasn't
16 that all important to me.

17 Q. You said to access the paths from the beach,
18 you stepped over some rocks and onto the path; is that
19 correct?

20 A. The rocks were actually kind of like steps. I
21 mean these were big rocks, and it just happened to make
22 steps for a big person. So obviously, they weren't
23 moved and he'll step on these rocks, you know, to get up
24 on the path.

25 Q. Are you describing a naturally occurring

1 condition or steps that are actually fabricated?

2 A. No, the rocks were a naturally occurring
3 thing. As I say, you can't move those rocks.

4 Q. Did you ever see a set of steps that had been
5 fabricated by some human hand at the base of that path?

6 A. There were some black clear -- A shovel had
7 been used to just make it easier, rather than it being a
8 smooth surface, it made kind of ridges, I guess you can
9 call it stairs.

10 Q. When did you first observe those stairs?

11 A. Oh gosh, it was a long time ago, but I can't
12 really recall the day -- that wasn't something that I
13 took notice of.

14 Q. All right, the path that you just described,
15 that's not the only way you can access the Secret Harbor
16 beach from Mr. Klein's property, correct?

17 A. That's correct.

18 Q. In other words, you can simply go down the
19 road and enter it through the public entrance by Secret
20 Harbor just like anybody else, correct?

21 A. Yes, the only time that we did that was when
22 were we're going town for supper and we were dressed
23 other than swim suits, we would go down the road because
24 we didn't want to trip on the path or anything.

25 Q. Would you consider the road way easier to

1 traverse than the path itself?

2 A. Um, no. I think it was six to one a half
3 dozen or the other because the road had gravel on it.
4 The path had no gravel; it was all dirt. So going up
5 and down the hill, you know, sometimes the gravel -- you
6 know how gravel is, it's loose. So, I wouldn't say one
7 was any easier than the other.

8 Q. Taking the road to Secret Harbor simply takes
9 you a little bit longer, correct?

10 A. It took longer to get to the restaurant, but
11 it was shorter going to the beach.

12 ATTORNEY DUENSING: All right. I
13 have nothing further, Your Honor.

14 THE COURT: Attorney Crain.

15 ATTORNEY CRAIN: Just briefly,
16 Your Honor.

17 **REDIRECT**

18 BY ATTORNEY CRAIN:

19 Q. Mr. Sanders, you testified I think on cross
20 about Mr. Klein's purchased package of bulbs within the
21 last few years from you?

22 A. Yes.

23 Q. Approximately, how much would that cost?

24 A. The bulbs were less than \$2 and they are 48 in
25 the pack so -- less than a hundred dollars, these were

1 bug lights, the yellow bug lights.

2 ATTORNEY CRAIN: Nothing further,
3 Your Honor from me.

4 **EXAMINATION**

5 BY THE COURT:

6 Q. Mr. Saunders, you said you were at the
7 property in the last two to three months?

8 A. Yes.

9 Q. And on the path, did you notice any fencing?

10 A. I think there was a fence on the left -- well
11 going up, on the left-hand side, there is a house there
12 on that left hand side. And again depending upon rainy
13 season and the dry season, you can easily see the house
14 if the wet --

15 Q. I'm not asking about the house. I'm asking
16 about the fence. Did you notice a fence on the path?

17 A. I think there was, but I can't say there was
18 without any degree of certainty.

19 Q. Do you recall seeing any *NO TRESPASS* signs?

20 A. No.

21 Q. A chain across the path?

22 A. No.

23 Q. Then how are you sure that you were there in
24 the last two to three months?

25 A. Well, if I have to produce plane tickets, I

1 can certainly do that. That would be easy for me to get
2 for you.

3 Q. As you sit there now, you don't -- You only
4 believe you were here two or three months ago?

5 A. That's correct, the latest.

6 Q. Okay.

7 THE COURT: Attorney Crain, any
8 questions on the Court's questions?

9 ATTORNEY CRAIN: No, Your Honor.

10 THE COURT: Attorney Duensing?

11 ATTORNEY DUENSING: No, Your
12 Honor.

13 THE COURT: May Mr. Saunders, be
14 excused?

15 ATTORNEY CRAIN: Yes, Your Honor
16 from the defense's side.

17 ATTORNEY DUENSING: Yes, Your
18 Honor.

19 THE COURT: Mr. Saunders, you may
20 be excused. If you care to remain and listen to
21 the rest of the hearing, you may do so and with
22 your microphone muted as long as you're not driving
23 your vehicle.

24 ATTORNEY DUENSING: Thank you,
25 Your Honor.

1 THE COURT: Thank you. Have a
2 good afternoon.

3 Mr. Black is now back.

4 ATTORNEY CRAIN: That will be
5 great, Your Honor, if you could bring Mr. Black
6 back.

7 THE COURT: We'll finish with
8 Mr. Black and then Ms. Hupprich is in the waiting
9 room. So we'll go to her.

10 MR. BLACK: I apologize for
11 whatever happened.

12 THE COURT: Mr. Black, the Court
13 reminds you that you're still under oath and you
14 are being questioned by Attorney Crain.

15 ATTORNEY CRAIN: Yes.

16 **(RECONVENED WITH PREVIOUS WITNESS, MR. BLACK.)**

17 **DIRECT EXAMINATION OF MR. BLACK**

18 BY ATTORNEY CRAIN:

19 Q. That's all right, Mr. Black. You talked about
20 some of your prior visits, I just want to talk about
21 subsequent visits to property.

22 How often since 2003 would you say you
23 visited John Klein, if at all?

24 A. I'm guessing maybe about ten times.

25 Q. And in those ten times, approximately how

1 often were you there? Was it a year apart or was it
2 every six months?

3 A. No, a year, sometimes two.

4 Q. And when was the last time you visited
5 Mr. Klein in St. Thomas?

6 A. In St. Thomas, in 2019, October 2019, as a
7 matter of fact.

8 Q. Okay. And among those ten sometimes or so you
9 have visited with Mr. Klein after the first use of the
10 trail, did you use the trail any other times?

11 A. Yes.

12 Q. How often approximately would you use the
13 trail, when you visited subsequent to your first use?

14 A. I used it only when I was going down the beach
15 and sometimes I took the trail and sometimes I went
16 around to Secret Harbor and down the steps. It depended
17 on the weather. It depended on weather, you know,
18 whether I was wearing the right kind of shoes, it
19 depends on my wife who was with me. She's not a hiker
20 so the trails are a little rough for her. So we took
21 the steps instead.

22 Q. And how would you describe the trail during
23 your last visit in 2019 as compared to your first visit
24 in 2003?

25 A. It was definitely more used, it was clearer.

1 The only rough spots were down closer to the beach, but
2 you know, it was easier to traverse. If it rained, it
3 was a kind of muddy there, so. You didn't want to go
4 there around that time.

5 Q. All right.

6 ATTORNEY CRAIN: Your Honor, I
7 don't have anything further for Mr. Black.

8 THE COURT: Thank you, Attorney
9 Crain.

10 Attorney Duensing.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY DUENSING:

13 Q. Good afternoon, Mr. Black. What is the nature
14 of your relationship with Mr. Klein?

15 A. He is a very close friend. I have known him
16 about for about 50 years.

17 Q. And how did that friendship develop?

18 A. As teenagers, we lived not too far away. And
19 back in the early 70's, we were teenagers, a more of a
20 party times. We got together in our respective houses
21 and we have been very close friends since then.

22 Q. And you have stayed close over the years; is
23 that correct?

24 A. Yes.

25 Q. All right. And the trail that you described

1 -- first of all, was there just the one trail on that
2 property?

3 A. Well they had some interconnected pieces.
4 There was one trail went up and there was a branch that
5 went off, further closer to John's newer house.

6 Q. Did you ever observe on all of your visits
7 either John or any of his maintenance personnel ever
8 maintaining that trail?

9 A. I never saw anybody maintain the trail while I
10 was there.

11 Q. The trail as you describe it, you said I
12 believe it was rough and rugged and you needed some type
13 of foot wear; is that correct?

14 A. Yes. Particularly in the early days when I
15 first took that trail, it was pretty rough.

16 Q. The trail that you're describing, is that the
17 sort of trail that tourists could traverse just wearing,
18 say flip-flops and carrying a cooler and a beach chair?

19 A. Today, yes.

20 Q. But not when you first traversed it?

21 A. Well, earlier on, it was a clear trail, but
22 it wasn't used all that frequently. I know it had been
23 used. It was clearly a trail and you could see stuff
24 had been cleared and there were no branches on the
25 trail.

1 Q. So the trail is more developed now than it was
2 when you first saw it? Is that an accurate way to
3 describe it?

4 A. Yes.

5 ATTORNEY DUENSING: Nothing
6 further, Judge.

7 THE COURT: Anything further,
8 Attorney Crain?

9 ATTORNEY CRAIN: No, Your Honor,
10 nothing further from me.

11 THE COURT: May Mr. Black be
12 excused?

13 ATTORNEY CRAIN: From the defense
14 side, yes, Your Honor.

15 ATTORNEY DUENSING: Yes, Your
16 Honor.

17 THE COURT: Thank you, Mr. Black.
18 The attorneys said you can be excused. You can
19 remain and watch if you want to. Keep your
20 microphone muted otherwise, you will be
21 disconnected from the hearing.

22 MR. BLACK: Thank you, good day.

23 THE COURT: I'm going to admit
24 Ms. Hupprich.

25 Attorney Crain, when you go back

1 to your case, who's your next witness?

2 ATTORNEY CRAIN: I will call
3 Mr. Bennett if he's in the room.

4 THE COURT: And after
5 Mr. Bennett?

6 ATTORNEY CRAIN: Let me find my
7 list.

8 MS. HUPPRICH: Hi.

9 THE COURT: Good afternoon,
10 Ms. Hupprich, how are you doing?

11 MS. HUPPRICH: Not bad, Judge.

12 THE COURT: Welcome back to
13 St. Thomas. You are being called as a witness. I
14 am going to have the clerk swear you in.

15 Madam Clerk.

16 THE CLERK: Good afternoon, can
17 you raise your right hand? Ms. Hupprich, can you
18 raise your right hand?

19 THE COURT: Are you ready?
20 Ms. Hupprich, raise your right hand please.

21 **SHARON HUPPRICH**, having been
22 first duly sworn as a witness, testified as
23 follows:

24 MS. HUPPRICH: I do.

25 THE CLERK: Thank you.

1 THE COURT: Attorney Duensing,
2 you can proceed.

3 ATTORNEY DUENSING: Thank you.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY DUENSING:

6 Q. Good afternoon, Ms. Hupprich.

7 A. Good afternoon.

8 Q. I'm Matthew Duensing and I represent Madeline
9 Bassil in this case. This case concerns a dispute over
10 a piece of property known as 2 D - 12 Estate Nazareth.
11 Are you familiar with that property -- excuse me.
12 Secret Harbor, are you familiar with that property?

13 A. I am.

14 THE COURT: Would you have
15 Ms. Hupprich put her appearance on the record?

16 ATTORNEY DUENSING: Yes.

17 Q. Would you state your full name for the record,
18 please?

19 A. Sure. Sharon, middle name Elizabeth Band,
20 last name Hupprich, H-U-P-P-R-I-C-H.

21 Q. Can you tell the court what your professional
22 is?

23 A. Excuse me. Can I just ask you a question?

24 Q. Sure.

25 A. I see there are four other people here that

1 are not -- are they listening? But there is no photo
2 they are not --

3 THE COURT: Ms. Hupprich,
4 Ms. Curreri was here before. She is not
5 participating. Two of them are my law clerks, one
6 is my civil clerk, one is my court reporter and
7 then three are colleagues of Attorney Duensing.

8 THE WITNESS: Okay. I just see
9 now John Klein starting, okay.

10 What was the question? I am sorry.

11 By ATTORNEY DUENSING:

12 Q. I was just asking, what is the nature of your
13 profession?

14 A. I own a company called Calypso Realty, and I'm
15 a real estate broker.

16 Q. All right. I was asking you earlier about a
17 property that by client owns 2 D - 12 Estate Nazareth,
18 and I believe that you indicated that you are familiar
19 with the property; am I correct?

20 A. Yes, I am very familiar with it. Do you want
21 to know why?

22 Q. Yes, please.

23 A. I sold the property right next door 2 D - 13
24 and the Kilpatricks that I sold it to were clients of
25 mine for more than 10 years.

1 Q. All right. And in the course of your efforts
2 to market your client's properties next door 2 D - 13,
3 did you have occasion to observe my client's property
4 from time to time?

5 A. Yes, I did. Because we had it as a short term
6 vacation rental. So we were constantly -- it wasn't
7 just a sale. You know, I sold them the property and I
8 sold it again. We were managing it. So we were out
9 there, you know, pretty much weekly.

10 Q. All right. Can you give the Court a time
11 frame from when you would have made these observations?

12 A. I think that it was probably from right around
13 2000, maybe 2005 to between 2005 and 2017, so 12 years.

14 Q. All right. And so during that 12-year period
15 from 2005 to 2017, did you ever observe any established
16 trails on my client's property next door in 2 - D - 12?

17 A. Never.

18 Q. How would you describe the general condition
19 of my client's property during that period?

20 A. It was lots of bush and lots of catch-n-keep.

21 Q. Thank you, Ms. Hupprich. As part of your
22 brokering efforts on behalf of your clients, who owns
23 the property next door 2 D - 13, did you yourself ever
24 do any marketing of that property such as you know
25 taking photographs and that sort of thing?

1 A. Yes. I took my own photographs and had them
2 also professional done.

3 Q. And when you engage someone to do professional
4 photographs, do you maintain records of that engagement
5 in the ordinary course of your business?

6 A. Always.

7 Q. In other words, you track the expenses related
8 to that engagement?

9 A. Yes, we do and copies of checks and all of the
10 above receipts, invoices.

11 Q. And you maintained those records in the files
12 at your office?

13 A. We do.

14 Q. All right. I'd like to show you what we
15 marked for purposes of identification as Exhibit 3.

16 We're going to try to get this in a
17 format that is a little bit easier to read. Would you
18 take a look at this and tell us what that is?

19 A. That's an invoice from Don Hebert who did
20 still and aerial photography for us.

21 Q. And this invoice was for -- First of all, who
22 do you understand Don Hebert to be?

23 A. Oh, I'm sorry Don Hebert is a professional
24 photographer who we use quite extensively to photograph
25 villas for both rental and for sale.

1 Q. All right. And when was this particular
2 engagement?

3 A. The invoice says and we have the photographs
4 from November of 2015.

5 ATTORNEY DUENSING: Well, first
6 of all, I would like to move to admit Exhibit 3,
7 Your Honor.

8 ATTORNEY CRAIN: No objection,
9 Your Honor, to Exhibit 3.

10 THE COURT: Ms. Hupprich, does
11 this invoice relate to a property?

12 THE WITNESS: Yes, it does. It
13 says the beach house which is 2 B - 13.

14 THE COURT: It's admitted.

15 ATTORNEY DUENSING: Thank you,
16 Your Honor.

17 BY ATTORNEY DUENSING:

18 Q. And again, Ms. Hupprich, is it immediately
19 adjacent to my client's property sort of on the Secret
20 Harbor side?

21 A. Correct.

22 Q. And you said you also maintained the photos
23 that were acquired as evidence by this invoice; is that
24 correct?

25 A. Yes, yes.

1 Q. All right. I would like to show you what
2 we've marked as Plaintiff's Exhibit 1.

3 THE COURT: Are you showing her
4 the composite exhibit or just the one photograph?

5 ATTORNEY DUENSING: This is just
6 the one photograph, Judge.

7 THE COURT: Okay.

8 ATTORNEY CRAIN: Your Honor, I
9 would object to the use of the photographs in the
10 sense that she may have kept the record. She
11 didn't create the record. There's a part that's
12 missing from this analysis of the business record.
13 You know, it's like akin to me saying that as a
14 business record /keeper of the deposition
15 transcripts, but I'm not the court reporter. I
16 don't think she can use the photographs that she
17 just kept and didn't create.

18 ATTORNEY DUENSING: Well, Your
19 Honor, she procured --

20 THE COURT: Ms. Hupprich, did you
21 hire Mr. Hebert personally?

22 THE WITNESS: I'm sorry. Is that
23 a question for me?

24 THE COURT: Yes. Ms. Hupprich,
25 were you directly involved in the hiring

1 Mr. Hebert?

2 THE WITNESS: I was.

3 THE COURT: To take those
4 photographs?

5 THE WITNESS: Yes.

6 THE COURT: And after he took
7 these photographs, he gave them to you?

8 THE WITNESS: Correct.

9 THE COURT: The Court is
10 satisfied that she has sufficient --

11 THE WITNESS: I was there. I was
12 actually on property kind of directing him, so.

13 THE COURT: Thank you,

14 Ms. Hupprich.

15 It's admitted.

16 ATTORNEY DUENSING: Thank you,
17 Your Honor.

18 BY ATTORNEY DUENSING:

19 Q. Can you tell us when this particular
20 photograph was taken, Ms. Hupprich?

21 A. It was in November of 2015.

22 Q. All right. And is that your client's house
23 sort of on the left side of this photo?

24 A. Correct.

25 Q. And Mr. Klein's house is out on the point,

1 correct?

2 A. Correct.

3 Q. And it is my client's property 2 D - 12 in the
4 middle?

5 A. Correct.

6 THE COURT: Attorney Duensing,
7 for the record, is Mr. Klein's house the red roof
8 or the white roof? There are two houses on the
9 point.

10 Q. Do you know, Ms. Hupprich?

11 A. I think they're both his now.

12 THE COURT: Thank you.

13 THE WITNESS: And in 2015, they
14 were both his.

15 ATTORNEY DUENSING: Okay, thank
16 you.

17 Q. Next, I'd like to show you --

18 ATTORNEY DUENSING: First of all,
19 this photo has been admitted? Correct, Judge?

20 THE COURT: Yes, it has.

21 BY ATTORNEY DUENSING:

22 Q. So I would like to show next what we have
23 marked as Exhibit 1 A.

24 Can you tell us what this is, Ms. Hupprich?

25 A. That is a direct helicopter view down onto my

1 client's property on the beach house and also your
2 client's property with all the trees and the bush on it.

3 Q. And to your knowledge, was this taken the same
4 --

5 A. Same day, same time.

6 Q. All right. Thank you.

7 A. The photos --

8 ATTORNEY DUENSING: We would move
9 to admit 1A, Your Honor.

10 THE COURT: Attorney Duensing, do
11 you intend to show Ms. Hupprich all of those
12 photographs?

13 ATTORNEY DUENSING: No, we were
14 just going to show one more, Judge.

15 THE COURT: Okay. If you can do
16 that, then we can move for the admission of.

17 ATTORNEY DUENSING: Okay, all
18 right.

19 Q. We're showing you what we marked as Exhibit 1
20 B Ms. Hupprich, can you identify that?

21 A. Yes, again that's my client's property and
22 your client's property, 2 D - 13 aerial photography same
23 day as the others.

24 Q. Thank you, Ms. Hupprich.

25 ATTORNEY DUENSING: Your Honor,

1 we will move to admit these photos. And I guess I
2 just have a kind of final questions for the
3 witness.

4 ATTORNEY CRAIN: I would have the
5 same objection, Your Honor, understanding the
6 ruling being the same.

7 THE COURT: Exhibits 1, 1 A and B
8 are admit with counsel's objections.

9 Attorney Duensing, you may
10 proceed.

11 ATTORNEY DUENSING: Thank you.
12 Thank you.

13 BY ATTORNEY DUENSING:

14 Q. Ms. Hupprich, have you -- Since the time that
15 these photographs were taken in November of 2015, have
16 you observed any new trails developed on my client's
17 property?

18 A. Just in the past year. I don't manage that
19 property anymore, but what I have seen just from Secret
20 Harbor Beach Resort.

21 Q. Can you tell the Court what you observed --
22 First of all, when would this have been? And second
23 what was it?

24 A. It would have been about when I noticed it, it
25 was probably about maybe nine months ago or something,

1 eight months ago. That was the first time I've noticed
2 that. And it was like a road for goodness sake, a road
3 way, a swat cut through the property.

4 ATTORNEY DUENSING: All right.
5 Thank you, I have nothing further for this witness,
6 Your Honor.

7 THE COURT: Attorney Crain.

8 ATTORNEY CRAIN: Yes, Your Honor.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY CRAIN:

11 Q. Ms. Hupprich, did you ever walk the exterior
12 boundaries of 2 D 12?

13 A. Just the one boundary that bounds 2 D -- 13
14 because we had our fence put up there.

15 Q. Inside the fence, you walked the boundary?

16 A. Well before the fence was even there. The
17 boundary --

18 Q. Fair enough. But you never walked the other
19 side of 2 D 12, correct?

20 A. No, it would be impossible to get at because
21 of the catch-n-keep.

22 Q. And you have never seen the interior of 2 D
23 12, correct?

24 A. Like inside the property?

25 Q. You never walked inside of property, correct?

1 A. No.

2 Q. And so up until recently, your view was only
3 from 2 D 13, correct?

4 A. Or from the beach or from the water which is
5 pretty easy to see.

6 ATTORNEY CRAIN: Nothing further
7 for me, Your Honor.

8 THE COURT: Any follow-up,
9 Attorney Duensing?

10 ATTORNEY DUENSING: Nothing
11 further, Your Honor. We will excuse this witness.
12 Thank you, Ms. Hupprich.

13 THE COURT: Ms. Hupprich, the
14 Court does have one question before Attorney
15 Duensing excuses you.

16 THE WITNESS: Yes.

17 THE COURT: Ms. Hupprich, you
18 said you couldn't walk the property because of the
19 catch-n-keep and such. But if you wanted to, would
20 you be able with a machete to walk through that
21 property between 2005 and 2017.

22 THE WITNESS: Yes, if you cut it,
23 but I would not do that on somebody's else
24 property. There will be no reason for me to do
25 that.

1 THE COURT: Thank you.

2 Any questions on the Court's questions?

3 ATTORNEY DUENSING: Nothing
4 further, Your Honor.

5 THE COURT: Thank you,
6 Ms. Hupprich. Have a good afternoon.

7 THE WITNESS: Yes, thank you very
8 much. Bye-bye.

9 THE COURT: Bye-bye.
10 I'm admitting Mr. Bennett.

11 ATTORNEY CRAIN: Thank you, Your
12 Honor.

13 THE COURT: Attorney Crain, after
14 Mr. Bennett if we have time, who would you
15 anticipate calling?

16 ATTORNEY CRAIN: Mr. Glasgow,
17 Asif Glasgow.

18 THE COURT: What's his first
19 name?

20 ATTORNEY CRAIN: Asif, A-S-I-F.

21 THE COURT: He's not in the
22 waiting room. All right, let's continue with
23 Mr. Bennett.

24 Madam clerk, if you can swear him in.

25 **SIDNEY BENNETT**, having been first

1 duly sworn as a witness, testified as follows:

2 MR. BENNETT: I do.

3 THE CLERK: Thank you.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY CRAIN:

6 Q. Mr. Bennett, could you please state your full
7 name for the record?

8 A. My name is Sidney A. Bennett.

9 Q. And Mr. Bennett, where do you reside?

10 A. I reside in Tortola, West End Tortola in the
11 British Virgin Islands.

12 Q. And what have you been doing for a living in
13 Tortola?

14 A. I've been a lawyer for 41 years. About --
15 since 1989, I have practiced in Tortola.

16 Q. At any point as a lawyer, have you earned any
17 titles or recognition?

18 A. Well, I'm a priest counsel, yes. In 2003 --

19 THE COURT: Are you trying to
20 qualify him as an expert or is he a fact witness?

21 ATTORNEY CRAIN: He's a fact
22 witness, Your Honor.

23 THE COURT: Okay. Can we get to
24 how he is related to the case, then?

25 ATTORNEY CRAIN: Yes, Your Honor.

1 THE COURT: And Mr. Benefit,
2 there is no slight to you, and all of your
3 achievements are greatly appreciated as your
4 service to the community there in Tortola. We just
5 need to keep focus.

6 BY ATTORNEY CRAIN:

7 Q. Mr. Bennett, do you know Mr. Klein?

8 A. I know John Klein, very well.

9 Q. Okay. Did you ever have occasion to visit
10 John Klein at any of his residences in St. Thomas?

11 A. I have visited John Klein at his residence
12 many times over the past 30 years. We have a long term
13 relationship. And over many years, he has stayed at my
14 house in Tortola and I have stayed at his house on
15 St. Thomas -- his houses.

16 Q. And do you recall visiting his first residence
17 in Secret Harbor in 2004?

18 A. Yes -- 2004? I don't think -- I don't think
19 it was 2004. It probably was around that time yeah, but
20 I've been going to his house. I would stay over. And I
21 a remember once staying at his house. I have stayed
22 one week-end sometimes and I remember once perhaps that
23 would have been when he told me, I think that he was
24 buying another piece of land in Secret Harbor.

25 Q. Did you have occasion to visit the other piece

1 of land that he was buying in Secret Harbor?

2 A. Yes, it was -- He told me that he was buying
3 the piece of land and I think he had plans. He had part
4 the land already and he plans to build a house on it.
5 And he brought it out the house, the land from his
6 balcony in the housing -- in the land, Secret Harbor
7 first house. Later on that day --

8 Q. Did you have occasion to go visit that piece
9 of property?

10 A. Yes, I actually went out there to the Secret
11 Harbor Hotel. And there was I think at the time there
12 was a cafe there called Blue Moon Cafe. So he said
13 let's go visit the land. And so we walked along the
14 beach and passed a couple hotel blocks at Secret Harbor
15 and I passed a kind of jetty.

16 And then there was another kind of form, a
17 concrete structure there, kind of a dock with a kind of
18 gazebo structure at the end of it. And we were going up
19 a path. We were supposed to go up a path in the bush
20 and while tracking, I was not particularly enthusiastic
21 of the challenge, but we did go; it was narrow and bush,
22 it was a little track through the bush. You can see it.
23 There was tracks through the bush, a steep hill in some
24 parts and we ended up, I think near -- we came out
25 through a hole and onto a road, and there was I think a

1 light colored or a smallish house was on the other side.
2 And a part of the land was next to the where that house
3 was and we went onto the land. And when I went on the
4 land, it was spectacular. It was kind of a point going
5 out into in sea. You can see the sea on the three
6 sides. There is a beautiful view of the harbor, of the
7 Secret Harbor. It was -- that was when I kind of okay
8 -- It was worth going through that track.

9 Q. At the time -- Mr. Bennett, I'm going to have
10 stop you. At the time you took the trail up, was there
11 any kind of construction going on, on the piece of
12 property?

13 A. No, no, no. This was -- this was an intended
14 house he was going to build. And the only reason why --
15 because you asked about whether it was 2004, I don't
16 know. What I don't know is that it was shortly before
17 the house was built because I remember. After that,
18 there was a lot of talk about construction. In the next
19 few weeks or so and it was the construction was just
20 about to begin. But what I saw was just bush, rugged
21 undeveloped land.

22 ATTORNEY CRAIN: Nothing further
23 from me, Your Honor.

24 THE COURT: Attorney Duensing.

25 ATTORNEY DUENSING: Nothing

1 further from me, Your Honor.

2 ATTORNEY CRAIN: I apologize,
3 Judge. I was muted. No questions.

4 THE COURT: May Mr. Bennett be
5 excused?

6 ATTORNEY CRAIN: Yes, Your Honor.

7 ATTORNEY DUENSING: Yes, Your
8 Honor.

9 THE COURT: Mr. Bennett, thank
10 you for your testimony and your patience this
11 afternoon. Have a good afternoon. If you wish to
12 stay, you can mute your microphone and watch the
13 rest of the hearing.

14 THE WITNESS: No, Judge. Thanks,
15 I'll leave.

16 THE COURT: Okay. Thank you.
17 Have a good afternoon and be safe over there.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. Attorney
20 Crain, your next witness. There is an Alfredo and
21 an Alfree and a Kevin in the waiting room.

22 ATTORNEY CRAIN: Okay. I think
23 it is probably Afree. I think it's Asif is his
24 name, I believe that's the gentleman that we're
25 looking for.

1 THE COURT: Okay. I will let him
2 join.

3 Would the two remaining witnesses in
4 the waiting room be your final witnesses?

5 ATTORNEY CRAIN: Well, I think we
6 will probably run out of time, Your Honor. The
7 final ones besides my client, yes.

8 THE COURT: Sir, can you please
9 turn on your video and identify yourself, please?

10 If you just joined us from the waiting
11 room sir, if you can please turn on your video and
12 identify yourself, please?

13 ATTORNEY CRAIN: If the Court is
14 incline, maybe we can call Mr. Melhem and call back
15 to Mr. Glasgow.

16 THE COURT: Are you admitting
17 Mr. Melhem?

18 Attorney Crain, do you have someone to
19 assist you to find out who that was?

20 ATTORNEY CRAIN: Yes, I will look
21 into it. I believe it was Mr. Glasgow, but I will
22 confirm.

23 THE COURT: Okay, Mr. Melhem.
24 Can you please turn on your video? I'll ask the
25 clerk to swear you in.

1 Madam Clerk.

2 Mr. Melhem, you also need to turn on
3 your microphone.

4 MR. MELHEM: Okay, good
5 afternoon.

6 THE CLERK: Good afternoon,
7 Mr. Melhem, could you please raise your right hand?

8 **ALFREDO MELHEM**, having been first
9 duly sworn as a witness, testified as follows.

10 MR. MELHEM: Yes, I swear.

11 THE COURT: Good afternoon, sir.

12 THE WITNESS: Good afternoon.

13 THE COURT: Attorney Crain.

14 ATTORNEY CRAIN: Thank you, Your
15 Honor.

16 **DIRECT EXAMINATION**

17 BY ATTORNEY CRAIN:

18 Q. Mr. Melhem, could you please state your full
19 name for the record?

20 A. My full name is Alfredo Rafael Melhem.

21 Q. Mr. Melhem, do you know John Klein?

22 A. Yes, I do.

23 Q. How do you know John Klein?

24 A. Well I know of him when I was traveling there
25 in the British Virgin Islands in the middle of the 90's.

1 I met him at the British Virgin Islands in Jost Van
2 Dyke.

3 Q. Okay. And have you on occasion gone to visit
4 him on St. Thomas?

5 A. If I visited him on St. Thomas?

6 Q. Yes.

7 A. Yes, of course.

8 Q. And did you visit him at any point in 2003 or
9 2004?

10 A. Yes, I was there in 2003/2004.

11 Q. How do you know you visited him in 2003 and
12 2004?

13 A. Pardon me? I didn't hear you. My connection
14 is not very good.

15 Q. How do you know you visited Mr. Klein in 2003
16 or 2004?

17 A. Because I was living on St. Thomas at that
18 moment, okay. I was going back and forth to my country
19 in Argentina because the situation in Argentina was
20 terrible. So, I know it was at that period of time.

21 Q. And when you visited Mr. Klein in 2003/2004,
22 did you visit the house in Secret Harbor?

23 A. Yes, yes. I was staying at his home in Secret
24 Harbor the first one he bought.

25 Q. Okay. And did you ever have occasion to go

1 with Mr. Klein to visit a second property in Secret
2 Harbor?

3 A. Which property?

4 Q. The second property.

5 A. Yes, yes I was there.

6 Q. And did you do that during your 2003/2004
7 visits?

8 A. Right, exactly.

9 Q. Tell me about that, please.

10 A. Tell you about that?

11 Q. Tell me about when you went to visit the
12 second property?

13 A. Okay. We went to the second property with
14 John. We were walking around the place. We were
15 drinking beer. We were walking, taking a look and I
16 remember that we went there. We were walking, you know,
17 down the beach and going down to the beach, to the gates
18 seeing the property. We were walking around, you know,
19 just walking. I mean, nothing, nothing very important.

20 Q. Okay. And when you visited the properties,
21 did you have an occasion to either see or go down any
22 paths?

23 A. Yes, yes.

24 Q. Tell me about that.

25 A. We went through a path that started up on the

1 low hill and went down that path to the beach. I mean,
2 it wasn't a very big path. It wasn't very dirty, with
3 lots of vegetation and it seems like it was a covert
4 path. I mean something like, I don't know if it is the
5 right word, a secret path, but something like that.

6 Q. Okay. And how did you enter the path?

7 A. How did we entered the path?

8 Q. Yes. From where?

9 A. Walking, walking.

10 Q. Where was the entry of the path located?

11 A. It was on the right. It was a post there with
12 some electricity thing and he was at the main entrance
13 of the road, okay.

14 Q. Did you enter the path from Mr. Klein's
15 property?

16 A. If I entered --

17 Q. -- from Mr. Klein's property?

18 A. It wasn't his property yet, I think. He
19 didn't buy the property at that time.

20 Q. And did you take the path down? And so where
21 did it drop you off at?

22 A. Yes, to the beach.

23 Q. All right. And when you were visiting him in
24 2003/2004, did you use the path other times other than
25 the one time we discussed?

1 A. Well, we used that path one or two times and
2 then we used another. Sometimes, we went through the
3 hotel, the Secret Harbor Hotel down the beach. We
4 didn't use it like always to go to the beach. We used
5 it one or two times and then we used the other path,
6 okay. Sometimes, we get from the other side of the
7 beach also different places.

8 Q. Did there come a time when you came to visit
9 Mr. Klein once he had moved into his new residence?

10 A. What?

11 Q. Did you come visit Mr. Klein once he moved
12 into his new residence?

13 A. When he -- yes, yes, I visited him, yes.

14 Q. And do you know when that visit was?

15 A. When I visit that?

16 Q. Yes.

17 A. I visited in 2007 I think one time. And then
18 I visited again just a couple of years ago. And before
19 COVID, I was there, also. Yes, a couple of times.

20 Q. And did you take the path during any of your
21 subsequent visits to Mr. Klein?

22 A. Yes, yes. We went through that path, yes. It
23 was different. I mean, it was 18 years ago anyway the
24 first time I went through that path. So my memory is
25 not excellent, but it was like different, okay.

1 Q. How was it different?

2 A. It had a rope on it, less vegetation, but it
3 was in the same location.

4 Q. And are you talking about it was different
5 when you came back in 2007?

6 A. Right.

7 Q. And was the path still present when you last
8 visited before COVID?

9 A. Yes, yes.

10 Q. Did you use it during that last visit?

11 A. Yes.

12 Q. And was it in the same basic condition and
13 location when you saw it in 2007?

14 A. Right.

15 Q. All right.

16 ATTORNEY CRAIN: Your Honor,
17 nothing further for this witness.

18 THE COURT: Attorney Duensing.

19 ATTORNEY DUENSING: Yes, Your
20 Honor. I have just a couple of questions.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY DUENSING:

23 Q. Good afternoon, sir. How are you?

24 A. Yes, good afternoon, yes.

25 Q. So, this path when you first saw this path,

1 you described it as a secret path, right?

2 A. I said, I don't know if this is a right word
3 but you know, it was like a secret path, like something
4 was hidden, you know, with all the vegetation.

5 Q. By saying a secret path, do you mean it was
6 difficult to see?

7 A. Not at the entrance. I mean, when you walk
8 there inside, it was too close, you know, a lot of
9 vegetation.

10 Q. So this path was not obvious to someone who
11 was not familiar with the property, correct?

12 A. I don't know that. I can't respond to that.

13 Q. Now, you said when you would stay with
14 Mr. Klein and go to the beach, you didn't always use
15 this path, correct?

16 A. Again please?

17 Q. Again, on the occasion that you visited
18 Mr. Klein and went from his property to the beach,
19 sometimes you just used the public entrance right at the
20 hotel, correct?

21 A. Right.

22 Q. In other words, you just had to walk down the
23 road from Mr. Klein's house to go to the public
24 entrance, correct?

25 A. Again?

1 Q. To get from Mr. Klein's house to the beach in
2 Secret Harbor, all you had to do was walk down the road
3 to the resort, correct?

4 A. Yes.

5 ATTORNEY DUENSING: All right,
6 nothing further, Your Honor.

7 THE COURT: Any follow-up,
8 Attorney Crain?

9 ATTORNEY CRAIN: No, Your Honor.

10 **EXAMINATION**

11 BY THE COURT:

12 Q. Mr. Melhem, do you know whose property, this
13 access that you took with Mr. Klein, do you know whose
14 property that was that you walked across?

15 A. No, I didn't understand you, sorry.

16 Q. Do you know whose property it was that you
17 were walking across?

18 A. I can't understand you, the last part. The
19 connection is not very good. So it had some cuts in
20 your voice, sorry.

21 Q. I will try again. The property that you
22 described with the path, do you know who that belongs
23 to?

24 A. You mean, at the first time before John Klein
25 bought that property? It was a couple there that owned

1 the property; I remember them a little bit.

2 Q. Do you know who owns the property that you
3 walked across? Do you know who owns that property?

4 A. No, I don't know.

5 Q. And when you -- it may not seem significant,
6 but you used the word *secret*. I believe, Spanish may be
7 your first language?

8 A. Yes, right.

9 Q. Are you able to describe it better if you were
10 able to say it in Spanish?

11 A. You want me to speak in Spanish?

12 Q. No. When you described the property -- the
13 path as *secret* in 2003/2004, you said you were not
14 really able to explain what you mean by the word *secret*.
15 Are you able to describe that if you were able to say it
16 in Spanish?

17 A. I mean, when you were in the path, okay, it
18 was very covered of vegetation. So it seems like a
19 secret, okay. It is not because it is secret path that
20 I decided, but it was a lot of bush, sometimes you would
21 have to go through like this to advance (indicating.)
22 When you were walking, but nothing was secret at the
23 entrance. I mean, you can see the entrance of the path,
24 okay.

25 THE COURT: Okay. Thank you,

1 Mr. Melhem. And for the record, I don't know if
2 you were looking at the camera or Attorney Crain,
3 but Mr. Melhem was using his hands in a gesture
4 that was pushing back things that were in front of
5 him when he was walking on the path.

6 Any questions for either counsels from
7 the Court's questions?

8 ATTORNEY CRAIN: No, Your Honor.

9 ATTORNEY DUENSING: No, Your
10 Honor.

11 THE COURT: May Mr. Melhem be
12 excused?

13 ATTORNEY CRAIN: Yes, Your Honor.

14 ATTORNEY DUENSING: Yes, Your
15 Honor.

16 THE COURT: Mr. Melhem, you are
17 excused. You can remain and listen to the rest of
18 the hearing or you can disconnect and have a good
19 afternoon.

20 THE WITNESS: Okay, I will
21 disconnect. Thank you.

22 THE COURT: Thank you.

23 THE WITNESS: You're welcome.

24 THE COURT: Attorney Crain, your
25 next witness.

1 ATTORNEY CRAIN: Mr. Keating,
2 Your Honor. I'm surprised no one took you up on
3 the offer to stick around.

4 THE COURT: I'm sorry, who is
5 your next witness?

6 ATTORNEY CRAIN: Mr. Keating.

7 THE COURT: Okay, is his first
8 name Kevin?

9 ATTORNEY CRAIN: Yes, Your Honor.

10 THE COURT: Okay, he is only
11 logged in as *Kevin*.

12 ATTORNEY CRAIN: My apologies.

13 THE COURT: Sir, if you can
14 please unmute your mic and turn on your video,
15 Mr. Keating?

16 MR. KEATING: I am unmuted.

17 THE COURT: Turn on video so we
18 can see you.

19 MR. KEATING: It's on, but it's
20 got a camera on it. Let me see if I can do it on
21 my phone. I can see everybody, but you guys can't
22 see me.

23 THE COURT: No, we can't.

24 ATTORNEY CRAIN: While he's doing
25 that Your Honor, can we talk for a second, just

1 logistically?

2 THE COURT: Yes.

3 ATTORNEY CRAIN: If you don't
4 mind.

5 So Mr. Glasgow is the last witness
6 besides Mr. Klein. It's about ten to 4:00. I
7 think we can get Mr. Keating done quickly, but I
8 have a feeling that we're going to run out of time
9 at that point.

10 THE COURT: About how much time
11 do you think your last two witness are going to
12 take?

13 ATTORNEY CRAIN: I think
14 Mr. Glasgow is not very much time. Mr. Klein is a
15 little much harder to decide, but I think it will
16 be 45-minute to an hour.

17 THE COURT: I think, we can --
18 let's continue with Mr. Keating once we can see
19 him. We may get Mr. Glasgow in and maybe recess
20 for evening.

21 MR. KEATING: I'm on my phone.
22 You just need to let me in.

23 THE COURT: Sorry. I did see
24 that.

25 MR. KEATING: It's the same

1 thing.

2 THE COURT: Attorney Crain, can
3 we go ahead with Mr. Glasgow?

4 ATTORNEY CRAIN: Yes. I'll get a
5 hold of the IT guy.

6 THE COURT: Okay, we are going to
7 put you back in the waiting room.

8 MR. KEATING: Thank you.

9 THE COURT: Mr. Glasgow, can you
10 please turn on your video? Mr. Glasgow, good
11 afternoon. Hello, Mr. Glasgow.

12 Attorney Crain, do you have a way of
13 reaching Mr. Glasgow?

14 ATTORNEY CRAIN: I believe my
15 client may be able to do so.

16 THE COURT: What's Mr. Glasgow
17 going to offer as for his testimony?

18 ATTORNEY CRAIN: He's going to
19 offer similar testimony to what the folks had offer
20 in the sense of being there in late of 2004 viewing
21 the properties, seeing the path and taking the
22 path.

23 THE COURT: Is it necessary for
24 him to testify?

25 ATTORNEY CRAIN: It's hard to

1 say, Your Honor, a little bit. I think that time
2 is clear so far in the evidence in that sort of
3 time frame.

4 THE COURT: He's present. So
5 we'll have the clerk swear him in.

6 Mr. Glasgow, can you raise your right
7 hand? Mr. Glasgow, can you hear the Court?

8 Attorney Crain, is that Mr. Glasgow?

9 ATTORNEY CRAIN: I have never
10 seen him. So I can't speak to that. I am -- I
11 have never met him. Mr. Klein said -- he is
12 telling me that yes, it is.

13 THE COURT: Mr. Glasgow, can you
14 please unmute your mic and raise your right hand
15 and prepare to be questioned?

16 **ASIF GLASGOW**, having been first
17 duly sworn as a witness, testified as follows:

18 MR. GLASGOW: Yes.

19 THE CLERK: Thank you.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY CRAIN:

22 Q. Mr. Glasgow, could you please state your full
23 name for the record?

24 A. Asif Glasgow.

25 THE COURT: Can you spell your

1 first name?

2 A. A S I F Glasgow.

3 Q. Mr. Glasgow, can you identify for the Court,
4 how it is you know John Klein?

5 A. I met John in about 1999 in Jost Van Dyke when
6 I did some heavy equipment work.

7 Q. And have you ever come to St. Thomas to come
8 to visit Mr. Klein on a property that he was developing
9 in Secret Harbor?

10 A. When I first came to St. Thomas, I met John
11 living in Secret Harbor in a previous house not the
12 existing house, but in the previous house across at the
13 entrance of Secret Harbor because I used to stay at that
14 house with him.

15 Q. And when was it -- Do you recall going to
16 visit where he currently resides prior to the house
17 being built?

18 A. It was late 2004 in either late November or
19 early December '04.

20 Q. And why do you believe it was late November
21 early December of 2004?

22 A. Because that is the same time my daughter was
23 born. She was born the 22nd of November 2004 and I was
24 staying at his residence at that time.

25 Q. Okay. And how did you access that property

1 that you went to visit?

2 A. We walked from the present house, the existing
3 house and we walked down Secret Harbor, down by the
4 restaurant on the bay, and then we walked up from there
5 up to the property.

6 Q. Um, did you go through the trail to get up to
7 the property?

8 A. Yes. Down through the trail, down the beach
9 and we go down by the dock and we walked up some little
10 dirt trail to get up there.

11 Q. How would you describe trail?

12 A. A trail, dirt, just a little walk path maybe
13 two, three feet wide.

14 THE COURT: Mr. Glasgow, are you
15 saying duck, like D-U-C-K.

16 THE WITNESS: Dirt, dirt, dirt.

17 THE COURT: Dirt, dirt. Oh,
18 dirt. Okay, I got you. Sorry.

19 ATTORNEY CRAIN: I heard dock,
20 Your Honor. Thanks for the clarification.

21 BY ATTORNEY CRAIN:

22 Q. All right. Mr. Glasgow, where did the trail
23 drop you off at?

24 A. To the entrance, to the property.

25 Q. And what property is that?

1 A. That's the one where Mr. Klein's house is now.

2 Q. Okay. And why were you going to that
3 property?

4 A. Well, I do heavy equipment works. So we went
5 to look that property because there was a discussion
6 about me coming to St. Thomas to do the excavation work
7 over there.

8 Q. Did you end up coming to St. Thomas to do the
9 excavation work?

10 A. No.

11 Q. Did you return any time after that in November
12 of '04 or December of '04 to visit the property, to see
13 the property again?

14 A. I can't remember what time. Most time I was
15 in St. Thomas, I always look for John. I stay with
16 John. So it is always a back and forth, a time frame I
17 can't say, but most time that I go to St. Thomas, I stay
18 at John's property. I stayed at the old property. I
19 stayed at the existing property.

20 Q. And approximately how many times you stayed at
21 the existing property?

22 A. Quite a few times.

23 THE COURT: Can you put that on
24 another time period?

25 BY ATTORNEY CRAIN:

1 Q. Mr. Glasgow, the Court would like to know at
2 what time frames do you believe you stayed at
3 Mr. Klein's property?

4 A. Time frame, in terms of the length of time?

5 Q. When? When did you stay there? After your
6 first visit, when did you stay there?

7 A. That's so much years ago. That's a tough one.
8 But like I say, the majority of the times I come to
9 St. Thomas, I don't really stay in hotels and stuff, it
10 is by Mr. Klein I stay.

11 Q. How many times have you come to St. Thomas
12 since your November or December '04 visit to Mr. Klein's
13 property?

14 A. Several times because my kids was living in
15 St. Thomas so I came back and forth often.

16 Q. Would you say it was more or less than ten?

17 A. Way more than times.

18 Q. And during those visits, if you stayed at
19 Mr. Klein's property did you ever notice there was an
20 existence of a trail?

21 A. Say that again.

22 Q. Sure. When you stayed at Mr. Klein's property
23 after your November or December '04 visit, did you
24 notice whether there was an existence of a trail?

25 A. Well, I wasn't really looking for a trail, but

1 once I go by John and sometimes he goes down to swim, I
2 would walk down there with him. But on my own
3 personally, I wouldn't go down there. So, normally when
4 I go by John in the afternoon time, he would say he is
5 going for a swim. I wouldn't swim, but I will go down
6 and sit down by Secret Harbor while he goes swimming and
7 stuff.

8 Q. And so you used that trail a number of times
9 since you first used it in 2004?

10 A. Yeah, I used it few times even since he has --
11 Since he lives on the property now, I used it a few
12 times with him.

13 ATTORNEY CRAIN: All right.
14 Nothing further from me, Your Honor.

15 THE COURT: Attorney Duensing.

16 ATTORNEY DUENSING: No, no
17 questions, Your Honor.

18 THE COURT: May Mr. Glasgow be
19 excused?

20 ATTORNEY CRAIN: Yes, Your Honor.

21 ATTORNEY DUENSING: Yes, Your
22 Honor.

23 THE COURT: Okay. Mr. Glasgow,
24 you may be excused. If you want to sit and
25 participate in the rest of the hearing, you may do

1 so with your muted micro phone. If you're still in
2 Tortola, please be safe over there.

3 THE WITNESS: Okay, thank you.

4 THE COURT: Okay. There's a
5 Lessie Remington in the waiting room. Are we to
6 believe that's Mr. Keating?

7 ATTORNEY CRAIN: That will be my
8 best bet, Your Honor, yes.

9 THE COURT: Okay. I will admit.
10 I know it's minutes to 4:00, but if this is going
11 to be brief testimony, let's get it into today
12 because tomorrow we have a very busy court schedule
13 here in the court with the court reporters.

14 ATTORNEY CRAIN: I will be as
15 brief as we can, Your Honor. Probably in the same
16 vein as we did with the couple other witnesses.

17 THE COURT: Is that Mr. Keating?

18 MR. KEATING: Yes, it is.

19 THE COURT: Can you raise your
20 right and be sworn in?

21 **KEVIN KEATING**, having been first
22 duly sworn as a witness, testified as follows.

23 MR. KEATING: Yes, I do.

24 **DIRECT EXAMINATION**

25 BY ATTORNEY CRAIN:

1 Q. Mr. Keating can you please state your full
2 name for the record?

3 A. Kevin Michael Keating.

4 Q. And Mr. Keating, do you know John Klein?

5 A. Yes, I do.

6 Q. Okay. When did you first meet Mr. Klein?

7 A. Back in late 2013.

8 Q. And in what context did you meet Mr. Klein?

9 A. I met him -- I used to see this gentleman
10 walking from -- by a bush, by the dock which is attached
11 to the complex that I managed, and I never really talked
12 to him until probably about a month or so after I first
13 initially saw him.

14 Q. And what property were you managing?

15 A. Secret Harbor Beach Resort.

16 Q. And so were you employed in Secret Harbor in
17 2013?

18 A. Yes, I was.

19 Q. And what was your title?

20 A. General manager.

21 Q. And when did you -- Did you leave Secret
22 Harbor's employment at any point?

23 A. Yes, in 2019.

24 Q. All right. And tell me, where do you
25 currently work?

1 A. Right now, I'm with the director of training
2 and development for White Bay Villas.

3 Q. All right. And so tell me again, how you
4 first encountered Mr. Klein?

5 A. I just used to see a gentleman walking down
6 from out of some trees or some bush out on to the beach
7 with a couple of dogs.

8 Q. What beach are you referencing?

9 A. Secret Harbor Beach.

10 Q. Can you describe the area he was walking down
11 from?

12 A. It was a wall -- tree, wooded area, and it was
13 amazing to me because I didn't know where he was coming
14 from.

15 Q. And do you know what Mr. Klein was doing when
16 he was coming out of the bush?

17 A. Yes, he was walking down to go swimming with
18 his dogs.

19 Q. And when did you first notice this?

20 A. Back in probably 2014, late '13, early of '14.

21 Q. And during your -- I think you said you left
22 Secret Harbor in July of '19 so during your five or six
23 years of Secret Harbor, did you see Mr. Klein coming
24 down through the bushes onto the beach on a regular
25 basis?

1 A. Yes.

2 Q. How often would you see him doing it?

3 A. A couple times a week. Unfortunately, I was
4 running a multi unit facility. I probably saw him at
5 least two or three times a week. I know on Sundays for
6 sure because that was the day I was responsible for the
7 beach area as a GM.

8 Q. Did you ever have an occasion to determine how
9 Mr. Klein was getting to go the beach?

10 A. Yes. Back in 2017 before Hurricane Irma and
11 Maria. There's a house that's next to the Secret Harbor
12 beaches, the four buildings, next to that is a huge home
13 that the owners of that approached Secret Harbor to
14 manage it for them, to put it in the rental pool with
15 us. So when I did walk through the house, I walked
16 through the property and I saw the area where Mr. Klein
17 was coming from which was surprising because I didn't
18 know it was there.

19 Q. And did you use the path at all?

20 A. Well, I actually, I walked up to it and it
21 was, you know, it was a probably a single path where one
22 person can go through and I walked almost to the top.
23 And I realized at the top was where he was coming down
24 from on his property area.

25 Q. And after that time, after the 2016 or '17

1 when you went up the path, did you see Mr. Klein using
2 that path at any time in the future?

3 A. Yes, many times.

4 Q. And how often would you see him after 2016 or
5 '17?

6 A. Couple days a week.

7 Q. And was that consistent for your tenure at
8 your at Secret Harbor in 2017?

9 A. Yes.

10 Q. And are you familiar with the condition of the
11 paths as they currently are?

12 A. Yes, I am. I have been up and down it many
13 times.

14 Q. And how would you describe the condition now
15 vis a vis now as to when you walked up to the house in
16 2016?

17 A. It's little bit wider and it's a little
18 clearer. So you can walk without tripping or killing
19 yourself.

20 Q. All right.

21 ATTORNEY CRAIN: Nothing further
22 from me, Your Honor.

23 THE COURT: Attorney Duensing.

24 ATTORNEY DUENSING: Yes.

25 **CROSS-EXAMINATION**

1 BY ATTORNEY DUENSING:

2 Q. Good afternoon, Mr. Keating. How are you?

3 A. Just fine.

4 Q. So you work for White Bay Villas currently,
5 correct?

6 A. That is correct.

7 Q. Isn't it true that Mr. Klein owns White Bay
8 Villas?

9 A. That is correct.

10 Q. So you're employed by Mr. Klein?

11 A. Yes, since 2019.

12 Q. All right.

13 ATTORNEY DUENSING: Thank you,
14 Your Honor. I have nothing further.

15 THE COURT: Mr. Keating.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Did you work at
18 Secret Harbor prior to 2013?

19 THE WITNESS: No, from 2013
20 through 2019. Before that, I worked at Sugar Bay.

21 THE COURT: Okay. The Court has
22 no further questions.

23 Attorney Crain, any follow up?

24 ATTORNEY CRAIN: Nothing further
25 from me, Your Honor.

1 THE COURT: Attorney Duensing?

2 ATTORNEY DUENSING: Nothing
3 further, Your Honor.

4 THE COURT: May Mr. Keating be
5 excused?

6 ATTORNEY CRAIN: Yes, Your Honor.

7 ATTORNEY DUENSING: Yes, Your
8 Honor.

9 THE COURT: Mr. Keating, thank
10 you for you testimony. You are excused.

11 THE WITNESS: Thank you.

12 THE COURT: Okay, counsel.

13 Attorney Crain, so Mr. Klein is your
14 last witness?

15 ATTORNEY CRAIN: It's -- That's
16 my plan, Your Honor, yes.

17 THE COURT: And how long? I know
18 you said maybe 45 minutes is your direct?

19 ATTORNEY CRAIN: That's my
20 expectation, yes.

21 THE COURT: Do you have any
22 exhibits that you intend to introduce through
23 Mr. Klein?

24 ATTORNEY CRAIN: Potentially,
25 Your Honor, I guess I don't want to think about it

1 a little bit. Potentially those are some of the
2 photographs that we identified are in your exhibit
3 list.

4 THE COURT: Can you confer with
5 counsel to see if there is anything that can be
6 stipulated to, to expedite Mr. Klein's testimony?
7 The Court will appreciate that.

8 Attorney Duensing, do you anticipate
9 calling any rebuttal witnesses?

10 ATTORNEY DUENSING: I do not,
11 Your Honor. We basically -- What we've seen so
12 far, we anticipate that we will be resting, but you
13 know, I would like to hear Mr. Klein's testimony
14 tomorrow before we make that final decision. But
15 no, no I don't expect the Court to schedule any
16 further time for us tomorrow.

17 THE COURT: Okay. This is just
18 purely for logistics so that the court reporters
19 can make some plans tomorrow.

20 How long, Attorney Duensing, do you
21 believe that your closing will take?

22 ATTORNEY DUENSING: Honestly,
23 Judge, I think, we believe it's fairly extensively.
24 To me, I would say we need 15 minutes maximum for
25 closing, really.

1 THE COURT: Attorney Crain, can
2 you be done in 15 minutes, as well?

3 ATTORNEY CRAIN: I would echo,
4 Your Honor, that I will certainly keep it brief
5 during that time period, yes.

6 THE COURT: Okay, so if we start
7 at 9:00 o'clock, do counsels believe we will be
8 done by 11:00?

9 ATTORNEY DUENSING: I think so,
10 Judge.

11 THE COURT: Ball park?

12 Attorney Duensing?

13 ATTORNEY DUENSING: I would think
14 so, Judge. I mean, much of my questioning of
15 Mr. Klein is already in the record. So I would
16 think that we could finish, assuming Mr. Klein's
17 testimony doesn't go much more than an hour, I
18 would think we can go, we could finish by 11:00.

19 THE COURT: If anything else that
20 the Court is going to have to anticipate or deal
21 with administratively tomorrow morning, I would
22 like to start promptly at 9 o'clock.

23 ATTORNEY DUENSING: I would
24 suggest, Your Honor, again following your
25 suggestion if Mr. Crain could send me an e-mail

1 this evening of the exhibits that he proposes that
2 we stipulate to, then you know I will take a look
3 at that and try to get back to him by you know
4 8 o'clock in the morning at the latest.

5 ATTORNEY CRAIN: No objection.

6 ATTORNEY DUENSING: From what I
7 have seen so far of the photographs, I don't
8 anticipate any substantial objections.

9 THE COURT: Okay. Well, I would
10 appreciate whatever counsel could do to work
11 together to move this matter forward. If there's
12 nothing further, from either counsel?

13 ATTORNEY CRAIN: Your Honor, just
14 one housekeeping measure. Is it going to be a new
15 link for tomorrow?

16 THE COURT: You know what -- Is
17 there a new link, Madam Clerk? Madam Clerk, did I
18 send out a new link?

19 THE CLERK: Yes, Judge as soon as
20 I get out of court, I am going to send it to the
21 parties.

22 THE COURT: So, yes. Attorney
23 Crain, expect an invite to a new link.

24 Madam Clerk, is there anything else
25 that we need to do today?

1 THE CLERK: Not to my knowledge.

2 THE COURT: Okay.

3 Madam Court Reporter, thank you for
4 your patience. I'll call Ms. Donovan shortly.

5 ATTORNEY DUENSING: Thank you,
6 Your Honor.

7 THE COURT: Ms. Callender, are
8 you still there?

9 MADAM COURT REPORTER: Yes I am,
10 Judge.

11 THE COURT: I'll call Ms. Donovan
12 in a few minutes.

13 With that, the Court is adjourned until
14 tomorrow morning at 9 o'clock if everyone can be
15 prompt and make sure that their cameras and
16 microphones are working. We will try to start as
17 close to 9 o'clock as possible. Thank you. Have a
18 good evening.

19 ATTORNEY DUENSING: Thank you,
20 Your Honor.

21 ATTORNEY CRAIN: Thank you, Your
22 Honor.

23 MADAM CLERK: Thank you, Your
24 Honor.

25 **(HEARING RECESSED AT 4:10 PM)**

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CERTIFICATE OF REPORTER

I, MYKA V. CALLENDER-SMITH, an Official Reporter of the Superior Court of the Virgin Islands, certify that in my official capacity of reporting by machine shorthand, I did transcribe the proceedings in the case of **MADELINE A. BASSIL v JOHN KLEIN**, in said court via zoom, on July 27, 2021, which consist of 263 pages.

IN WITNESS WHEREOF, I affix my signature this 29 day of June, 2022, which certifies this to be a true and accurate transcript.

/s/ Myka V Callender-Smith
MYKA V. CALLENDER-SMITH, CSR.
OFFICIAL COURT REPORTER I

FILED

August 29, 2022 03:47 PM

SCT-Civ-2021-0044

VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

In The
**Supreme Court of the
Virgin Islands**

APPEAL NO. 2021-0044

JOHN KLEIN,

Appellant,

v.

MADELINE A. BASSIL,

Appellee.

**ON APPEAL FROM THE SUPERIOR COURT OF THE
VIRGIN ISLANDS DIVISION OF ST. THOMAS
SUPERIOR COURT CIV. NO. ST-2021-CV-00148**

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VOLUME II OF II
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Counsel for Appellee

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FILED

July 27, 2021

ST-2021-CV-00148

TAMARA CHARLES

CLERK OF THE COURT

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

MADELEINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS

PLAINTIFF'S EXHIBIT LIST

Plaintiff and Counterclaim Defendant Madeleine A. Bassil ("Plaintiff" or "Counterclaim Defendant"), through undersigned counsel Duensing & Casner, hereby files her proposed exhibit list for the hearing set for Tuesday, July 21, 2021. The exhibits are available the following

DropBox Link: https://www.dropbox.com/sh/qf8xnsiw9hkbpec/AABnh--_DbRK755U9L3CEnNva?dl=0

Exhibit Number	Nature	Identified	Admitted
1	November 2015 Photos by Don Hebert	Yes	Yes
1-A	November 2015 Photos by Don Hebert	Yes	Yes
1-B	November 2015 Photos by Don Hebert	Yes	Yes
1-C	November 2015 Photos by Don Hebert		
1-D	November 2015 Photos by Don Hebert		
1-E	November 2015 Photos by Don Hebert		
2	Surveys of properties on Estate Nazareth, St. Thomas		
2-A	Surveys of properties on Estate Nazareth, St. Thomas	Yes	Yes
2-B	Surveys of properties on Estate Nazareth, St. Thomas		
2-C	Surveys of properties on Estate Nazareth, St. Thomas		
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2-F	Surveys of properties on Estate Nazareth, St. Thomas		
2-G	Surveys of properties on Estate Nazareth, St. Thomas		
2-H	Surveys of properties on Estate Nazareth, St. Thomas		

*objects
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objection

2-I	Surveys of properties on Estate Nazareth, St. Thomas			
2-J	Surveys of properties on Estate Nazareth, St. Thomas	Yes	Yes	No objection objection
2-K	Surveys of properties on Estate Nazareth, St. Thomas	Yes		
2-L	Surveys of properties on Estate Nazareth, St. Thomas			
2-M	Surveys of properties on Estate Nazareth, St. Thomas	Yes		
3	November 2015 Don Hebert Invoice and Proof of Payment	Yes	Yes	No ob
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4-B	2016 MLS Listing of 2D-13 Estate Nazareth, St. Thomas			
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4-D	2016 MLS Listing of 2D-13 Estate Nazareth, St. Thomas			
4-E	2016 MLS Listing of 2D-13 Estate Nazareth, St. Thomas			
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6-D	MapGeo Images			
7	Security Camera Videos	Yes	Yes	objection
8	Drone Video Screen Shots	Yes	Yes	
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8-B	Drone Video Screen Shots			
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9-F	Drone Video Screen Shots			
9-G	Drone Video Screen Shots			
9-H	Drone Video Screen Shots			
9-I	Drone Video Screen Shots	Yes	Yes	
10	2002 2D-12 Deed to Anderson and Bassil			
10-A	2004 2D-11 Deed to John M. Klein	Yes	Yes	
11	2006 2D-12 Deed from Anderson to Bassil	stipulate	stipulate	
12	2008 2D-12-1 Quitclaim Deed to Klein			
13	ST-2020-CV-420 Complaint	Yes	Yes	
14	2D-12 Property Tax Records			

15	Payment Receipt for Property Tax Records			
16	2014 Klein Purchase Offer	Yes	Yes	No objection
17	2015 Klein Purchase Offer	Yes	Yes	No objection
18	Bassil Emails	Yes	Yes	objectm

LAW OFFICES OF DUENSING & CASNER

Dated: July 23, 2021

By: /s/ Matthew J. Duensing
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2021, caused a true and correct copy of the foregoing document to be served via EMAIL, and Superior Court C-Track E- filing System on:

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 Willcox & Savage, P.C.
 440 Monticello Avenue, Suite 2200
 Norfolk, Virginia 23510
 Telephone: (757) 628-5500
 Facsimile: (757) 628-5566
 Email: jcrain@wilsav.com
 Counsel for Defendant

/s/ Daniella Schmeiske



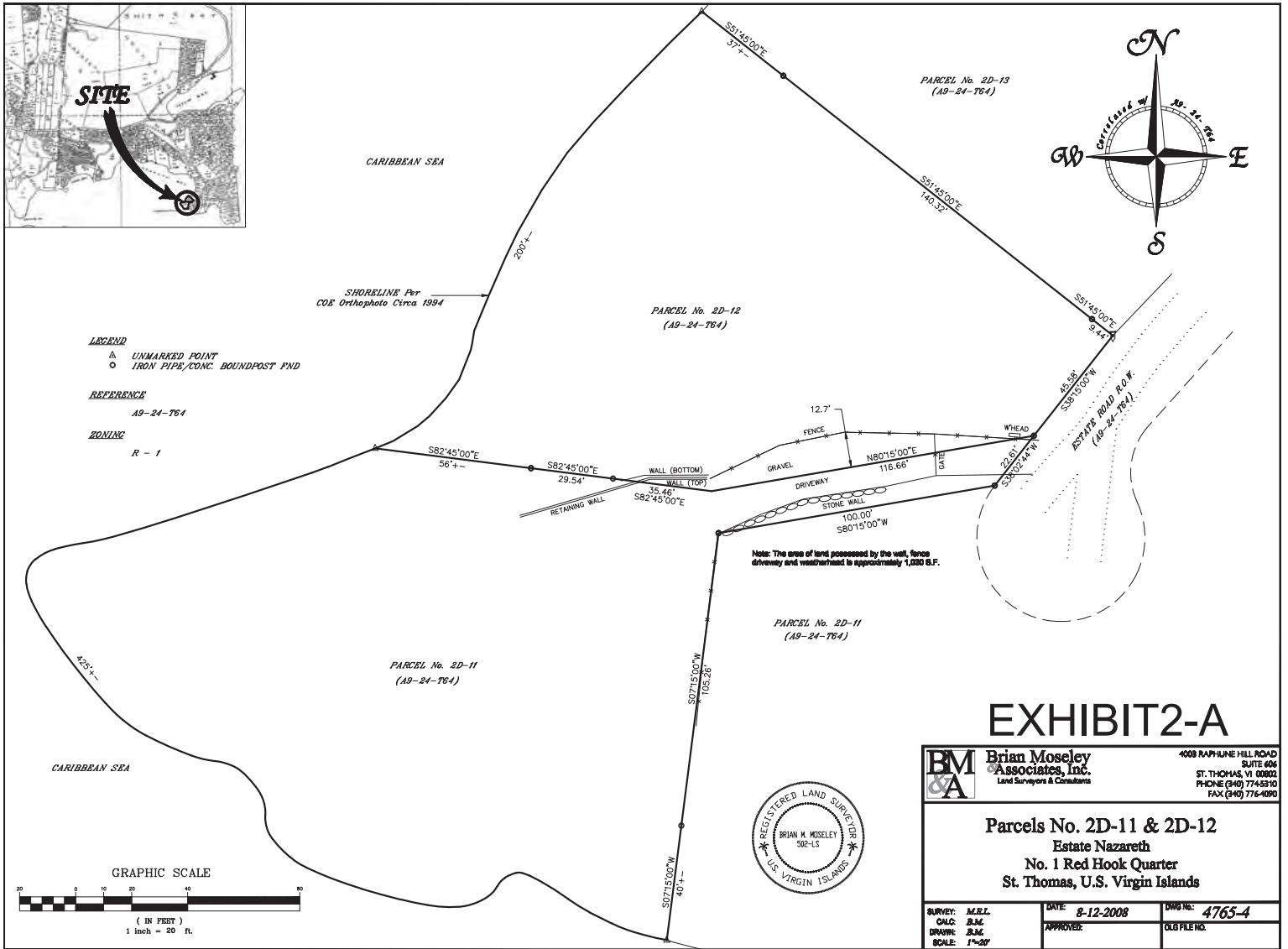
EXHIBIT 1

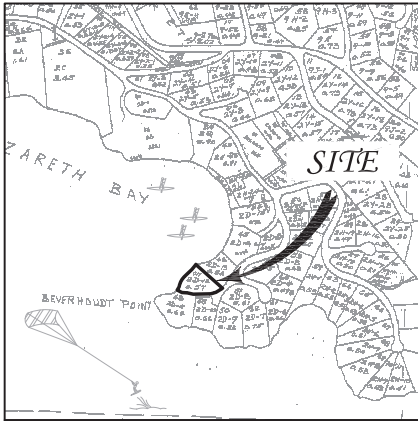


EXHIBIT 1-A

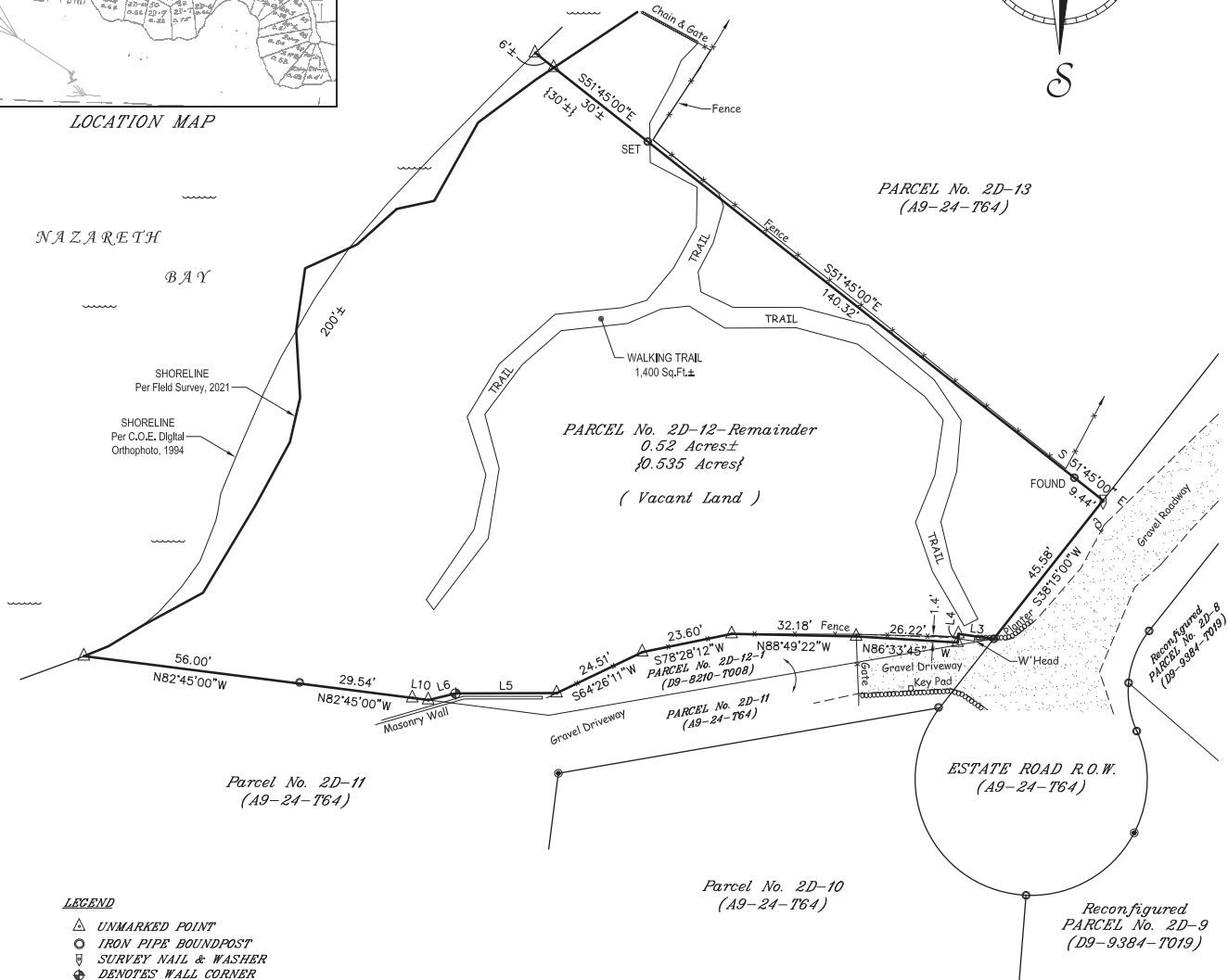
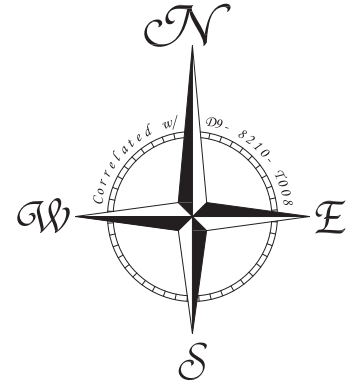


EXHIBIT 1-B





LOCATION MAP



LEGEND

- △ UNMARKED POINT
- IRON PIPE BOUNDPOST
- ⊕ SURVEY NAIL & WASHER
- ⊕ DENOTES WALL CORNER
- FENCE

REFERENCE

D9-8210-7008

ZONING

R-1

NOTE:

DATA IN BRACKETS { xxx } PER FILED MAP, WHERE DIFFERENT FROM ACTUAL FIELD MEASUREMENTS.

This is to certify that this map and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 4, 8, 11(a), 16, and 20 of Table A thereof. The field work was completed on 01-19-2021.

Date of Map: 01-27-2021

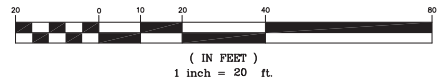
BRIAN MOSELEY AND ASSOCIATES, INC.

Ryan C. Wischart
Ryan C. Wischart, PLS



UPDATED SURVEY: 01-19-21
ORIGINAL SURVEY: 04-08-02

EXHIBIT 2-J



	Brian Moseley & Associates, Inc. Land Surveyors & Consultants		4003 RAPHUNE HILL ROAD SUITE 606 ST. THOMAS, VI 00802 PHONE (340) 774-5310 FAX (340) 776-4090
	ALTA / NSPS Land Title Survey of Parcel No. 2D-12-Remainder Estate Nazareth No. 1 Red Hook Quarter St. Thomas, U.S. Virgin Islands		
SURVEY: A.G.B. CALC: R.C.W.	DRAWN: D.J.S. SCALE: 1" = 20'	DATE: 01-27-2021	DWG No.: 4506-4

ASSIGNMENT INVOICE



Don Hebert
Photography

STUDIO Physical Address:
10-1-28 Estate Peterborg
St. Thomas, USVI 00802

USPS Mailing Address:
P.O. Box 11594
St. Thomas, USVI 00801

CELLULAR PHONE
140-642-5579

EMAIL
don@donhebert.com

WEB
www.donhebert.com



Client: Calypso Realty

Date: 12 November 2015

Invoice #: 1681

Project / Assignment:

Photography of The Beach House for promotional purposes.

Photography fee includes creative supervision, photo session, travel time, and coordination. Computer time is for downloading, editing, and Photoshopping. Images will be archived for one year.

PLEASE READ: If these images have been sent to you via ftp please note that this link expires in 14 days so download, save, and backup your images. I will archive them for only one year and if they need to be resent within that time period there will be a \$40 fee to cover my time for researching, resizing, and resending. Also, images will not be passed on to a third party for their own advertising, PR, or editorial purposes without compensation to and written permission from photographer!
Thnx so much
Don

Expenses:

Still photography of great room (3 angles).	\$ 500.00
Aerial photography	350.00
Virtual walk-through.	1000.00
Annual hosting fee for walk-through to 11/12/16	50.00
TOTAL	\$ 1900.00

Terms:

Acceptance, use, and or publication of images constitutes agreement with above terms, and payment shall be made in full upon receipt. Please apply service charge of 1.5%/month after 30 days. No usage fees are granted until payment is made in full. Thank you. DH

Please make check payable to: Donald Hebert
P.O. Box 11604
St. Thomas, VI 00801



CALYPSO REALTY, P.C.
 ESCROW ACCOUNT
 PO BOX 12178
 ST THOMAS, VI 00801 5178
 PH: 340-774-1620

M C B **MERCHANTS**
 COMMERCIAL
 BANK
 ST THOMAS, VI 00802
 101-674/216

6091

11/13/2015

PAY TO THE ORDER OF Don Hebert Photography \$ ****1,900.00**

One Thousand Nine Hundred and 00/100***** DOLLARS

Don Hebert Photography
 PO BOX 11694
 St. Thomas VI 00801



Sharon E. Heppner
 AUTHORIZED SIGNATURE

MEMO

Beach House Photographed Great Room 3 Angles/ Aerial Photog

⑈00609⑈ ⑆02⑆606742⑆400 0283 0⑈

CALYPSO REALTY, P.C.

6091

Don Hebert Photography					11/13/2015		
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment	
11/12/2015	Bill	1681	1,900.00	1,900.00		1,900.00	
					Check Amount	1,900.00	

Merchant's Escrow Account Beach House Photographed Great Room 3 Angles/ Aerial P 1,900.00

CALYPSO REALTY, P.C.

6091

Don Hebert Photography					11/13/2015		
Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment	
11/12/2015	Bill	1681	1,900.00	1,900.00		1,900.00	
					Check Amount	1,900.00	

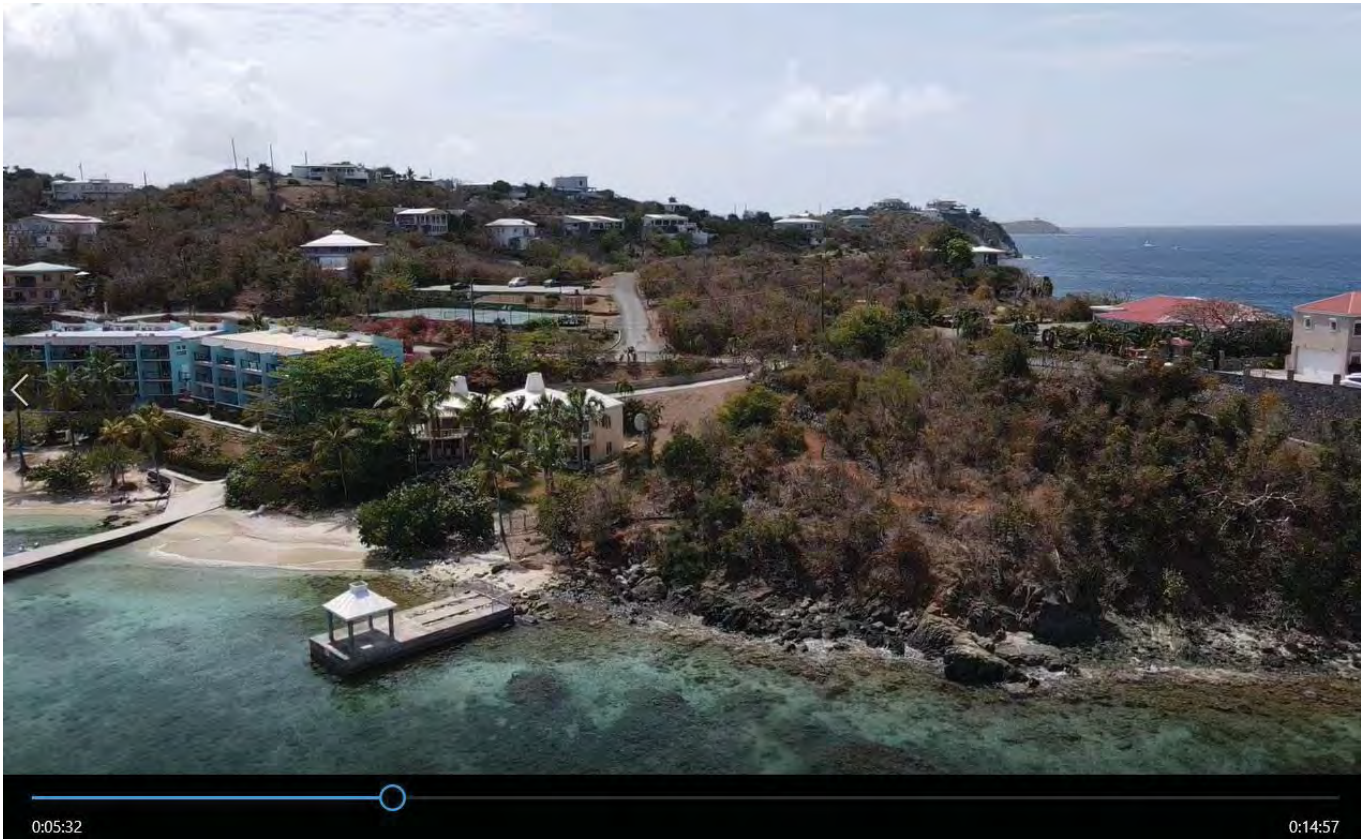
Merchant's Escrow Account Beach House Photographed Great Room 3 Angles/ Aerial P 1,900.00

PRODUCT SSL1103

USA VNT911603 ENVELOPE

Deluxe Corporation 1-800-328-0304 or www.deluxe.com/SHOP

10: F80524 STXRX5 09/23/2015 00 35



0:05:32

0:14:57

EXHIBIT 8

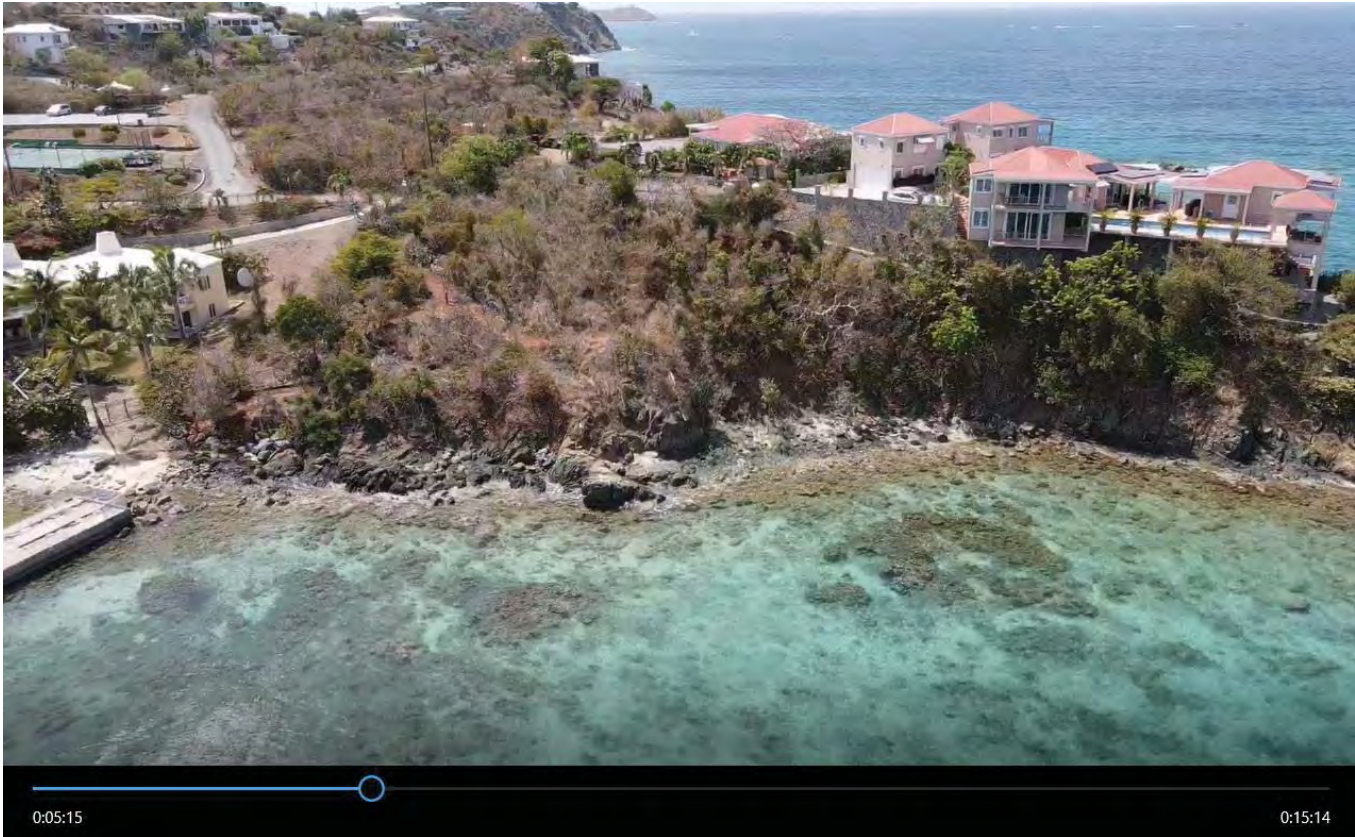


EXHIBIT 8-A

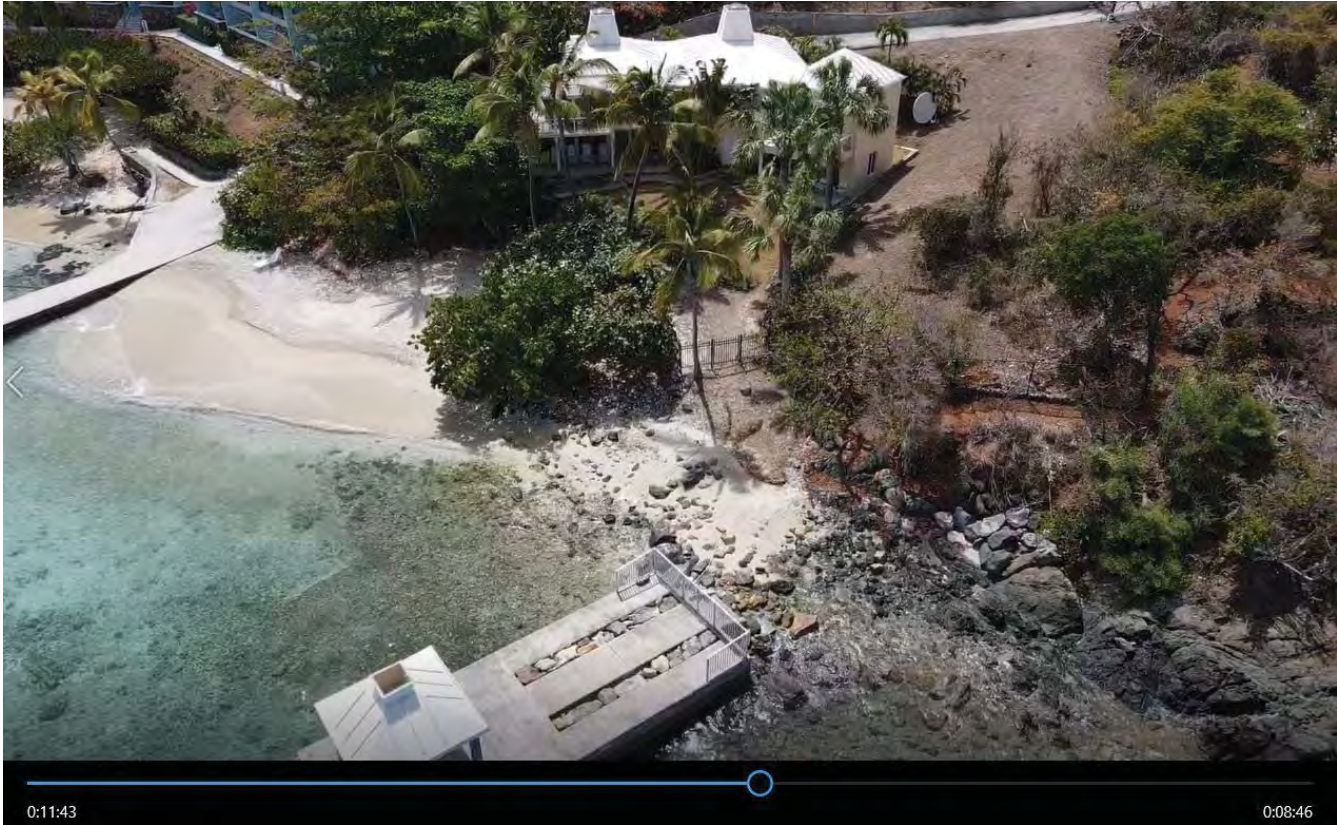


EXHIBIT8-B



EXHIBIT 8-C



EXHIBIT 8-D

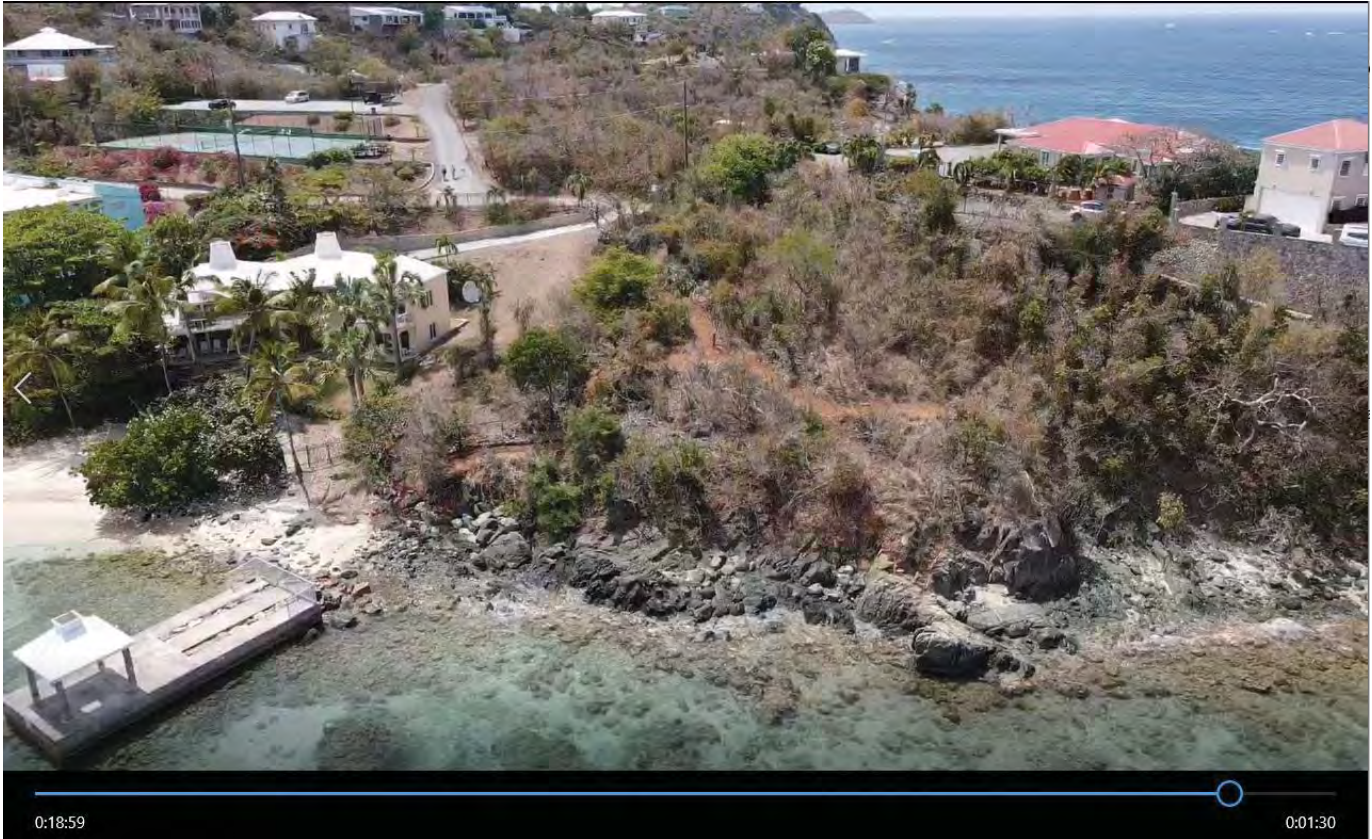


EXHIBIT 8-E



EXHIBIT8-F

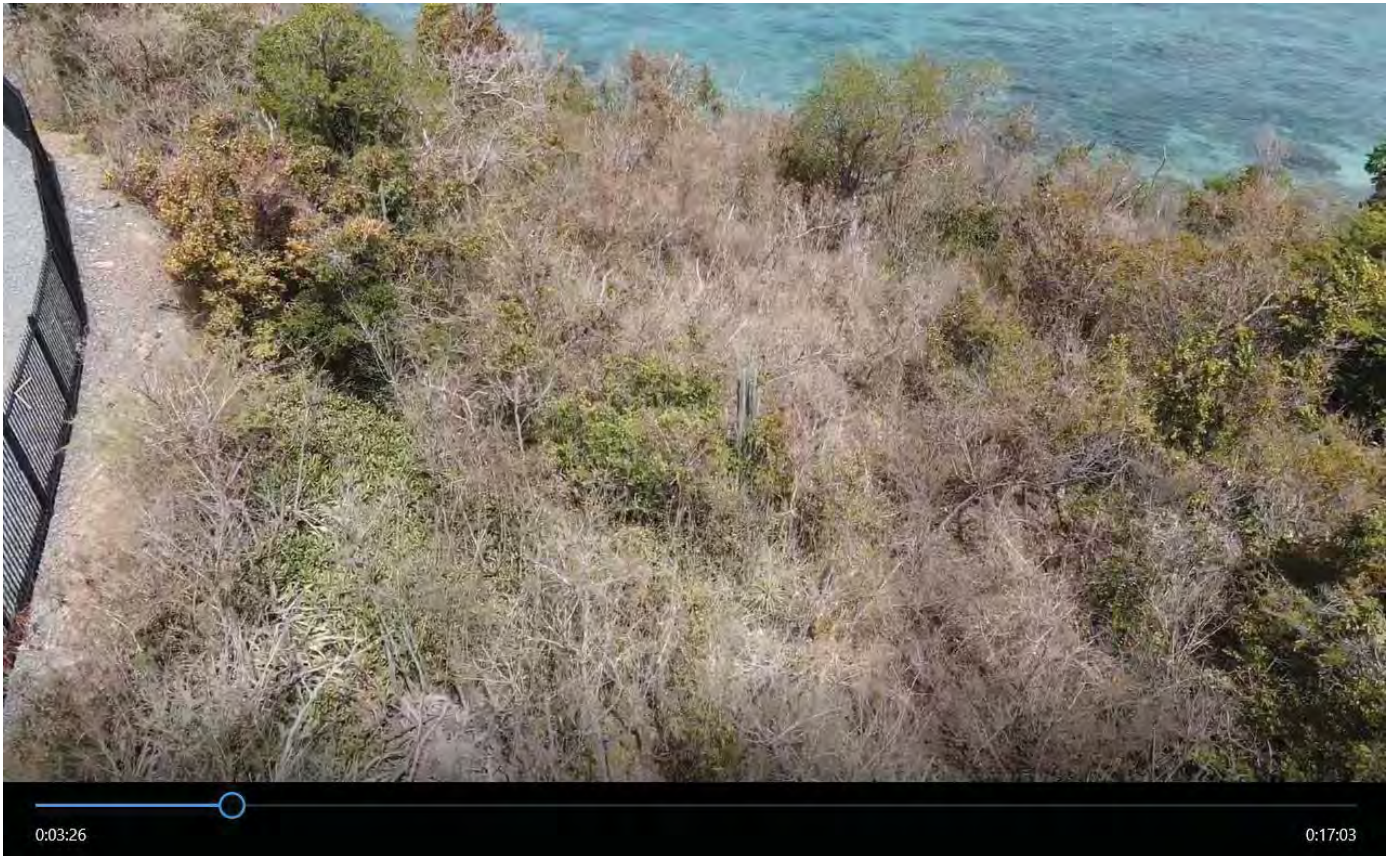


EXHIBIT 8-G



EXHIBIT 8-H



EXHIBIT 8-I



EXHIBIT 9



EXHIBIT 9-A



EXHIBIT 9-B



EXHIBIT 9-C



EXHIBIT 9-D



EXHIBIT 9-E



EXHIBIT 9-F



EXHIBIT 9-G



EXHIBIT 9-I

St Thomas - 116
4/1/04

Book:
Pages:
Doc# 2004004096
Filed & Recorded
05/28/2004 9:25AM
WILMA D. HART SMITH
RECORDER OF DEEDS
ST THOMAS/ST JOHN
RECORDING FEE \$ 487.00
DEED DOC STAMP 2.5 \$ 9,875.00
PER PAGE FEE \$ 3.00

WARRANTY DEED

INDENTURE made this 22nd day of April, 2004, by and between DAN ALAN DITMORE, TRUSTEE of the SADERS REALTY TRUST ("Grantor"), and JOHN M. KLEIN, 6501 Red Hook Plaza, Suite 201, St. Thomas, VI 00802 ("Grantee");

W I T N E S S E T H:

That the Grantor, in consideration of Three Hundred Ninety Five Thousand Dollars (\$395,000.00) and other sufficient consideration paid by the Grantee, does hereby give, grant, sell and convey unto the said Grantee, in fee simple absolute, all right, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 2D-11 Estate Nazareth
No. 1 Red Hook Quarter
St. Thomas, Virgin Islands
consisting of 0.64 acre, more or less
as shown on PWD No. A9-24-T64
(the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantor, his heirs, successors and assigns, in and to the premises herein granted.

SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

TO HAVE AND TO HOLD the premises herein granted unto Grantee, his heirs, successors and assigns, in fee simple absolute forever.

EXCEPT AS HEREINABOVE MENTIONED, GRANTOR COVENANTS that he is seized of the premises in fee simple and has good right to convey the same; and that the Grantee and his heirs, successors and assigns, shall quietly enjoy said premises; and that said premises are free from encumbrances;

Doc# 2004004096

2)

Exhibit 10-A

**GOVERNMENT OF
 THE VIRGIN ISLANDS OF THE UNITED STATES
 CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801
 ---0---**

**DEPARTMENT OF FINANCE
 TREASURY DIVISION**

TO: THE RECORDER OF DEEDS

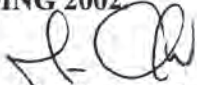
FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMEMDED, THIS IS
 CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR DITMORE, DAN ALAN/TRUSTEE

Nazareth #2D-11,
~~Red Hook Quarter~~ (PARCEL NO.) 1-07704-0148-00

_____).
 TAXES RESEARCHED UP TO AND INCLUDING 2002

RESEARCHED BY: 
Ira Christopher

TITLE: Enforcement Officer II

DATE: May 03, 2004

VERIFIED BY: 
Ianthe M. De Alomal

TITLE: Chief, Revenue Collection

DATE: May 03, 2004

COLLECTOR NO. 8501

Doc# 2004004096

FILED

October 21, 2020

TAMARA CHARLES
CLERK OF THE COURT

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

JOHN M. KLEIN,
Plaintiff,

v.

CIVIL NO. ST-2020-CV-420

**ACTION FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

SECRET HARBOR BEACH ASSOCIATES, LP
Serve: Javier J. De La Rosa
6280 Estate Nazareth,
St. Thomas, U.S. Virgin Islands 00802

JURY TRIAL DEMANDED

and

SECRET HARBOUR BEACH RESORT, INC.
Serve: Javier J. De La Rosa
6280 Estate Nazareth,
St. Thomas, U.S. Virgin Islands 00802

and

SECRET HARBOR
HOUSE LLC A/K/A SECRET HARBOUR
PROPERTY OWNERS ASSOCIATION, INC.,

Serve: Javier J. De La Rosa
6280 Estate Nazareth,
St. Thomas, U.S. Virgin Islands 00802

Serve: BoltNagi PC
c/o Ravi Nagi
Merchants Financial Center
4608 Tutu Park Mall, Suite 202
St. Thomas, U.S. Virgin Islands 00802

and

NELLE N. NUGENT
130 E 67 St.
New York, New York 10066,

and

JACK R. CAVALERI
20610 Gathering Oak
San Antonio, Texas 78006,

and

KEVIN P. FELTES
2435 Dean St. #2D
St. Charles, Illinois 60175,

and

MOLLIE R. GROSSMAN
1528 Old Northern Boulevard
Roslyn, New York 11576,

and

RANDALL J. HRABINA
19500 E Gregory St. Lot 2
Black Canyon City, Arizona 85324-1430,

and

ELIZABETH G. KNOERZER
33 Gold St. – Apt 127
New York, New York 10038-2817,

and

DOROTHY R. OURVAN
740 Iron Latch Road
Franklin Lakes, New Jersey 07417,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, John M. Klein, by counsel and pursuant to the Rules of the Superior Court of the Virgin Islands and states as his Complaint for Declaratory Judgment and Injunctive Relief as follows:

Parties

1. John M. Klein ("Plaintiff" or "Mr. Klein") is the owner of Parcel No. 2D-11 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands ("Parcel No. 2D-11").
2. Defendant Secret Harbor Beach Resorts Associates, LP, is a domestic limited partnership, Defendant Secret Harbour Beach Resort, Inc. is a domestic corporation, and Defendant Secret Harbor House LLC a/k/a Secret Harbour Property Owners Association, Inc. is a limited liability company, hereinafter collectively referred to as the "Association". The Association is jointly responsible for Parcels 2H-24, 2H-24-1, 2H-25, 2D-15, 2D-A, 2D-B, and 2D-5 Estate Nazareth, St. Thomas, U.S. Virgin Islands 00802, (collectively referred to as "6280 Estate Nazareth" for purposes of this action).
3. Defendant, Nelle N. Nugent, upon information and belief, is an adult resident of New York, New York, and owns a portion of 6280 Estate Nazareth and is the acting Secretary of the Association.
4. Defendant, Jack R. Cavaleri, upon information and belief, is an adult resident of San Antonio, Texas, and owns a portion of 6280 Estate Nazareth and is the acting President of the Association.
5. Defendant, Kevin P. Feltes, upon information and belief, is an adult resident of St. Charles, Illinois, and owns a portion of 6280 Estate Nazareth.
6. Defendant, Mollie R. Grossman, upon information and belief, is an adult resident of Roslyn, New York, and owns a portion of 6280 Estate Nazareth.
7. Defendant, Randall J. Hrabina, upon information and belief, is an adult resident of Black Canyon City, Arizona, and owns a portion of 6280 Estate Nazareth.
8. Defendant, Elizabeth G. Knoerzer, upon information and belief, is an adult resident of New York, New York, and owns a portion of 6280 Estate Nazareth.

9. Defendant, Dorothy R. Ourvan, upon information and belief, is an adult resident of Franklin Lakes, New Jersey, and owns a portion of 6280 Estate Nazareth.

10. Defendants Nugent, Cavaleri, Feltes, Grossman, Hrabina, Knoerzer, and Ourvan are collectively referred to as the “Defendant Directors” and with the Association as “Defendants”.

Jurisdiction and Venue

11. This court has jurisdiction over this matter pursuant to the Virgin Islands Code title 4, § 76 (a) and venue is permissible in this judicial district pursuant to the Virgin Islands Code title 4, § 78 (a) as the property at issue, 6280 Estate Nazareth, including Parcels 2H-24, 2H-24-1, 2H-25, 2D-15, 2D-A, 2D-B, and 2D-5 Estate Nazareth, is located in St. Thomas, Virgin Islands and therefore this cause of action arises from within this judicial district.

Factual Background

12. Mr. Klein purchased the property located at Parcel No. 2D-11 on April 22, 2004. For approximately two years prior to purchasing Parcel No. 2D-11 and continuously thereafter, Mr. Klein used the path and stairway located on the 2D-A side of the boundary between 2D-A and 2D-13 (“Access Path and Stairway”) to gain access to the public Secret Harbor Beach and ultimately Nazareth Bay. The Access Path and Stairway is located directly off of the shared Estate Nazareth Road (“Estate Road”) and serves as a point of ingress and egress to the public beachfront from the Estate Road.

13. Mr. Klein regularly, continuously, and openly used the Access Path and Stairway as a means of ingress and egress to the public Secret Harbor Beach for two (2) years prior to purchasing Parcel No. 2D-11 and has continued to do so for the past eighteen (18) years.

14. Mr. Klein has at all times since April 22, 2004, solely maintained the Estate Road between his property and the Access Path and Stairway.

15. Mr. Klein is a sixty-eight (68) year old service disabled veteran with pulmonary and cardiac medical disabilities who has regularly, continuously, and openly used the Access Path and Stairway to access Secret Harbor Beach to engage in his aquatic cardiovascular physical therapy in Nazareth Bay along with the assistance of his service dog(s).¹

16. On or about August 28, 2020, Defendants erected a fence (“Fence”) outside the boundary of Defendants’ Parcel 2D-A Estate Nazareth Property which actually encroaches onto the shared Estate Road², and without any notice to neighboring property owners who use and enjoy a perpetual easement in the Estate Road and without any permit or authorization from any governmental agency, including the Department of Planning and Natural Resources.

17. The Fence includes a gated section (“Gate”) where the Access Path and Stairway exits into the Estate Road. However, the Defendants secured the Gate and Access Path and Stairway with a keyed lock which effectively blocked Mr. Klein normal and customary access from accessing the public Secret Harbor Beach from his customary access point.

18. Mr. Klein contacted Defendant Jack Cavaleri on August 30, 2020, and again on September 8, 2020, and requested the Defendants either unlock the gate or provide him with a key to the Gate’s lock so that he could continue his daily use of the Access Path and Stairway for his aquatic cardiovascular physical therapy but on September 9, 2020, Defendant Jack Cavaleri informed Mr. Klein that the Defendants denied his request. See Correspondence with Defendant Jack Cavaleri, attached as Exhibit I.

Count I
(Declaratory Judgment)

19. Plaintiff repeats and realleges paragraphs 1 through 18 as though the same were set forth fully herein.

¹ Due to the unfortunate nature of canines having shorter lifespans than their human counterpart, Mr. Klein has had more than one service dog and may require additional service dogs in the future.

² The Fence currently blocks access to pertinent utility poles for which a utility easement exists.

20. Mr. Klein seeks a declaration that his continuous, open, and customary use of the Access Path and Stairway over the course of eighteen (18) years entitled him to a private prescriptive easement, easement by implication, or easement by custom, with the right to use the Access Path and Stairway in a similar manner as he has continuously enjoyed for the past eighteen (18) years as a means to access the public Secret Harbor Beach from the Estate Road.

Count II
(Preliminary Injunction)

21. Plaintiff repeats and realleges paragraphs 1 through 20 as though the same were set forth fully herein.

22. Mr. Klein seeks an injunction requiring the Defendants to remove the lock from the Gate or, in the alternative, provide Mr. Klein with a personal copy of a key to the locked Gate so that he may resume his physician prescribed aquatic cardiovascular physical therapy.

23. Mr. Klein and his service dog(s) require immediate access to the Secret Harbor Beach by way of the Access Path and Stairway as he uses it to navigate to the public beach and ultimately Nazareth Bay for his daily aquatic cardiovascular physical therapy.

24. Mr. Klein is likely to succeed on the merits of this claim as his continuous, open and obvious, hostile, and customary use of the Access Path and Stairway to enter and use a public beach for more than eighteen (18) years overwhelmingly entitles him to an easement, whether it be prescriptive, implied, or by custom.

25. Mr. Klein has been and continues to be irreparably injured by the Defendants elimination of his customary point of access to the public Secret Harbor Beach from the Estate Road causing substantial safety issues and severe disruptions to his aquatic cardiovascular physical therapy and physical well-being and for which no monetary compensation can atone for the disruption to his ongoing physical health requirements.

26. The balance of hardship favors injunctive relief as granting the relief will do nothing more than resume Mr. Klein's use of the Access Path and Stairway as he had already been doing for more than eighteen (18) years without dispute, whereas preventing Mr. Klein and his service dog(s) from accessing a public beach so that he can partake in aquatic cardiovascular physical therapy places an undue hardship and suffering to his physical well-being which cannot be addressed with monetary compensation.

27. By permitting the Defendants to block Mr. Klein from his normal and customary access to the public beach as he has done for more than eighteen (18) years would be contrary to the public interest as it would encourage foreign entities and foreign persons, such as the Defendants, who own property in the Virgin Islands, but reside elsewhere, to continue to exclude residents and tourists from equal and legal access to the public beaches which is in direct contrast to the goals of the Virgin Islands Open Shorelines Act which seeks to maximize public access to shorelines. See V.I. Code tit. 12, § 401, 403 (2019) (expressly stating that the "seashore has been a place of...physical therapy"); see also V.I. Code tit. 12, § 903 (2019).

WHEREFORE, Plaintiff John M. Klein seeks the following relief:

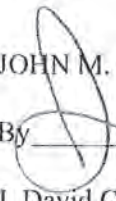
1. An Order declaring that John M. Klein has an easement, either prescriptive, implied, or by custom, for use of the Access Path and Stairway from the Estate Road to the Secret Harbor Beach for himself, his service dog(s), and any personal guests, and

2. An Order for injunctive relief to allow Mr. Klein immediate access to the Access Path and Stairway in line with his customary use of the Access Path and Stairway from the Estate Road to the Secret Harbor Beach for himself, his service dog(s), and any personal guests.

Dated: October 21, 2020

Respectfully submitted,

JOHN M. KLEIN

By  _____
Of Counsel

J. David Crain, Esq.
Willcox & Savage, PC
440 Monticello Ave., Ste. 2200
Norfolk, Virginia 23510
(757) 628-5500 Telephone
(757) 628-5566 Facsimile
jcrain@wilsav.com
Counsel for Plaintiff John M. Klein

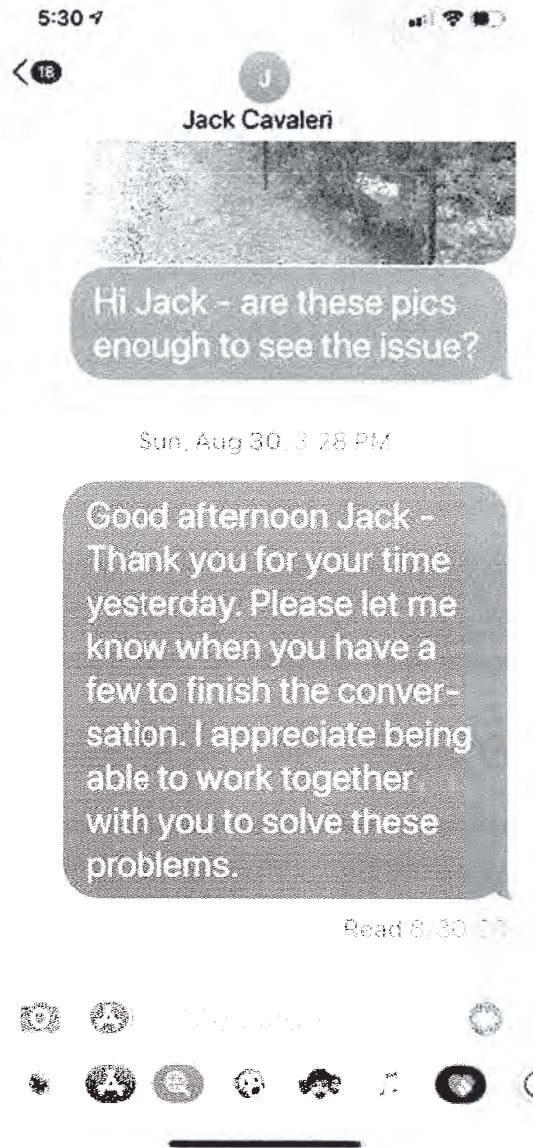
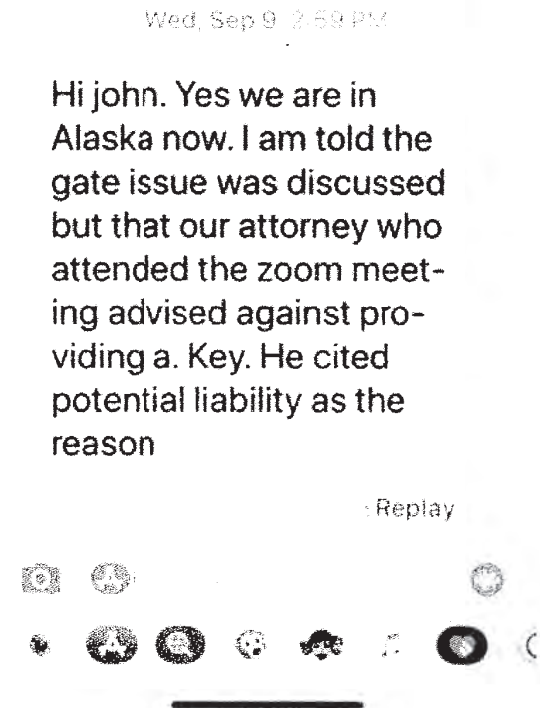
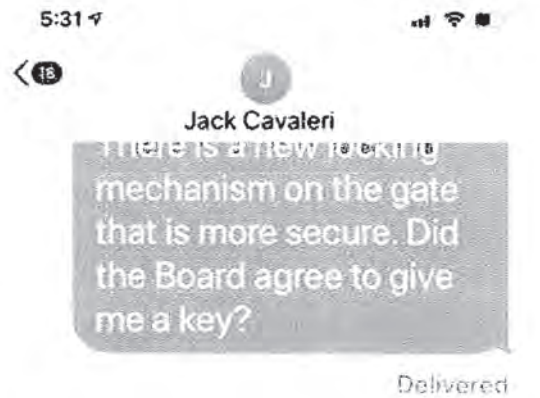
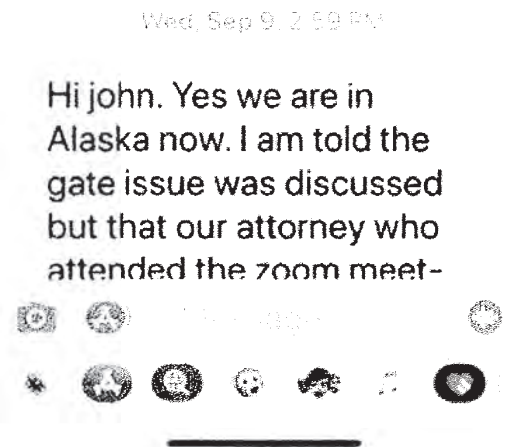


EXHIBIT 1



JOHN FOSTER REAL ESTATE

6111 Estate Nazareth, St Thomas, VI 00802

~Tel: 340-775-9000 & 340-776-5000 ~Fax: 340-775-3301

Contract of Sale

THIS CONTRACT OF SALE dated the 8TH day of APRIL, 2014 between:

BUYER(S)

SELLERS(S) BASSIL

Names(s): JOHN KLEIN AND/OR ASSIGNS
ST THOMAS, USVI

Address:

Phone:

Fax:

1. **PROPERTY:** Buyer hereby offers to purchase the following real estate from Seller:

Parcel No.	2D-12	Estate	Nazareth
St. Thomas	United States Virgin Islands	Tax Map No.	1-07704-0147-00
PWD Map #	A9-24-T69	Dated:	

Further Description MLS# 14-534 Vacant waterfront land approximately .535 acres.

2. **PURCHASE PRICE/DEPOSIT:** The purchase price is \$300,000.00

payable as follows:

- \$10,000.00 which has been deposited in escrow with Realtor upon execution of this contract by Buyer as an earnest money deposit;
- ~~Balance of 10% of purchase price which will be deposited in escrow with Realtor within 40 business days of execution of this contract by Seller as an earnest money deposit;~~
- The balance of the purchase price in cash or certified local funds at Closing.

Realtor agrees to hold the earnest money deposit in its trust account and agrees to apply the earnest money as set forth herein. If there is a dispute between Seller and Buyer over the return or forfeiture of the earnest money deposit held in its trust account, then the Realtor shall retain the earnest money deposit in its trust account until it has received a written release from all parties consenting to its disposition, or until disbursement is ordered by a court of competent jurisdiction. Realtor shall be entitled to recover its expenses incurred in connection with such a dispute out of the earnest money deposit.

3. **ACCEPTANCE.** Buyer's offer must be accepted in writing by Seller within **THREE (3) business** days of the date Buyer signs this Contract. If this Contract is not accepted within this time period, then it shall terminate, and the earnest money deposit shall be promptly refunded to Buyer.

St. Thomas Board of Realtors Contract of Sale, Page 1

Sellers Initials _____

Buyers Initials JK

EXHIBIT 16

4. **CLOSING.** The closing shall take place in St. Thomas, USVI within 60-90 days of the date of execution of this Contract by the Seller. Unless either party has indicated in Paragraph 15 that time is of the essence with respect to the Closing, the Closing may take place at such later time as is mutually agreed upon by Seller and Buyer. Possession shall be granted to Buyer at closing unless otherwise agreed in writing by Seller and Buyer. **Seller agrees to a 30 day extension to close if necessary due to financing contingency.** *for title*

5. **EXPENSES.** Seller shall pay the costs of preparing the deed, recording any mortgage releases, securing the necessary attests and tax certificates, and affixing the transfer tax stamps on the deed. Real estate taxes, insurance, utility expenses, association assessments and dues, rent and/or security deposits, if any, shall be prorated to the date of Closing between Seller and Buyer. *Unless otherwise indicated in Paragraph 15,* adjustments for real property taxes shall be based upon the most recent tax bill available. All expenses of obtaining financing, preparing loan documents, installment sales contracts, new surveys, appraisals, inspections, title examinations, title insurance, and the recording fees of the deed and any purchase money mortgage shall be paid by the Buyer. Each party shall pay its own attorney's fees.

6. **TITLE.** At Closing, Seller shall convey good, marketable and insurable fee simple title to the Property to the Buyer by Warranty Deed (unless another form of deed is specified in Paragraph 15) subject only to easements, covenants, restrictions, and rights of way of record that do not render the title unmarketable, any leases described herein, and all zoning, building, environmental, or other laws or regulations affecting the use or occupancy of the Property. Buyer shall have **10 business days** from the accepted contract date, to inspect the **BOUND POSTS** to the property, and shall be deemed to consent to them, unless Buyer files written objection by the end of the inspection period with the Selling Realtor. In the event that the Buyer notifies the Seller that the bound posts cannot be located, then Seller shall provide for the placement or location of bound posts on the property in identifiable positions. Buyer shall be allowed to have the title examined and shall promptly notify Seller in writing of any title defects, zoning or deed restriction violations, or encroachments which may exist. Seller shall then have a reasonable opportunity to cure such objections, and may extend the date for closing up to sixty (60) days after notification of the objections in order to cure them. If Seller is unable to cure the objections, then Buyer shall have the right to terminate this contract, and receive a refund of the earnest money deposit, and no party shall have any further rights, claims, obligations or liabilities arising out of or resulting from this contract. If requested by the Buyer's title insurance company, Seller shall also execute at closing a standard form owner's affidavit in a format reasonably acceptable to Buyer's title insurance company.

7, INSPECTION, ENTRY AND BROKER INDEMNIFICATION...

~~(a) Buyer or Buyer's designee shall inspect the property within **ten (10)** days of receipt of a fully executed copy of this Contract, for the purpose of inspecting the condition of the property. Buyer shall have **2 business days** from the receipt by Buyer of the inspection report in which to notify Seller or the listing Realtor in writing of Buyer's intention to cancel this Contract, with neither party having any claim against the other, except that the deposit paid hereunder shall be refunded to Buyer forthwith and in full. The inspection period is a time period for Buyer to ascertain the condition of the property with the knowledge that if Buyer proceeds with the sale, Buyer is accepting the condition with no representations or warranties by the Seller or Realtor whatsoever, except as specifically set forth herein. In no case shall Seller, or Seller's Realtor be held responsible for damages or physical defects to the property. Seller and Seller's Realtor make no personal or professional claims as to the condition of the property. If Seller has provided a written disclosure statement, then it shall be attached to this Contract and made a part of it.~~

~~(b) Buyer and Buyer's agents, employees, independent contractors, engineers, surveyors and other representatives (collectively "Agents") shall have the right to enter the Property at reasonable times for the purposes of performing appraisals, testing water samples, making surveys of the Property, and performing any and all other reasonable activities relating to the purchase of the Property. Buyer and such Agents shall make entry only after providing reasonable notice to Seller and any tenant or other occupant of the Property. Buyer agrees that the entry permitted by this paragraph shall not cause injury or damage to the Property. Buyer indemnifies and holds harmless Seller and Broker(s) against any such injury or damage caused by Buyer or its Agents.~~

St. Thomas Board of Realtors Contract of Sale, Page 2

Sellers Initials _____

Buyers Initials *JA*

(c) Buyer and Seller acknowledge that the Realtor(s) in the course of events leading to this contract have advised Buyer and Seller of the need for professional opinions, advice, counsel and other services for the protection of their interests or rights in this matter, including but not limited to: consultation with an attorney prior to the signing of this contract, and professional inspection and evaluation of the Property by an engineer, surveyor or inspector to reveal any defects or deficiencies that may or may not be visually detectable. The undersigned parties hereby acknowledge that they have not received or relied upon any statements or representations made by the Realtor(s) which are not expressly set forth in this Contract. Seller and Buyer each hereby agree to indemnify and hold harmless each Realtor, and its respective agents and employees from and against any and all claims damages suits or causes of actions for damages and other liabilities that may arise out of or result from this contract the closing of the purchase and sale contemplated hereunder the condition of the Property, or otherwise, unless such liability was solely caused by the gross negligence or intentional misconduct of such Realtor.

8 COMMISSION AND DECLARATION OF AGENCY BY REALTOR(S).

(a) The parties acknowledge that LISA CURRERI of CURRERI & COMPANY the Listing Agent, and ROBERT AYARS of JOHN FOSTER REAL ESTATE, the Selling Agent, are the Realtors who brought about this transaction. Seller shall pay the professional service fee ("commission") as stipulated in the listing agreement between Seller and the listing Realtor at the time of closing, or in the case of any installment sales contract, upon the execution of the installment sales contract, or as otherwise agreed to in writing by the parties.

(b) Buyer acknowledges that the listing Realtor and any selling Realtor are agents of the Seller in this transaction and are to be paid a commission by Seller. Unless otherwise provided in Paragraph 15, the listing Realtor and any selling Realtor in this transaction have not acted as an agent for the Buyer, have not been paid a commission by the Buyer, and are not representing the Buyer.

9 DEFAULT BY BUYER. If Seller accepts this Contract and if the transaction contemplated herein is not closed by reason of Buyer's default or failure or refusal to perform through no fault of the Seller, then Seller shall have the right to elect either (i) to terminate this Agreement, to have the earnest money deposit paid one-half to Seller and one half to the Realtor(s) (but not to exceed the agreed commission) as full liquidated damages, and no party shall have any further rights, obligations or liabilities hereunder; or (ii) Seller may pursue an action for specific performance.

10 DEFAULT BY SELLER. If the Seller accepts this Contract and if the transaction contemplated herein is not closed by reasons of Seller's default or failure or refusal to perform, through no fault of the Buyer, then Buyer shall have the right to elect either (i) to terminate this Agreement, and receive a refund of the earnest money deposit paid hereunder, and no party shall have any further rights, obligations or liabilities hereunder, except that Seller shall be obligated to immediately pay Broker the full Commission as set forth in the listing agreement, or (ii) Buyer may pursue an action for specific performance.

~~**11 DESTRUCTION OR DAMAGE TO PROPERTY.** Unless Buyer takes possession of the property prior to Closing, Seller shall bear the risk of loss prior to Closing, including but not limited to total or partial destruction of the property and its contents due to casualty. Seller shall deliver the property in substantially the same condition as it existed at the time of the execution of this Offer by the Seller (reasonable wear and tear excepted), and shall adequately maintain and repair it until Closing. If prior to closing, any improvements located on the Property are destroyed or damaged by fire or other casualty to the extent that the cost of repair or replacement shall exceed ten percent (10.0%) of the Purchase Price, then either party shall have the right to terminate this contract by providing written notice to the other party prior to closing, in which event, the earnest money deposit shall be returned to Buyer and no party shall have any further rights, obligations or liabilities hereunder. If neither party elects to terminate this contract, then Seller shall either (i) restore the Property to its condition at the time this Offer was accepted; or (ii) convey it to Buyer with an appropriate reduction in the purchase price; or (iii) convey the property to the Buyer at the stated purchase price, along with an assignment of all insurance proceeds. In the case of option (i), the closing will be postponed for a reasonable period of time to allow Seller to make such repairs. In the event that Buyer takes possession of the property prior to Closing, all risk of loss is on the Buyer, in which case Buyer may not terminate this contract in the event of a total or partial destruction~~

~~of the premises due to casualty or other loss, obtain a reduction in the purchase price, or obtain an assignment of the insurance proceeds.~~

~~12 — **PERSONAL PROPERTY.** The Property, if improved, is being sold with the following fixtures, appliances and equipment shall be included in this transaction: all plumbing and electrical systems, including water pumps, the hot water heater(s), major kitchen appliances (stove, refrigerator, dishwasher), built-in cabinets and overhead fan(s). Any other personal property (for example, furniture) included in this transaction must be described on an attached inventory and made a part of this contract. Said inventory shall be provided to Buyer within 10 days of execution of contract and shall be approved by Buyer within 48 hours.~~

13 FINANCING: Buyer's obligations under this Contract are subject to and contingent upon the Buyer being able to obtain a commitment for a satisfactory mortgage loan on the property from a lending institution doing business in the U.S. Virgin Islands within **30-60** days of the date of execution hereof by Seller. If, after diligent effort, the Buyer is unable to obtain a commitment for a satisfactory mortgage loan this Agreement shall terminate and the Buyer's deposit shall be promptly refunded in full. For the purpose of this Contract, a "satisfactory mortgage loan" shall be in an amount of not less than EIGHTY (80), percent of the contracted price, payable in monthly installments of principal and interest over not less than **TWENTY FIVE** (25)** years, with interest at the prevailing rate, provided that Buyer, at Buyer's option, may accept a loan of lesser amount. The Buyer agrees to use diligent efforts to obtain a commitment for a satisfactory mortgage loan. For the purpose of this contract, "diligent efforts" shall require that Buyer(s) apply for mortgage loan from a lending institution doing business in the US Virgin Islands within 7 (SEVEN) business days of fully executed contract, and comply with the lender's requirements for the payment of fees and production of documents.

14. MISCELLANEOUS. This contract constitutes the entire agreement between the parties hereto and no representations, agreements, inducements or provisions other than those expressly set forth herein shall be binding. All changes, additions or deletions to this contract must be in writing and signed by all parties. All notices shall be in writing and may be delivered via confirmed facsimile transmission, hand delivery, courier, or by confirmed mail delivery to the other party or its attorney or agent. The notice shall be effective when hand delivered or the date sent, as evidenced by the delivery confirmation. The parties agree that signatures by facsimile will be binding. This contract, regardless of where it is signed, shall be deemed to have been made in the United States Virgin Islands and shall be governed by and interpreted in accordance with the laws of the United States Virgin Islands. Buyer shall not have the right to assign any of Buyer's rights or obligations under this contract without the prior written consent of Seller, which consent shall not be unreasonably withheld. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns. As used herein, words in the singular shall include the plural and the masculine shall include the feminine and neuter genders, as appropriate. At Closing, the Seller shall also comply with the withholding tax requirements imposed by Section 1445 of the Internal Revenue Code.

15. OTHER CONDITIONS:

****PURCHASER IS IN CONSULTATION WITH FIRST BANK FOR POSSIBLE BLANKET LOAN (25 YEARS REMAINING)** ON ADJACENT HOME AND ADDITIONAL PROPERTY FOR THIS PURCHASE AS WELL.**

16. LEAD WARNING DISCLOSURE AND 10 DAY INSPECTION PERIOD OR WAIVER.

(if not required state reason): NA


SIGNATURE PAGE FOLLOWS:

St. Thomas Board of Realtors Contract of Sale, Page 4

Sellers Initials _____

Buyers Initials DT

THIS CONTRACT OF SALE BECOMES A BINDING LEGAL CONTRACT WHEN EXECUTED BY ALL PARTIES, AND EACH PARTY SHOULD READ AND UNDERSTAND ITS TERMS AND CONDITIONS.



Buyer

APR 10, 2014

Date

Witness

Buyer

Date

Witness

Seller

Date

Witness

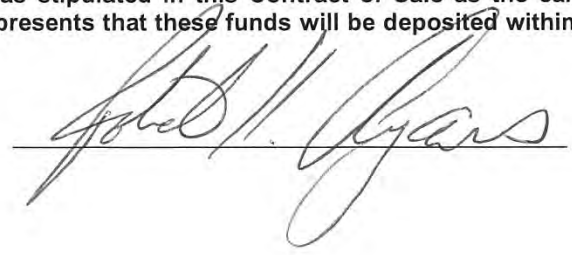
Seller

Date

Witness

RECEIPT is hereby acknowledged of the payment (check) (cash) of \$10,000.00 to the Escrow Account of JOHN FOSTER REAL ESTATE as stipulated in this Contract of Sale as the earnest money deposit. The undersigned Realtor represents that these funds will be deposited within two (2) banking days of the Acceptance Date.

Date: 4/10/14



JOHN M. KLEIN

2601

101-7285/2216

4/10/14

Date

Pay to the
Order of

JOHN FOSTER ROAD ESTATE

\$ 10,000.00

Ten Thousand

00/100

Dollars

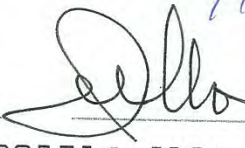
 Security Features Details on Back.

1 First Bank

Port of Sales Branch
St. Thomas, Virgin Island

For

ERNEST \$ 2D-12 NAZARETH



MP

⑆ 221672851⑆ 710⑆ ⑆ 000896⑆ 260⑆

JOHN FOSTER REAL ESTATE

6111 Estate Nazareth, St Thomas, VI 00802

~Tel: 340-775-9000 & 340-776-5000 ~Fax: 340-775-3301

Contract of Sale

THIS CONTRACT OF SALE dated the 9TH day of February, 2015 between:

BUYER(S)

SELLERS(S) BASSIL

Names(s): JOHN KLEIN AND/OR ASSIGNS
ST THOMAS, USVI

Address:

Phone:

Fax:

1. **PROPERTY:** Buyer hereby offers to purchase the following real estate from Seller:

Parcel No.	2D-12	Estate	Nazareth
St. Thomas	United States Virgin Islands	Tax Map No.	1-07704-0147-00
PWD Map #	A9-24-T69	Dated:	

Further Description **MLS# 14-534 Vacant waterfront land approximately .535 acres.**

2. **PURCHASE PRICE/DEPOSIT:** The purchase price is \$400,000.00

payable as follows:

- \$10,000.00 which has been deposited in escrow with Realtor upon execution of this contract by Buyer as an earnest money deposit;
- ~~Balance of 10% of purchase price which will be deposited in escrow with Realtor within 10 business days of execution of this contract by Seller as an earnest money deposit;~~
- The balance of the purchase price in cash or certified local funds at Closing.

Realtor agrees to hold the earnest money deposit in its trust account and agrees to apply the earnest money as set forth herein. If there is a dispute between Seller and Buyer over the return or forfeiture of the earnest money deposit held in its trust account, then the Realtor shall retain the earnest money deposit in its trust account until it has received a written release from all parties consenting to its disposition, or until disbursement is ordered by a court of competent jurisdiction. Realtor shall be entitled to recover its expenses incurred in connection with such a dispute out of the earnest money deposit.

3. **ACCEPTANCE.** Buyer's offer must be accepted in writing by Seller within **THREE (3) business** days of the date Buyer signs this Contract. If this Contract is not accepted within this time period, then it shall terminate, and the earnest money deposit shall be promptly refunded to Buyer.

St. Thomas Board of Realtors Contract of Sale, Page 1

Sellers Initials _____

Buyers Initials 

EXHIBIT 17

(c) Buyer and Seller acknowledge that the Realtor(s) in the course of events leading to this contract have advised Buyer and Seller of the need for professional opinions, advice, counsel and other services for the protection of their interests or rights in this matter, including but not limited to: consultation with an attorney prior to the signing of this contract, and professional inspection and evaluation of the Property by an engineer, surveyor or inspector to reveal any defects or deficiencies that may or may not be visually detectable. The undersigned parties hereby acknowledge that they have not received or relied upon any statements or representations made by the Realtor(s) which are not expressly set forth in this Contract. Seller and Buyer each hereby agree to indemnify and hold harmless each Realtor, and its respective agents and employees from and against any and all claims damages suits or causes of actions for damages and other liabilities that may arise out of or result from this contract the closing of the purchase and sale contemplated hereunder the condition of the Property, or otherwise, unless such liability was solely caused by the gross negligence or intentional misconduct of such Realtor.

8 COMMISSION AND DECLARATION OF AGENCY BY REALTOR(S).

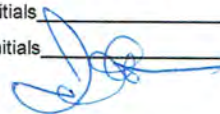
(a) The parties acknowledge that LISA CURRERI of CURRERI & COMPANY the Listing Agent, and ROBERT AYARS of JOHN FOSTER REAL ESTATE, the Selling Agent, are the Realtors who brought about this transaction. Seller shall pay the professional service fee ("commission") as stipulated in the listing agreement between Seller and the listing Realtor at the time of closing, or in the case of any installment sales contract, upon the execution of the installment sales contract, or as otherwise agreed to in writing by the parties.

(b) Buyer acknowledges that the listing Realtor and any selling Realtor are agents of the Seller in this transaction and are to be paid a commission by Seller. Unless otherwise provided in Paragraph 15, the listing Realtor and any selling Realtor in this transaction have not acted as an agent for the Buyer, have not been paid a commission by the Buyer, and are not representing the Buyer.

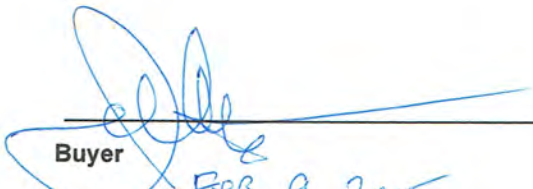
9 DEFAULT BY BUYER. If Seller accepts this Contract and if the transaction contemplated herein is not closed by reason of Buyer's default or failure or refusal to perform through no fault of the Seller, then Seller shall have the right to elect either (i) to terminate this Agreement, to have the earnest money deposit paid one-half to Seller and one half to the Realtor(s) (but not to exceed the agreed commission) as full liquidated damages, and no party shall have any further rights, obligations or liabilities hereunder; or (ii) Seller may pursue an action for specific performance.

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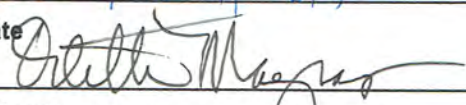
~~**11 DESTRUCTION OR DAMAGE TO PROPERTY.** Unless Buyer takes possession of the property prior to Closing, Seller shall bear the risk of loss prior to Closing, including but not limited to total or partial destruction of the property and its contents due to casualty. Seller shall deliver the property in substantially the same condition as it existed at the time of the execution of this Offer by the Seller (reasonable wear and tear excepted), and shall adequately maintain and repair it until Closing. If prior to closing, any improvements located on the Property are destroyed or damaged by fire or other casualty to the extent that the cost of repair or replacement shall exceed ten percent (10.0%) of the Purchase Price, then either party shall have the right to terminate this contract by providing written notice to the other party prior to closing, in which event, the earnest money deposit shall be returned to Buyer and no party shall have any further rights, obligations or liabilities hereunder. If neither party elects to terminate this contract, then Seller shall either (i) restore the Property to its condition at the time this Offer was accepted; or (ii) convey it to Buyer with an appropriate reduction in the purchase price; or (iii) convey the property to the Buyer at the stated purchase price, along with an assignment of all insurance proceeds. In the case of option (i), the closing will be postponed for a reasonable period of time to allow Seller to make such repairs. In the event that Buyer takes possession of the property prior to Closing, all risk of loss is on the Buyer, in which case Buyer may not terminate this contract in the event of a total or partial destruction~~



THIS CONTRACT OF SALE BECOMES A BINDING LEGAL CONTRACT WHEN EXECUTED BY ALL PARTIES, AND EACH PARTY SHOULD READ AND UNDERSTAND ITS TERMS AND CONDITIONS.



Buyer
Feb 9, 2015

Date


Witness ODETTE MAGRAS

Seller

Date

Witness

Buyer

Date

Witness


Seller

Date

Witness

RECEIPT is hereby acknowledged of the payment (check) (cash) of \$10,000.00 to the Escrow Account of JOHN FOSTER REAL ESTATE as stipulated in this Contract of Sale as the earnest money deposit. The undersigned Realtor represents that these funds will be deposited within two (2) banking days of the Acceptance Date.

Date: _____

Sellers Initials _____
Buyers Initials 

From: madeleine bassil <madeleinebassil@hotmail.com>
Sent: Monday, April 21, 2008 10:14 PM
To: john klein <jkecsc@aol.com>
Cc: David E. Nichols <den2pc@earthlink.net>; Lisa Curreri <lisacurreri@earthlink.net>
Subject:

Dear Mr. Klein,

Thank you for your call this morning. As i can see it, you can build a fence on your side of the property only. You may not build a fence on the easement side as you don't own the easement, but have the right to use it. But thank you for raising the issue. Again i repeat, you many NOT build a fence on the easement side , but ONLY on your side of the property

Mr. Nichols, i hope this should be clear for you regarding the fence issue. Thank you very much for all your trouble.

Sincerely,

Madeleine

Going green? [See the top 12 foods to eat organic.](#)

From: madeleine bassil <madeleinebassil@hotmail.com>
Sent: Thursday, April 24, 2008 5:44 PM
To: john klein <jkecsc@aol.com>
Cc: David E. Nichols <den2pc@earthlink.net>; Lisa Curreri <lisacurreri@earthlink.net>
Subject:

Mr. Klein,

First of all, and before we go any further with any agreement, I would like you to have a surveyor come out to the property as soon as possible and put the access boundary flags back in and be flagged with orange surveyor's tape so we can see exactly where we're at.

Second, and after a lot of thinking and consideration, i am ready to sell you the encroached piece for \$20,000.00. This way we are both freed from any further disagreements. I believe this should be the best solution for this unfortunate situation.

Mr. Klein, I don't want to go back and forth with this any longer, and i don't want to take any other steps that may result to bad neighborly. After all, i am going to build there, and we are going to be neighbors.

For now, please don't call me on the phone but email me with anything we need to arrange to end this issue.

Sincerely,

Madeleine

From: madeleinebassil@hotmail.com
To: bmoseley@visurveyors.com; den2pc@earthlink.net; jkecsc@aol.com; lisacurreri@earthlink.net
Subject: RE: Common Boundary Adjustment
Date: Tue, 6 May 2008 19:18:42 -0400

Mr. Moseley,

would you please check the first survey that you did last year, and compare with the new one. From what i see in the survey that you just emailed us, Mr. Klein have taken two more foot in width from when he first encroached on the property. Thank you

Sincerely,

Madeleine

EXHIBIT 18

From: jkeesc@aol.com
Date: Mon, 28 Apr 2008 09:38:19 -0400
Subject: Driveway
To: madeleinebassil@hotmail.com
CC: den2pc@earthlink.net; liscurreri@earthlink.net

Madeline: Thank you for your note. I am in agreement to pay \$20,000.00 for the land in question. Further, I have called the surveyors, and asked them to kindly expedite the placement of the survey flags as you requested. They are scheduled to do the work tomorrow morning. Also, I have spoken with David Nichols this morning, and he is prepared to draft the necessary documents as soon as you confirm for him to proceed.

I trust we can finalize this shortly.

John

John Klein

In a message dated 4/24/2008 5:44:30 PM Eastern Daylight Time, madeleinebassil@hotmail.com writes:

Mr. Klein,

First of all, and before we go any further with any agreement, I would like you to have a surveyor come out to the property as soon as possible and put the access boundary flags back in and be flagged with orange surveyor's tape so we can see exactly where we're at.

Second, and after a lot of thinking and consideration, I am ready to sell you the encroached piece for \$20,000.00. This way we are both freed from any further disagreements. I believe this should be the best solution for this unfortunate situation.

Mr. Klein, I don't want to go back and forth with this any longer, and I don't want to take any other steps that may result to bad neighborly. After all, I am going to build there, and we are going to be neighbors.

For now, please don't call me on the phone but email me with anything we need to arrange to end this issue.

Sincerely,

Madeleine

Express yourself wherever you are. [Mobilize!](#) =

From: madeleine bassil <madeleinebassil@hotmail.com>
Sent: Friday, June 13, 2008 1:50 PM
To: brian moseley <bmoseley@visurveyors.com>; David E. Nichols <den2pc@earthlink.net>; john klein <jkeesc@aol.com>; Lisa Curreri <liscurreri@earthlink.net>
Subject:

Dear David,

I am on the Island and I went to see the property. As of now, all previous discussions of agreement are off the table. I have talked to a lawyer and John Klein will hear from my lawyer soon.

Madeleine

Now you can invite friends from Facebook and other groups to join you on Windows Live™ Messenger. [Add them now!](#)

From: jkeesc@aol.com <jkeesc@aol.com>
Sent: Thursday, June 19, 2008 10:34 AM
To: madeleinebassil@hotmail.com <madeleinebassil@hotmail.com>
Cc: hfeuerzeig@dtflaw.com <hfeuerzeig@dtflaw.com>; den2pc@earthlink.net <den2pc@earthlink.net>; bmoseley@visurveyors.com <bmoseley@visurveyors.com>
Subject: 2D-11 & 2D-12 Estate Nazareth

Dear Madeline:

I received a copy of your recent email to David Nichols and was very disappointed. When this issue first arose, I knew that I was not obligated to do anything about it, as the situation would involve adverse possession of the sliver of land in question. When I purchased the land from the previous owner, he had been using the same driveway to enter the property since the early 1980's. Between Dan Ditmore's ownership and mine, we have uninterruptedly been openly and notoriously using the same driveway to enter the property for more than 25 years.

Despite use, I only agreed to the first arrangement we made for an easement to try and maintain a peaceful relationship between neighbors, as it was not legally necessary that I agree to an easement. Later, when you changed your mind about an easement, and offered to sell me the piece in question for \$20,000.00, once again I agreed in order to keep a good tone between neighbors, even though, again, I was not obligated to do so.

Consistent with our agreement, I signed the necessary documents weeks ago, and delivered them to David Nichols. We have only been waiting for you to return to the territory to sign those documents. We have a binding contract, and I have spent considerable sums of money on a variety of items based on our agreement. Further, I have fulfilled the tasks required – including the preparation of agreements, and the hiring and facilitating surveyors.

We have an agreement, and unless you are prepared to execute the documents, I will go back to my original position, which I made clear to both you and Lisa Curreri on numerous occasions, that being that I own the property in question by adverse possession. Therefore, I look forward to you promptly advising me that you have executed the agreement documents, and your advising me when to expect receipt of the executed agreements in exchange for the \$20,000.00 I agreed to pay pursuant to our agreement. Reflective of that agreement, I also am forwarding to my attorney, Henry L. Feuerzeig, my check in the amount of \$20,000 to be held in escrow by him on the understanding that it is to be released to you by Mr. Feuerzeig upon receipt by me of the executed Common Boundary Agreement, the Request for Survey Registration, and any other documents required for the Boundary Agreement to become effective and binding as a matter of law.

Sincerely,

John M. Klein

FILED

July 28, 2021

ST-2021-CV-00148

TAMARA CHARLES

CLERK OF THE COURT

EXHIBIT LIST

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF St. Thomas

ST-2021-CV-148 No. _____

Date: July 28, 2021

Atty. J. David Cram Jr, Esq.

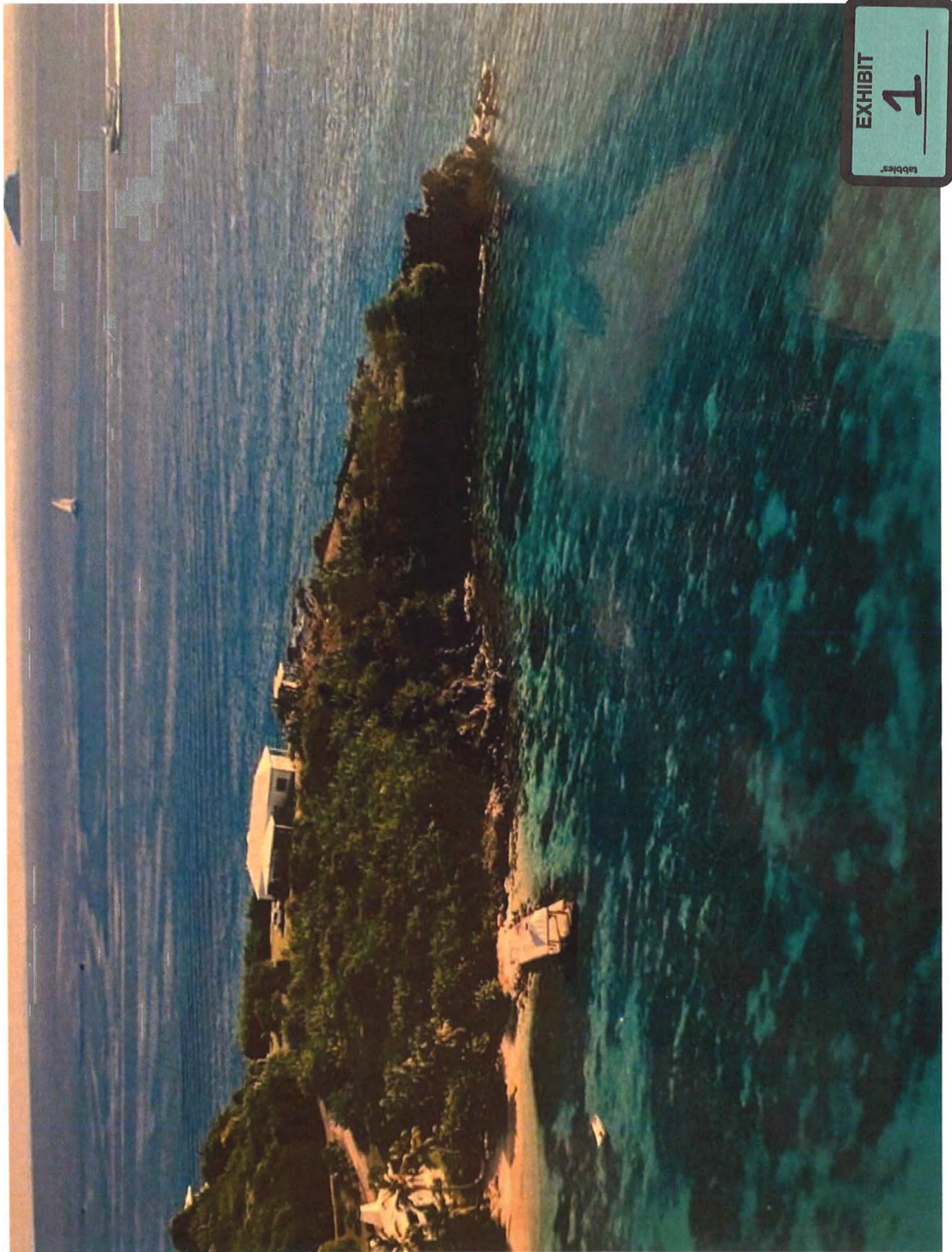
Plaintiff: ()

Defendant: (X)

Case: Madelaine A Bassil vs John Kern

EXHIBIT NUMBER	NATURE OF EXHIBIT	IDENTIFIED	ADMITTED IN EVIDENCE
14	Commitment for Title Insurance	Yes	Stipulated
13	Warranty Deed	Yes	Stipulated
1	Photo	Yes	Yes
2	Photo	7/12/2021 Yes	Yes
3	Photo	7/12/2021 Yes	Yes
4	Photo	Stipulated	Stipulated
5	Photo	Stipulated	Stipulated
7	Photo	Stipulated	Stipulated
9	Photo	Stipulated	Stipulated
15	Photo	2004 Stipulated	Stipulated

P.S. Exhibits "identified" only to be retained by counsel.



tabbles®
EXHIBIT
1

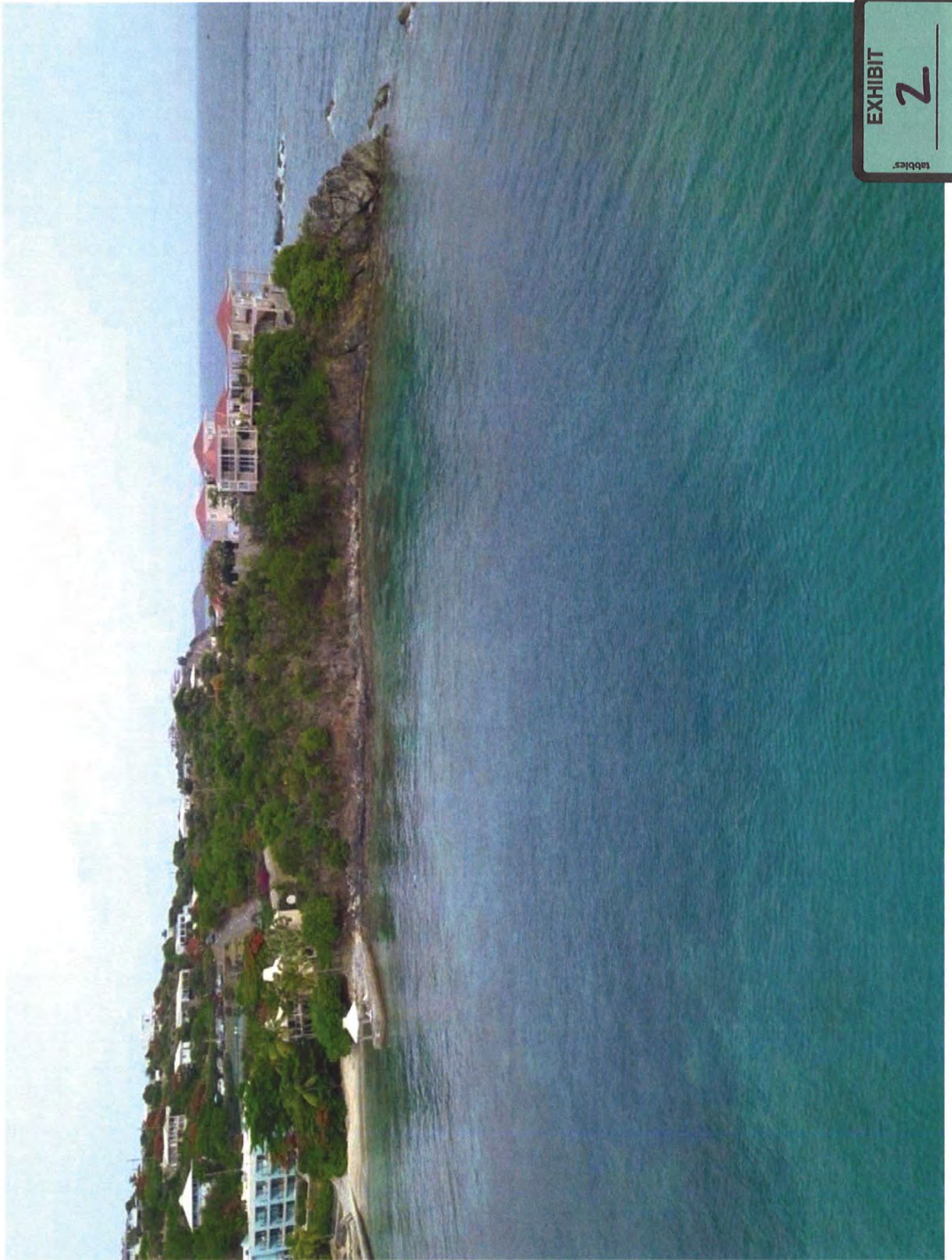


EXHIBIT
2
tabbles



EXHIBIT
3
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EXHIBIT
4
tabbles

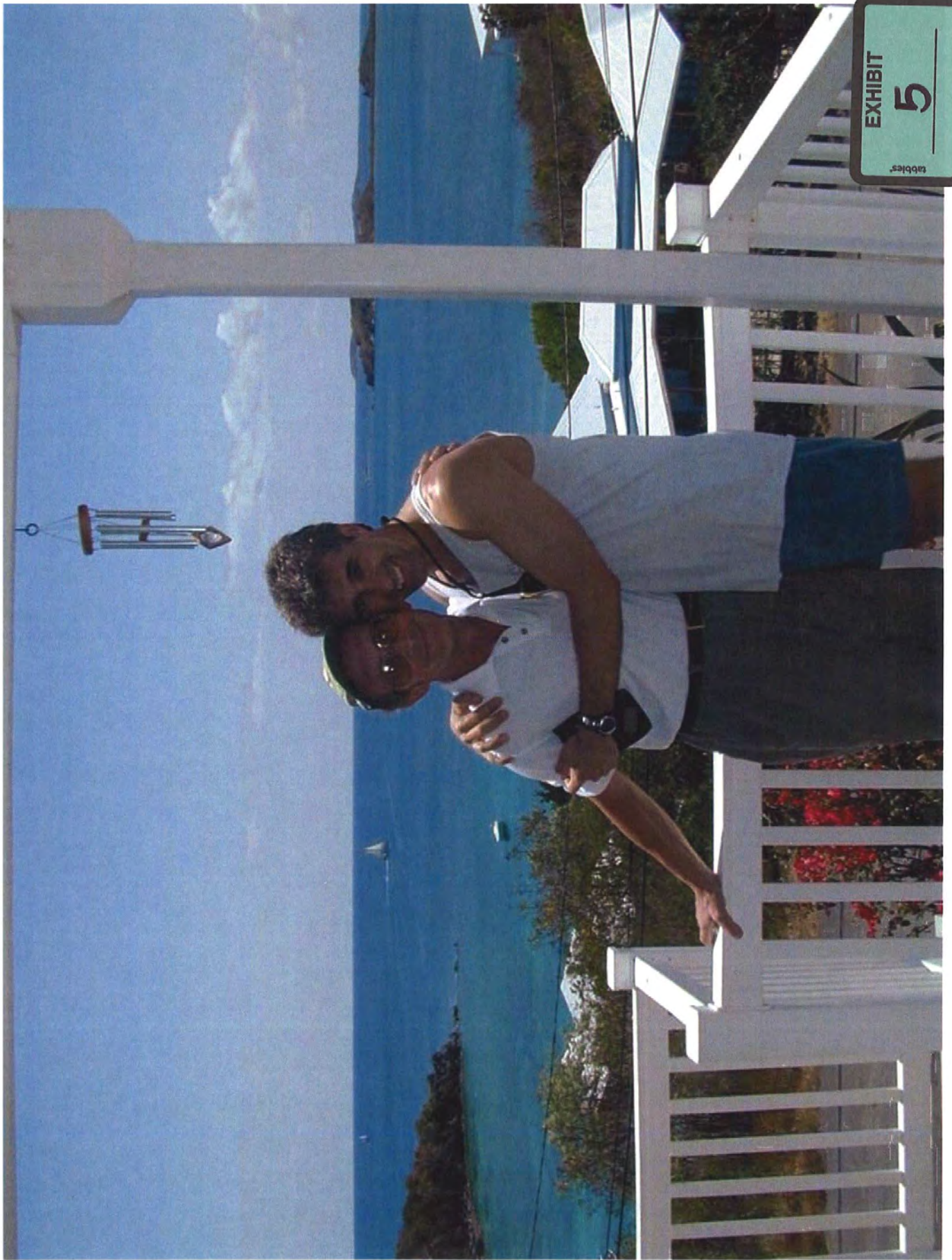


EXHIBIT
5
tabbles®

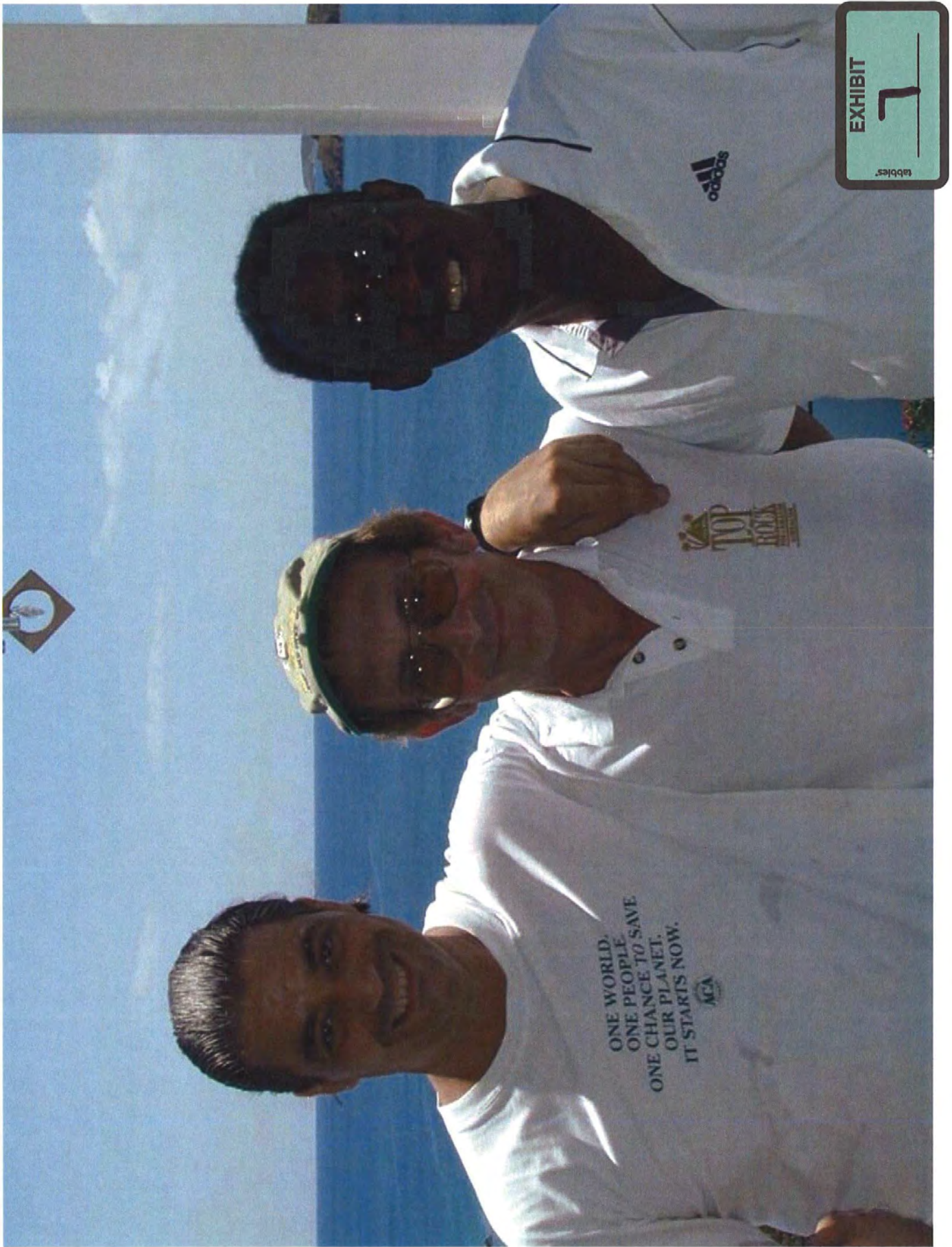


EXHIBIT
7
labbies



EXHIBIT
9
tabbles.

DAVID E. HICHOLES PC

FAK N1. 3348 774 8630

May. 31 2005 05:23PM B1

Book:

Page: 200408496
Filed & Recorded
05/20/2005 9:52AM
WILMA D. HART SMITH
ADDRESS OF DEED
ST THOMAS ST JOHN
SECURITY FEE \$ 487.00
RECORDING FEE \$ 9,070.00
PER PAGE FEE \$ 2.00

Book:

Page: 200408496
Filed & Recorded
05/20/2005 9:52AM
WILMA D. HART SMITH
ADDRESS OF DEED
ST THOMAS ST JOHN
SECURITY FEE \$ 487.00
RECORDING FEE \$ 9,070.00
PER PAGE FEE \$ 2.00

WARRANTY DEED

INDENTURE made this 22nd day of April, 2004, by and between DAN ALAN DITMORE, TRUSTEE of the SADERS REALTY TRUST ("Grantor"), and JOHN M. KLEIN, 6501 Red Hook Plaza, Suite 201, St. Thomas, VI 00802 ("Grantee");

W I T N E S S E T H:

That the Grantor, in consideration of Three Hundred Ninety Five Thousand Dollars (\$395,000.00) and other sufficient consideration paid by the Grantee, does hereby give, grant, sell and convey unto the said Grantee, in fee simple absolute, all right, title and interest in and to that certain plot, piece or parcel of land, with all the improvements thereon described as follows:

Parcel No. 2D-11 Estate Nezateth
No. 1 Red Hook Quarter
St. Thomas, Virgin Islands
consisting of 0.64 acre, more or less
as shown on FMI No. A9-24-164
(the "Property");

TOGETHER WITH all of the improvements thereon, the appurtenances thereto, including but not limited to easements for ingress and egress over estate roads, all as of record appear, and all of the estate, right, title and interest of the Grantor, his heirs, successors and assigns, in and to the premises herein granted.

SUBJECT, HOWEVER, to zoning regulations, covenants, restrictions and easements of record.

TO HAVE AND TO HOLD the premises herein granted unto Grantee, his heirs, successors and assigns, in fee simple absolute forever.

EXCEPT AS HEREINAFORE MENTIONED, GRANTOR COVENANTS that he is seized of the premises in fee simple and has good right to convey the same; and that the Grantee and his heirs, successors and assigns, shall quietly enjoy said premises; and that said premises are free from encumbrances;

Doc # 200408496



CHICAGO TITLE INSURANCE COMPANY
COMMITMENT FOR TITLE INSURANCE

- 1. Effective Date: November 12, 2003 Case No. 7739
- 2. Policy or policies to be issued:
 - (a) ALTA Owner's Policy- (10-17-82) Amount \$396,000.00
 - Proposed Insured: John M. Klein
- (b) ALTA Loan Policy - (10-17-82) Amount \$355,500.00
- Proposed Insured: Dan Alan Ditmore, Trustee of the Sanders Realty Trust

(c) Proposed insured: none Amount \$

3. Title to the fee simple estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:

 Dan Alan Ditmore, Trustee of the Sanders Realty Trust

4. The land referred to in this Commitment is described as follows:

Parcel #2D-11 Nezzareth
No. 1 Red Hook Quarter
St. Thomas, V.I., as shown on PWD #A8-24-754

Counter-signed at St. Thomas, V.I.
 ST. THOMAS TITLE & ABSTRACT, LLC Schedule A
 Authorized Officer for Agent
The commitment is void unless the insuring Provisions and Schedule A and B are attached.



EXHIBIT

15

tabbles



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

MADELINE A. BASSIL,)
)
)
PLAINTIFF,) ACTION FOR TEMPORARY
) RESTRAINING ORDER,
) INJUNCTIVE RELIEF,
) TRESPASS, DECLARATORY
) JUDGEMENT, QUIET TITLE, and
) DAMAGES FOR SLANDER OF
) TITLE and INTENTIONAL
) INFELICTION OF EMOTIONAL
) DISTRESS
vs.) CASE NO. ST-2021-CV-148
)
JOHN KLEIN,) VOL. II
)
DEFENDANT.)
_____)

TEMPORARY RESTRAINING ORDER HEARING

T R A N S C R I P T

JULY 28, 2021

BEFORE: HONORABLE JUDGE SIGRID TEJO
PRESIDING

APPEARANCES: Matthew J. Duensing, Esquire
James Casner, Esquire
Robin P. Seila, Esquire
9800 Buccaneer Mall, Building 2, Suite 9
St. Thomas, U.S.V.I. 00802
(For the Plaintiff)

Jerome David Crain, Jr., Esquire
Wilcox & Savage, P.C.
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
(For the Defendant)

COURT REPORTER: MYKA V. CALLENDER-SMITH, CSR.
Official Court Reporter I

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1 **Proceedings**

2 THE COURT: Good morning,
3 everyone.

4 Madam court reporter, Mrs. Smith, good
5 morning. Are you with us for the rest of the
6 hearing this morning?

7 MADAM COURT REPORTER: Yes, I
8 will.

9 THE COURT: We will do our best
10 to finish within the timeframe we spoke about
11 yesterday.

12 Good morning, Ms. Donovan.

13 THE CLERK: Good morning, Judge.
14 This is Ms. Pemberton sitting in for Ms. Donovan.

15 THE COURT: Thank you,
16 Ms. Pemberton.

17 Can you call the calendar, please?

18 THE CLERK: Sure. Good morning,
19 civil calendar for July 28, 2021 Madeline Bassil
20 vs. John Klein.

21 ATTORNEY DUENSING: Good morning,
22 Your Honor. This is Matthew Duensing together with
23 Robin Seila and James Casner on behalf of the
24 plaintiff, Madeline Bassil.

25 THE COURT: Good morning,

1 Attorney Duensing. Good morning, counsel. Good
2 morning, Ms. Bassil.

3 ATTORNEY CRAIN: Good morning,
4 Your Honor. This is David Crain on behalf of the
5 defendant, John Klein.

6 THE COURT: Good morning,
7 Mr. Crain. Good morning, Mr. Klein.

8 MR. KLEIN: Good morning, Your
9 Honor.

10 THE COURT: Are the parties ready
11 to proceed?

12 ATTORNEY CRAIN: Yes we are, Your
13 Honor.

14 THE COURT: Okay. The Court
15 neglected to inform Mr. Klein yesterday that he is
16 still under oath and I don't recall whether or not
17 we had excused him as a witness. I am not sure if
18 that raises any concerns from counsel.

19 ATTORNEY CRAIN: No, Your Honor.

20 THE COURT: Okay. So I will have
21 Mr. Klein placed under oath again. Let me not jump
22 to any conclusion.

23 Attorney Crain, are you ready to
24 proceed?

25 ATTORNEY CRAIN: I am, Your

1 Honor.

2 THE COURT: Please call your next
3 witness.

4 ATTORNEY CRAIN: The defense next
5 witness, Your Honor is John Klein.

6 THE COURT: Thank you.
7 Mr. Klein, can you raise your right hand to be
8 sworn in by the clerk.

9 **JOHN KLEIN**, having been first
10 duly sworn as a witness, testified as follows:

11 MR. KLEIN: I do.

12 THE COURT: Okay, thank you. You
13 may proceed.

14 **DIRECT EXAMINATION**

15 BY ATTORNEY CRAIN:

16 Q. Mr. Klein, can you please state your name for
17 the record?

18 A. John Michael Klein.

19 Q. Okay. Are you a resident of the US Virgin
20 Islands?

21 A. I am.

22 Q. Can you tell the Court what caused you to come
23 to the Virgin Islands?

24 A. Yes. I was -- I was in the United States Army
25 in the infantry. I was discharged in 1970 and while I

1 was in the Army, I contracted a lung disease. When I
2 was discharged from the Army, it was advised to me that
3 you can get a better quality of life if I lived in warm
4 climate with salt air. And I began looking for what
5 that place in the world would be that would be a better
6 place for my lungs to live there. I decided to move to
7 the Virgin Islands. I have been happy here for the last
8 40 something years.

9 Q. Mr. Klein, did there come a time when you
10 moved to the Secret Harbor area?

11 A. Yes.

12 Q. And when was that?

13 A. About 2002.

14 Q. Is that the same place where you reside now?

15 A. Well, I live in Secret Harbor, but I lived in
16 a different house than I did in 2002.

17 Q. Where do you live now?

18 A. I live on what's actually called Beverhout
19 Point, but I live at my address on the tax map --
20 because we don't have mail delivery -- is 2 D 11 Estate
21 Nazareth.

22 Q. And where did you live in relation 2 D 11 when
23 you first moved to Secret Harbor?

24 A. When I first lived in Secret Harbor, I lived
25 on the other side of Secret Harbor as you come down the

1 hill on a house that was there, that I purchased.

2 Q. And when did you purchase that house?

3 A. About 2002.

4 Q. And did you reside in that house after?

5 A. Yes, I did.

6 Q. And then moved from that house to your current
7 residence?

8 A. I am sorry. What was -- I didn't hear your
9 question.

10 Q. Did you move from that house to your current
11 residence?

12 A. Yes, I did. I did. I moved over here after I
13 built this house and had four walls and a roof over my
14 head that I was able to sleep in.

15 THE COURT: Counsel, I know we're
16 trying to speed things along. And I know this is
17 some foundation, but please don't continue to lead
18 your client.

19 And Mr. Klein, only answer the
20 questions that are posed to you.

21 ATTORNEY CRAIN: Yes, Your Honor.
22 I understand, Your Honor.

23 BY ATTORNEY CRAIN:

24 Q. How did it come about that you moved to your
25 current residence?

1 A. While I was living in the old house, on the
2 other side of Secret Harbor, couple things came, when I
3 was there with my daughter, her mom, her grandmother,
4 her cousin, my daughter's cousin and it became pretty
5 apparent with me trying to have an office in the house
6 and work from home that we needed more space.

7 And I looked out and admired a piece of land
8 that was out on the point that I could look at, out from
9 my old deck. That is where I live today, and I started
10 researching who owned the land over here and contacted
11 the owner because it wasn't on the open market and I
12 ultimately bought the land and built a house.

13 Q. And can you identify to the Court just the
14 timing of that transaction?

15 A. Well, I started talking to the owner of the
16 land, the previous owner of the land in about 2000 --
17 sometime in 2003 and I started negotiating with him.
18 During 2003, I believe I -- we made an agreement later
19 on in that year and then he had some issues with
20 delivering title because the property was in the name of
21 a trust. He ultimately got that resolved and I think, I
22 purchased the property in April of 2004. That's when I
23 took title.

24 ATTORNEY CRAIN: And Your Honor,
25 we have, based upon discussions yesterday,

1 stipulated to the admission of certain of
2 defendant's exhibits. So I want to go through a
3 number of them, Your Honor, but I just want to
4 briefly let Mr. Klein explain them real briefly.

5 So this is Exhibit 14th first which has
6 been stipulated to by the parties to its
7 admissibility.

8 I may not be as proficient as
9 Ms. Seila, but let me see if I can get that. Okay.

10 BY ATTORNEY CRAIN:

11 Q. Mr. Klein, do you recognize this?

12 THE COURT: It's been stipulated
13 to, Attorney?

14 Q. Mr. Klein, what is this?

15 THE COURT: Attorney Duensing,
16 did you stipulate to that document?

17 ATTORNEY DUENSING: Yes, Your
18 Honor.

19 THE COURT: It's been admitted by
20 stipulation, Exhibit 14.

21 BY ATTORNEY CRAIN:

22 A. Can I still answer?

23 Q. What is this, Mr. Klein?

24 A. It's a commitment for buying title insurance
25 for the land that I own here, 2 D 11 which after we had

1 made our agreement that I would buy the land, it looks
2 on the document like it was issued in November of 2003
3 for the amount of the purchase price that I paid for
4 this piece of the land that I have here for title
5 insurance.

6 ATTORNEY CRAIN: All right. Your
7 Honor, this is another document that the parties
8 have stipulated to.

9 THE COURT: Attorney Crain, can
10 you identify all the exhibits that have been
11 stipulated to?

12 ATTORNEY CRAIN: I can, Your
13 Honor, yes. That will be 4 and 5, 7 through 10 and
14 12 through 15.

15 THE COURT: Attorney Duensing, is
16 that your stipulation?

17 ATTORNEY DUENSING: That's
18 correct, Your Honor.

19 THE COURT: By stipulations,
20 Defense Exhibit 4, 5, 7, 8, 9, 10, 12, 13, 14 and
21 15 are admitted.

22 ATTORNEY CRAIN: Thank you, Your
23 Honor.

24 BY ATTORNEY CRAIN:

25 Q. Mr. Klein, very briefly, can you explain to

1 the Court what this is?

2 A. This looks like a copy of the deed from
3 Mr. Kenmore to me when I bought the property on the 22nd
4 of April in 2004.

5 ATTORNEY CRAIN: All right. And
6 this was Defense Exhibit 13 for the record. All
7 right.

8 Q. Mr. Klein, were you able to access 2 D 11
9 prior to you purchasing it?

10 A. Yes, I was.

11 Q. How did you access the property?

12 A. Well, first I asked the previous owner that I
13 have permission to go up on the property and he said
14 that was not a problem; so I did. And I came to the
15 property through a path that I saw at the end of the
16 beach when you would go pass from my old house, I'd
17 walked down; I'd walked down to Secret Harbor Beach.
18 I'd walked pass the Secret Harbor pier and there's
19 second pier there.

20 There was a second dock and just pass that
21 second dock after climbing up a couple of big boulders
22 on the right, you would take a left turn, and there was
23 the trail that was up through there. And I would walk
24 up that trail to get to then what is now the bottom of
25 the driveway that I have today. And I would walk down

1 that driveway which was the access to the property that
2 I'm on where my house is, and I would see the land, walk
3 around it. It was pretty rocky up here. It wasn't as
4 high bush.

5 THE COURT: Mr. Klein, I think
6 the question is how you accessed it and not a
7 description of the property. Until there is
8 another question, please, so we can move it along.
9 Only answer the questions that are posed to you.

10 THE WITNESS: Yes.

11 BY ATTORNEY CRAIN:

12 Q. Mr. Klein, how did you learn about the trail?

13 A. When I was living at my old house, from my
14 deck, you could easily see Secret Harbor and the former
15 owner of 2 D 10, while the owner at that time of 2 D 10
16 was a man that used to come down to the beach with a dog
17 and I would watch him go out on the pier and throw a
18 ball to his dog. The dog would jump off the Secret
19 Harbor pier. And when they would leave the beach to go
20 back, they would walk down the beach and they would walk
21 up what seem like through the bush. So, I knew there
22 were some trail there.

23 Q. And what was the time period in which you saw
24 this individual doing this?

25 A. From the time that I started living in my old

1 house.

2 Q. Okay. Which was when?

3 A. 2002.

4 Q. And approximately, for the Court's benefit,
5 what was the time frame of your first use of the trail?

6 A. I think the first time I used the trail was
7 probably sometime around the end of 2002. I mean, I
8 lived here in Secret Harbor and was very curious to see
9 where he came from. So I wanted to know what was in my
10 neighborhood.

11 Q. And between -- Did you use the trail more than
12 once?

13 A. Yes.

14 Q. And between the time of your first use and
15 your purchase of the property, how many times did you
16 use this trail?

17 A. Many times, many times.

18 Q. And did you ever understand that anyone else
19 used the trail during that time period?

20 A. Well, other than the man that used to come
21 down with his dog, I didn't see anybody else coming up
22 and down that trail other than when I would go up and
23 down or bring people that I knew up and down the trail.

24 Q. Who did you bring with you up and down the
25 trail?

1 A. Friends of mine, guests that will stay with me
2 in my old house.

3 Q. And who were some of those individuals?

4 A. Well, Ken Black, Sydney Bennett, Freddy
5 Melhem, Asif Glasgow, Frank Saunders.

6 Q. Can you describe the trail in the time period
7 of 2003, to the time you purchased the property in 2004?

8 A. Well, if you were entering the trail from the
9 beach, you'd walk up some rocks, a couple big ones that
10 was parallel to the beach. And then you can take a left
11 turn, kind of a 90-degree turn, and you would walk
12 straight. Then, it has some curves to it. And then, it
13 would angle off a little bit. And then, it would then
14 bring you up out at the top of the trail which was
15 across from the WAPA, Virgin Islands Water and Power
16 meter base that was across at the time a grassy
17 driveway. And it was a kind of an odd shape concrete
18 structure that held the meter base for the house. The
19 fellow who had lived in that had the dog that I used to
20 watch go up and down the trail to the beach.

21 Q. What work if any did you do on 2 D 11 in 2004?

22 A. In 2004, after I bought the property in April
23 of that year, I construct -- well, I started doing some
24 land clearing by hand on 2 D 11. I did that with the
25 chainsaw, machete. I had some casual labors that I

1 hired. I built a shed out of plywood to hold some of
2 the hand tools, and I started clearing the land up there
3 to get a feel for how I can place the house and maximize
4 what I was trying to accomplish which is a nice house,
5 taking advantage of the three views that are there at
6 that point.

7 Q. And at what point did you move into the
8 residence at 2 D 11?

9 A. I think, I started sleeping there around in
10 2006. It took a couple years to build the house. I was
11 a little delayed toward the end because the guy that was
12 making the railings was late in installing the railings.

13 Q. And was there a general contractor for the
14 work?

15 A. That was me.

16 Q. And how often were you on 2 D 11 during the
17 construction phase of the house?

18 A. I kind of lived there and breathe there. I
19 went across the street sort of everyday to go there. So
20 I was there all the time. I was there pretty much
21 everyday, Saturdays and Sundays and nights and whatever
22 it took to get a house built.

23 Q. And so between the time you purchased the
24 property in 2004 and when you moved in 2006, did you
25 have an occasion to use the trials?

1 A. I used the trails all the time; yes, I did.

2 Q. And how often, if you were there everyday, how
3 often would you use the trails to access the property?

4 A. You know, I would use the trails a few times a
5 week. I mean, I have to give myself lung therapy. So I
6 need to swim on a regular basis in seawater and it sort
7 of provide a salt water douche for my lungs. And so I
8 would walk down the trails to get to the beach and upon
9 depending on the rain or whatever, sometimes I would use
10 the steps over to Secret Harbor to walk down their steps
11 to get to the beach that was very close by, but I would
12 go to -- I mean, I'm in the water all the time. I would
13 go to the water every day, yes.

14 Q. And after moving in, have you had occasion to
15 use the trail?

16 A. I've been using it since I moved in, I
17 continue to use the trails all the time.

18 Q. Since moving in 2006, how often have you used
19 the trail?

20 A. A few times a week, every week I use the
21 trail. I mean, I generally -- I'm sorry. Yes, I few
22 times a week at least.

23 Q. Since 2004 you purchased the property, had
24 there been use of the trail for any other business?

25 A. I didn't hear the question.

1 Q. Since you purchased the property in 2004, have
2 you used the trail with any other individuals?

3 A. Yes. I've walked up and down the trail with
4 people that have stayed here in my house. I have
5 guests, friends, family, and more recently in the
6 beginning of this year, I started doing Airbnb rentals
7 at my house here. And the house that I purchased next
8 door and my guests used the trails to get to the beach,
9 as well.

10 Q. Did you create the trail, Mr. Klein?

11 A. I did not create the trail that I found when I
12 first bought the property, but I created another trail
13 after I purchased this house that connects to the first
14 trail that was there.

15 Q. When did that occur?

16 A. I made that trail in 2004 after I purchased
17 the property. When I was doing construction, I realize
18 that there was an angle that I found that I could make a
19 trail that would come from the lower part of where I was
20 building one of the bedrooms to make an easier access to
21 have to then walk up to the driveway and walk down to
22 the beach. So I made a faster access there and I made
23 another trail that intercepted with the first.

24 Q. Have you done anything Mr. Klein to maintain
25 the trails since you started using them?

1 A. Yes, I also found since I put in the second
2 trail, it was easier for me to look for a termite nest.
3 Termites are a big problem here in the Virgin Islands.
4 So, I would kill termite nests that I saw when we were
5 doing extermination work here at my house. Sometimes a
6 rat, after they'd eat rat poison, would die in the bush.
7 So, I would be able to locate the smells. It was easier
8 to find the rodents that were dead. I would rake stones
9 off of it.

10 I would cut the catch-n-keeps that was on
11 the sides from encroaching on to the trail. So I would
12 keep the center of the trail clear to be able to walk
13 without a problem. I didn't want to interfere with the
14 tree top because I like keeping in the shade. So I was
15 able to maintain the center of it. And try to keep the
16 crowns of the trees in place when possible in order to
17 get a shade when you walk there to spend time on the
18 trail.

19 Q. Over what period of time did you maintain the
20 trail?

21 A. I've maintained these trails since 2000 --
22 since I bought the property, since April of 2004.

23 Q. All right. Mr. Klein, did there come a time
24 when with you started renting the property as an Airbnb?

25 THE COURT: Attorney Crain, can

1 you be specific, which property?

2 ATTORNEY CRAIN: Yes, Your Honor.

3 Q. Let me go back to display this, I think. Do
4 you also own the neighboring property?

5 A. Yes, I own 2 B 10. I bought it I think in
6 2015 from the Gilmore's, after Mrs. Gilmore died.

7 Q. Okay. And did you -- did there come a time
8 when you started using either of your properties
9 2 B 11 or 2 B 10 as Airbnbs?

10 A. Yes.

11 Q. And when did that start?

12 A. Early this year in 2021.

13 Q. And do you advertise those properties?

14 A. Yes, we do.

15 Q. Do you describe it in anyway an access to the
16 beach?

17 A. Yes, we talk about private access to the beach
18 that you can go directly from the properties and walk
19 down -- we call it a natural trail to get to the beach;
20 it's a natural trail. I call it that because I haven't
21 paved any concrete or anything like that. We just try
22 to maintain it with rakes, a pick once in a while and
23 cut it back. So you can walk up and down.

24 Q. In addition to the maintenance you talked
25 about Mr. Klein, do you have steps to secure the trails

1 in any way?

2 A. Well, after I started doing the Airbnbs this
3 year, I built little gates. I did a couple things. I
4 hung a chain down at the beach. I hung the yellow chain
5 that's has a *No Trespassing* sign on it. And just beyond
6 that as you walk from the beach up toward the trail, I
7 bought a little gate there, when I say little, I mean,
8 it's a 3 ft x 3 ft. There's no lock on it, just has a
9 latch and it kind of just sends a message that you
10 shouldn't go pass here. And I did the same thing at the
11 top of the trail which is right next to the meter base
12 that comes off of my driveway that comes into my house
13 at 2 D 11. So, I built a gate at the top and I built a
14 gate at the bottom and that was this year.

15 Q. From the time you started using the trails
16 from today, did the location of the trails change at
17 all?

18 A. No, they are in the same place they have been;
19 nothing's change.

20 Q. Has the condition of the trails changed?

21 A. Well, they're probably a little easier to use
22 now than they were maybe even a year ago just because
23 there is no foot traffic on it. So there being no foot
24 traffic on it, they have probably made it seem a little
25 bit wider. There is less growing on it because there's

1 less a chance for anything to rout in the dirt that's
2 there. So the conditions are probably a little better
3 now than it might have been before we started doing the
4 Airbnbs because it just has more foot traffic on it. I
5 guess more traffic, period.

6 Q. Can you tell the Court how a preliminary
7 junction might impact you, Mr. Klein?

8 A. Yes, it would have a severe impact on me
9 personally because I wouldn't be able to get to the
10 beach safely the way that I have been. I need to swim
11 every day. I'm under a couple different doctors' care a
12 pulmonologist, an infectious disease doctor here, an
13 internist. I need to get to the sea and swim. I have a
14 service dog that helps me to get around that gives me
15 pulmonary relief. And since I can't use the Secret
16 Harbor steps to get down to the beach anymore to get to
17 the property, the trail is the only way I have to get
18 down to the beach. If I have to walk down to Secret
19 Harbor, that is a dangerous road to Secret Harbor.
20 Secret Harbor has been told that is not something that
21 should be used for the public.

22 ATTORNEY DUENSING: I'm going to
23 object, Your Honor. That's hearsay.

24 THE COURT: I agree.

25 Mr. Klein, again, the Court will

1 caution you only to answer the questions.

2 And Attorney Crain, Mr. Klein -- it's
3 not appropriate for Mr. Klein to be making a legal
4 conclusion either.

5 ATTORNEY CRAIN: Fair enough.

6 BY ATTORNEY CRAIN

7 A. All right. It would not be safe for me to
8 walk down the very steep gravelly concrete road which I
9 have fell on myself more than once to get to the beach
10 and it would be very difficult for me to go down and get
11 my therapy in the water on a regular basis.

12 Q. Mr. Klein, the guests that stay at your
13 Airbnb, did they sign any paperwork?

14 A. Yes, I have them sign waivers.

15 Q. All right. Mr. Klein, let me -- I want to
16 show you some exhibits Your Honor and I will delineate
17 which ones haven't been -- I will lay the foundation for
18 the ones that haven't been stipulated to.

19 Let me show you first what's Exhibit 1.

20 Mr. Klein, this is Defense Exhibit 1, do you
21 recognize this?

22 A. Yes.

23 Q. And what is it?

24 A. That is a picture of 2 D 12, 2 D 11, 2 D 10
25 and a little bit of 2 D 13 taken in probably late in

1 2004 that shows the plywood construction shed that I
2 built to hold hand tools and a little bit of --

3 ATTORNEY DUENSING: Objection,
4 Your Honor. We don't have a foundation in terms of
5 who took this photo or anything like that.

6 THE COURT: Attorney Crain,
7 please lay a proper foundation.

8 Mr. Klein, you can't testify about the
9 document, only answer the question.

10 THE WITNESS: Sorry, Your Honor.

11 Q. Mr. Klein, is it an accurate representation of
12 what your property look like in 2004?

13 A. Yes.

14 THE COURT: Attorney Crain, there
15 is no evidence that this was taken in 2014 {sic},
16 please.

17 BY ATTORNEY CRAIN:

18 Q. Mr. Klein, do you know what year this photo
19 was taken?

20 A. I believe that photo was taken in 2004.

21 Q. Is it an accurate representation of your
22 property in 2004?

23 ATTORNEY DUENSING: We're going
24 to still object, Judge, because we don't know who
25 took this photo or under what circumstances or

1 anything like that.

2 THE COURT: Attorney Duensing, I
3 don't know if it's necessary who took the
4 photographs. The Courts concern now at the point
5 that Attorney Crain continues to lead his client,
6 suggested the answer that this is a photograph
7 taken at that time.

8 What is the basis of this photograph,
9 Attorney Crain?

10 ATTORNEY CRAIN: Your Honor, it
11 it's corroborating the timeline Mr. Klein has
12 testified to as to the status of his property at a
13 certain time. Mr. Klein testified in 2004; I
14 didn't suggest 2004 to him, I apologize.

15 ATTORNEY DUENSING: Your Honor,
16 you know, we have no reason to know how Mr. Klein
17 would even know when this was taken.

18 THE COURT: There was a concern
19 the Court raised yesterday on other photographs.
20 These photographs are not time stamped. The people
21 who's taking the photographs are not testifying.
22 So what is the basis for entering the photographs?

23 ATTORNEY CRAIN: Your Honor, he's
24 able -- someone doesn't have to be the person
25 taking the photo to say that, that it's an accurate

1 representation. It just has to be accurate as to
2 what they knew the view was of the property at the
3 time and that is what Mr. Klein is testifying to.
4 This is what my property looked like in 2004.

5 THE COURT: And again, counsel
6 because the foundation -- You were leading your
7 client during the foundation of this, what is the
8 relevance of this photograph at this point?

9 ATTORNEY CRAIN: Well, Your
10 Honor, I think I asked him you know what is and he
11 started -- I didn't lead him to any particular
12 conclusion.

13 THE COURT: What is the relevance
14 of this photograph?

15 ATTORNEY CRAIN: The relevance,
16 Your Honor, is corroboration of Mr. Klein's
17 testimony of the status of his property in 2004?

18 THE COURT: Base on that,
19 Attorney Duensing, do you have any objections?

20 ATTORNEY DUENSING: I do object.
21 In the sense that I have no -- at least with our
22 photographs, we were able to tell the Court, you
23 know, how they originated. I have no idea who took
24 the photos. I have no idea, you know -- We have
25 Mr. Klein just saying after his attorney led him

1 that you know, this is what my property looked like
2 in 2004. I mean, for all we know, this photo could
3 have been taken in 1970; I just don't know.

4 THE COURT: Attorney Crain.

5 ATTORNEY CRAIN: Mr. Klein has
6 testified that it's an accurate petition what it
7 look like in 2004. It doesn't really matter if it
8 was taken in 1970; it's what it looks like in 2004.
9 That's what his testimony is.

10 THE COURT: And how is he able to
11 do that?

12 ATTORNEY CRAIN: I mean, he
13 testified. He has a memory of what it looks like
14 in 2004. He's up there everyday; he testified
15 about that.

16 THE COURT: Mr. Klein, how are
17 you -- Are you familiar with this photograph?

18 THE WITNESS: Yes.

19 THE COURT: And how are you
20 familiar with this photograph?

21 THE WITNESS: Because that's
22 exactly what my property looked like from my old
23 house that's right across from Secret Harbor. I
24 looked at it everyday when I wake up in the
25 morning. And this is what it looked like in 2004

1 after I put the construction shed up.

2 THE COURT: And where is the
3 construction shed depicted in this photograph?

4 THE WITNESS: I don't have the
5 pointer. So I can't --

6 THE COURT: You can describe it.

7 THE WITNESS: All right. If you
8 look at the house that's there, the existing house,
9 if you look to the right.

10 THE COURT: There's two houses in
11 the photographs. There's one to the left.

12 THE WITNESS: I'm sorry. I
13 apologize. I didn't mean to interrupt you, Your
14 Honor.

15 THE COURT: Go ahead. There are
16 two houses. Which house are you talking about?

17 THE WITNESS: If you look at the
18 house that is more or less towards the center of the
19 screen.

20 THE COURT: Okay. There is a
21 white vehicle parked outside of it.

22 THE WITNESS: Yes, thank you.
23 And that's the east side of the house. So this
24 picture is from looking at the property from south
25 to north -- I'm sorry from north to south. So

1 where the car is parked is the east side of that
2 house.

3 THE COURT: Where is your
4 construction shed?

5 THE WITNESS: My construction
6 shed is on the right of the west side of the house,
7 you'll see a little -- that looks like a "T" in the
8 photograph.

9 Do you see a white -- on the west side
10 of the house going toward the point, almost right
11 in the middle of the screen, that is a construction
12 shed.

13 THE COURT: Attorney Duensing?

14 ATTORNEY DUENSING: That's fine,
15 Judge.

16 THE COURT: Okay, Exhibit 1 is
17 admitted.

18 BY ATTORNEY CRAIN:

19 Q. Mr. Klein, let me show you.

20 ATTORNEY CRAIN: This is
21 defendant's Exhibit 2, Your Honor. I know the one
22 that was not stipulated to.

23 Q. Mr. Klein, do you recognize this?

24 A. Yes.

25 Q. What is it?

1 A. This a picture of my house on the right at
2 2 D 11. It is a picture that you can see 2 D 12 on the
3 water side below my house.

4 THE COURT: Okay Mr. Klein, he
5 just asked you what it was, the photograph.

6 THE WITNESS: It's a picture.

7 Q. And who took it?

8 A. I did.

9 Q. And when did you take it?

10 A. I took this picture on July 12th.

11 THE COURT: What year?

12 A. This year, 2021.

13 Q. Is this an accurate representation of the
14 view? Let me say -- What angle is it from, Mr. Klein,
15 or where is it taken from?

16 A. I took this picture from a drone that I fly as
17 a hobbyist.

18 THE COURT: Attorney Crain, if
19 you can lay the foundation of the photograph before
20 he testifies about it.

21 ATTORNEY CRAIN: I'm sorry. I
22 was just trying to get where it was taken from,
23 Your Honor.

24 BY ATTORNEY CRAIN:

25 Q. Where was the picture taken from, Mr. Klein?

1 A. The picture was taken from a drone.

2 Q. And from what location?

3 A. Approximately, 50 or 60 feet above the water
4 in Secret Harbor.

5 THE COURT: Mr. Klein, I'm going
6 to stop you.

7 Counsel, you're having him testify
8 again about the photograph.

9 Mr. Klein, is it a true and accurate
10 copy of the original photograph taken by your drone
11 on July 12th, 2021?

12 THE WITNESS: Yes.

13 ATTORNEY CRAIN: Your Honor, I
14 would move then Exhibit 2 into evidence.

15 THE COURT: Attorney Duensing?

16 ATTORNEY DUENSING: No objection,
17 Your Honor.

18 THE COURT: Exhibit 2 is
19 admitted. He can testify about the document now.

20 BY ATTORNEY CRAIN:

21 Q. Mr. Klein, what does Exhibit 2 depict?

22 A. Exhibit 2 depicts a picture of my house of the
23 property at 2 D 12, the property at 2 D 13, and the pier
24 that belongs to 2 D 13 from about 60 feet or so above
25 Secret Harbor from a distance of a couple hundred feet

1 across Secret Harbor.

2 Q. And why did you take this picture, Mr. Klein?

3 A. I took this picture because I had seen in
4 filings from the other side of the plaintiff's
5 photographs of the property that showed pictures of the
6 paths from different angles. And I wanted to show that
7 depending on the angle that you looked at the property
8 and when it was, whether you could see the paths or not.
9 And I wanted to take a picture that showed that there
10 are angles that even though the paths are very visible
11 from others, you can't see the paths and this is a
12 picture that in my view, the previous picture you can't
13 see the paths.

14 Q. Let me show you next then what's been marked
15 as Defendant's Exhibit 3. Okay.

16 Mr. Klein, do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. This is a picture that I took.

20 Q. It's a picture. Do you know who took the
21 picture?

22 A. Yes.

23 Q. Who took it?

24 A. I did.

25 Q. When was it taken?

1 A. This was taken two minutes after I took the
2 other picture, the first picture we saw a minute ago.

3 Q. Which was when?

4 A. July 12th of this year?

5 Q. And is this a true and accurate copy of the
6 photo that you took on July 12th, 2021?

7 A. Yes, it is.

8 ATTORNEY CRAIN: Your Honor, I
9 move Exhibit 3 into evidence.

10 THE COURT: Attorney Duensing?

11 ATTORNEY DUENSING: No objection,
12 Judge.

13 THE COURT: Exhibit 3 is
14 admitted.

15 ATTORNEY CRAIN: Thank you, Your
16 Honor.

17 BY ATTORNEY CRAIN:

18 Q. Mr. Klein, why did you take this picture?

19 A. I took the picture to show that even though
20 there was an angle that I took, in the picture I took a
21 minute before I flew the drone to this location, that
22 you can't see the paths.

23 On this particular day with the particular
24 foliage and the rainfall we had, you can see the paths
25 from overhead the property, clearly. Although you could

1 not see them from a number of other angles and they are
2 very clear here.

3 ATTORNEY CRAIN: Your Honor,
4 Exhibit 4 and Your Honor, this is one that's been
5 stipulated. I just want to have Mr. Klein -- this
6 is the defendant's 4. This one of the stipulated
7 photos.

8 Q. Mr. Klein, if you can just be very brief and
9 explain to the Court what the photo shows?

10 A. This is a picture of Mr. Sidney Bennett and my
11 brother Mark who died 15 years ago on the porch of my
12 old house, facing Secret Harbor. I'm sorry, I'm looking
13 at Secret Harbor and that's them looking at the camera
14 with me taking a picture.

15 Q. All right.

16 ATTORNEY CRAIN: And Your Honor,
17 another one that was stipulated to. This is
18 Defendant's Exhibit 5.

19 Q. Mr. Klein, again very briefly. Can you tell
20 the court what this is?

21 THE COURT: Mr. Klein, I
22 understand that these photographs was stipulated
23 to. What's the relevance?

24 ATTORNEY CRAIN: Again, Your
25 Honor, more so corroboration of the prior witness's

1 testimony about their visits to Mr. Klein's house.

2 THE COURT: Okay. Keep it brief.

3 ATTORNEY CRAIN: For example, the
4 witness yesterday.

5 BY ATTORNEY CRAIN:

6 Q. Mr. Klein, very briefly.

7 A. This is a picture of me with my brother on the
8 porch of my old house showing that there was nothing
9 built out on that point on 2 D 11 on the background on
10 the far left of the center of the picture. I took --
11 sorry.

12 ATTORNEY CRAIN: Your Honor,
13 another -- This is Exhibit 7 which is stipulated
14 by admission.

15 Q. Can you identify the people in the photo,
16 Mr. Klein?

17 A. From left to right that is Mr. Freddy Melhem
18 the one in the center is my brother, Mark and the one on
19 the right is Mr. Sidney Bennett. Again, taken on the
20 porch of my old house.

21 Q. Mr. Klein, do you recognize this exhibit,
22 Exhibit 9 also stipulated to?

23 A. Yes.

24 Q. What is that?

25 A. This is a picture that I took of Freddy

1 Melhem, his family, somebody from St. Thomas I don't
2 remember on the left and showing in the background the
3 point where my house is today, showing that there was
4 nothing built on that property at that time. There's a
5 green roof you see --

6 THE COURT: Mr. Klein, again only
7 answer the questions.

8 And Attorney Crain, you represented to
9 the Court these photographs are to corroborate
10 witnesses testimony about being here on St. Thomas
11 and Mr. Klein is going on and on and on.

12 ATTORNEY CRAIN: I apologize. I
13 will move on, Your Honor, to what I think is the
14 last exhibit.

15 Your Honor, this is Exhibit 15 and
16 there's another stipulated to exhibit.

17 BY ATTORNEY CRAIN:

18 Q. Mr. Klein, can you tell me who took this
19 picture?

20 A. I took this --

21 THE COURT: It's been stipulated
22 to?

23 ATTORNEY CRAIN: It's been
24 stipulated to, yes Your Honor.

25 THE COURT: Have him testify

1 about the photographs.

2 ATTORNEY CRAIN: I'm not laying
3 the foundation on it. It's just the timing, Your
4 Honor. I think it's important to understand.

5 THE COURT: Okay.

6 BY ATTORNEY CRAIN:

7 Q. When was the picture taken, Mr. Klein?

8 A. Later in 2004.

9 Q. And can you describe what it depicts?

10 A. This is a picture taken coming into to my --
11 coming into my driveway of 2 D 11 and it showed the
12 meter base of 2 D 10 on the left in that odd shape
13 structure that's there. And on the right, it shows the
14 location of a pole that has a meter on it which is the
15 in same place that my meter base is today. And behind
16 that, you could see the path that goes down to the beach
17 from next to that meter base as it existed in 2004.
18 And you enter it from the driveway that comes into the
19 2 D 11.

20 Q. All right. And then let's just compare that
21 Mr. Klein to Exhibit 3. One second.

22 ATTORNEY CRAIN: Before I go on
23 to another question. This is Exhibit 3 Your Honor;
24 it's been admitted.

25 BY ATTORNEY CRAIN:

1 Q. Mr. Klein, does this depict any of the same
2 areas that we just looked at in Exhibit 15?

3 A. Yes.

4 Q. And what areas are those?

5 A. If you can you scroll up the picture and get
6 in close, please? Can you get closer? Thank you.

7 All right. This is a picture taken that I
8 took. This is a blow up of the picture that I took on
9 July 12th and if you look on the driveway coming in here
10 from this view, at the top, you will see now the top of
11 what is now a stone meter base on the left which is in
12 the exact same spot as the meter base from the picture,
13 from 2004. And you look next to that meter base and
14 behind the meter base, and you see the path that goes
15 down to the beach in the exact same location that it was
16 17 years ago in 2004.

17 And if you look to the right of that meter
18 base across the driveway, you will see the top of the
19 concrete structure which is the same meter base that was
20 there in the 2 D 11 house in 2004. And I took this
21 picture to be able to show that this path is in the same
22 location as it was 17 years ago in the same spot. And
23 if you want to enter that path, you have to come into my
24 driveway. You don't go into the path from the entrance
25 of 2 D 12 that comes up the estate road.

1 Q. And how far is the entrance to the path from
2 the beginning of your driveway?

3 A. Maybe 25 or 30 feet if that, maybe 20 feet;
4 it's right there.

5 Q. Do you have any fencing along side of your
6 driveway?

7 A. Well, I have a fence in the driveway that goes
8 from the meter base to the gates that you could see that
9 go across the driveway. And then next to the meter
10 base, I built a gate earlier this year at the top of the
11 path. Right next to the meter base, it's very easy to
12 see that gate. That goes down to the path that gets to
13 the beach. It's the same path that I've been walking
14 since I've been here.

15 Q. Is there anything obstructing someone from
16 walking next to your fence along your driveway,
17 Mr. Klein?

18 A. Not on that side of the gate. Anybody that
19 wants to go and open that gate, can actually open that
20 gate and go down to the beach. And the only reason -- I
21 am sorry.

22 Q. Is there anything obstructing you from walking
23 down the side of the driveway?

24 A. There's nothing obstructing you until you get
25 to the gates that are there, but until you get to the

1 gates, it's very easy to get to that meter base and see
2 that gate that's there.

3 Q. All right.

4 ATTORNEY CRAIN: Your Honor,
5 nothing further for Mr. Klein at this time.

6 THE COURT: Thank you.

7 Attorney Duensing, are you ready to
8 proceed or do you need a minute?

9 ATTORNEY DUENSING: No. We are
10 ready to proceed, Your Honor; that's fine.

11 THE COURT: Your witness.

12 ATTORNEY DUENSING: Thank you.

13 **CROSS EXAMINATION**

14 BY ATTORNEY DUENSING:

15 Q. So Mr. Klein, am I correct in understanding
16 that shortly after you begin developing your property at
17 2 D - 11, you on your own again going on to what was
18 then Ms. Bassil's and Mr. Anderson's property and
19 removing brush, cutting trails, that sort of thing,
20 correct?

21 A. It's correct. I did that. I did not know who
22 own the property at that time.

23 Q. I get the impression that you're a fairly
24 sophisticated businessman whose owned a number of
25 different properties in the Virgin Islands. Am I

1 correct in understanding that you know about the
2 cadastral office and recording of deeds to property and
3 could have determined who the owner was quite easily?

4 A. If I wanted to, I'm sure I could have figured
5 that out.

6 Q. Right, in fact, you had attorneys at that time
7 such as Mr. Hank Feuerzeig for example?

8 A. Not when I first purchased this property, no.

9 Q. But you made no effort to even contact either
10 Mr. Anderson or Ms. Bassil and seek their permission to
11 come on to their property, remove brush, and whatever
12 else you removed in creating a new path, did you?

13 A. No, I didn't. As far I was concerned, the
14 property was abandoned because it was full of bush,
15 termite nests, dead rodents and dead dears. I found --

16 Q. Answer the question please.

17 A. No, I made no --

18 Q. The property -- the property was undeveloped,
19 correct?

20 A. With the --

21 THE COURT: Mr. Klein, you are
22 being asked a yes/no answer. If your counsel needs
23 to do anything, he will. Just answer the question
24 yes or no.

25 A. Can I get the question again, please?

1 Q. It was undeveloped property, correct?

2 A. Yes, correct.

3 Q. And it's still undeveloped property with the
4 exception of the trails that you cut on it, correct?

5 A. Correct.

6 Q. There was no structure on 2 D - 12 to abandon,
7 correct?

8 A. Okay.

9 Q. Now Mr. Melhem who testified yesterday, did he
10 used to work for you over at White Bay, also?

11 A. No.

12 Q. If your Website lists Mr. Melhem as a former
13 employee of White Bay, is that an inaccurate statement?

14 A. Mr. Melhem was never an employee of White Bay
15 Villas. I asked him to try to do some marketing some
16 years ago to the Spanish speaking population of the
17 world and it never worked. He was never an employee; he
18 was on a commission.

19 Q. Why was Mr. Melhem referenced on the website
20 for the property on Jost Van Dyke?

21 A. Because he was going to be a commission agent.
22 If he ever did any rentals in Jost Van Dyke in the
23 Spanish Speaking World, and never succeeded with any
24 rentals so, he never made any commission.

25 Q. All right. Now you testified that you began

1 your Airbnb operation in January of 2021, correct?

2 A. Yes.

3 Q. And you heard the testimony of surveyor Ryan
4 Wisehart yesterday, correct?

5 A. Yes.

6 Q. And you heard that Mr. Wisehart noted in his
7 surveyor report that January of 2021 that the trails had
8 been cut on parcel 2 D - 12 by a neighbor, correct?

9 A. I don't remember exactly what he said.

10 Q. All right, could we --

11 ATTORNEY DUENSING: Robin, would
12 you please show the witness, Plaintiff's Exhibit, I
13 believe it's 2 M to refresh his recollection?

14 If you can blow that up a little bit?

15 A. Forgive me, you're going to see my face a
16 little close to the screen, but I need to be able to
17 read this. So bear with me.

18 Q. That's fine. What I would like for you to do
19 is read for us paragraph one of this January 27, 2021,
20 survey report?

21 A. Do you want me to read it out loud?

22 Q. Yes, please.

23 A. One period rights of ways, old highways, or
24 abandoned roads, lanes or driveway, drains, sewer,
25 water, gas, or oil pipes lines across said premises.

1 Trail meandering through the surveyed property
2 apparently opened and utilized by the owner of parcel
3 number 2 D 11.

4 Q. Thank you. So this surveyor report from
5 Mr. Wisehart -- By the way, you've hired Mr. Wisehart
6 before so you respect him as a surveyor, correct?

7 A. Yes.

8 Q. In fact, you also hired Mr. Wisehart around
9 the same time in January of this year, correct?

10 A. For a different purpose, yes.

11 Q. All right. So basically you began your Airbnb
12 operation in the same -- around about the same time that
13 Mr. Wisehart made that notation in his January 2021
14 surveyor report, correct?

15 A. I don't know when he made the notation. I
16 mean, I began the Airbnbs when I began the Airbnbs
17 earlier this year. That's what I know. I just read
18 what I read. And I saw that he read that I opened the
19 trails. I think they're just a little bit easier to see
20 now than they were, but they were.

21 Q. He made a notation in January of this year and
22 is that the same month that you started your Airbnb?

23 A. I started the Airbnb January of this year yes,
24 more or less.

25 Q. You said that as part of your Airbnb

1 operation, you have developed a waiver for your guests
2 to sign, correct?

3 A. Yes.

4 Q. To whom that does that waiver benefit? Who
5 benefits from that waiver?

6 A. I'm not sure I understand what you mean.

7 Q. Does the waiver protect your interest
8 personally?

9 A. I don't remember what exactly is in the
10 waiver, but I think the waiver was established so that
11 any of the guests would release any agents, owners,
12 anybody representing themselves for anything that they
13 do when they're here.

14 We want them to understand that it's here in
15 the Virgin Islands, you're going to be walking. There
16 is a pool next door that is available for them to use.
17 We do tell them that they can use this private access to
18 get down to the beach. So we've asked them to release
19 us and anybody affiliated or attached to us or anyone
20 whatsoever from any of the movement that they do, that
21 they're pretty much on their own and they act on their
22 own responsibility in everything that they do.

23 Q. Mr. Klein, do you expressly include Madeline
24 Bassil within terms of your waiver?

25 A. No, but I can certainly add her to that waiver

1 if you would like me to.

2 Q. Have you ever even discussed the waiver with
3 Madeline Bassil?

4 A. No, I haven't.

5 Q. Have you ever even discussed your trails with
6 Madeline Bassil?

7 A. No.

8 Q. Now, back in 2007 and 2008, the first time you
9 encroached upon Ms. Bassil's property, you did engage in
10 discussions with her about that encroachment, correct?

11 A. Yes.

12 Q. In fact, you specifically discussed it in
13 correspondence, correct?

14 A. Yes.

15 Q. You specifically claim that you didn't have to
16 do anything because legally you already owned what was
17 over a thousand square feet of her property, correct?

18 A. I think it's correct in part. I mean, that
19 driveway was here with the width that it was for the
20 years before I even bought this property.

21 Mr. Dipmore used to access and come in and
22 out of this property that's here.

23 Q. My point is this, Mr. Klein, the first time
24 you encroached on Ms. Bassil's property, you were openly
25 notorious about it, correct? You discussed it with her?

1 You corresponded with her about it, correct?

2 A. No. She came to me to tell me that I was on
3 her property. I didn't know that, that was her
4 property. She came to me. The first time I met
5 Ms. Bassil was in my driveway when she showed up with
6 somebody else to say, do you know you're on my land over
7 here and I said, *No, I didn't know that.*

8 Q. Right. So you did discuss it with her,
9 correct?

10 A. After she told me that it was her property
11 that my dirt had fallen onto, yes.

12 Q. And you corresponded with her and told her
13 that it was your property by adverse possession,
14 correct?

15 A. On the advise of counsel at that time,
16 Mr. Feuerzeig, yes.

17 Q. All right. Now with regard to the second time
18 you encroached on Ms. Bassil's property with the trails,
19 you never written Ms. Bassil about trails, have you?

20 A. I never wrote to Ms. Bassil about the trail.
21 I found the trail here when I bought this property.

22 Q. I understand but in all that time even after
23 you invited yourself upon Ms. Bassil's property to cut
24 another trail, you never communicated with her, correct?

25 A. That's correct.

1 Q. You never even made any effort to find out who
2 the owners were, correct?

3 A. That's correct. The first time I knew
4 Ms. Bassil owned the property was when I met her when
5 she came in my driveway which was '07 or '08 sometime
6 back then.

7 Q. You understand the concept of private
8 property, correct?

9 A. Maybe -- I'm not sure I know what your
10 question is actually.

11 Q. All right. Is it your belief as a citizen of
12 the Virgin Islands that you have the unfettered right to
13 go on somebody's property and take what you want?

14 A. I think I have the right to continue using a
15 condition that I found when I got here, which I did.

16 Q. And then expanding that condition to cut new
17 trails and bring workmen onto the property?

18 A. I did that on my own.

19 Q. You brought bush cutters and I think you refer
20 to them as casual laborers onto Ms. Bassil's property to
21 remove bush and other growth, correct?

22 A. I didn't say that. I brought casual laborers
23 to clear property that was up here on my own property.
24 I did the initial cutting on that trail on Ms. Bassil's
25 property myself.

1 Q. And are you the one who has continued cutting
2 that trail over the years?

3 A. In part, yes.

4 Q. So you have brought on others onto
5 Ms. Bassil's property to cut bush and that sort of
6 thing?

7 A. I don't know about to cut bush, but I would
8 say to rake and move stones, to cut back catch-n-keep.
9 Yes, that will be true.

10 Q. And as you testified on direct, you encouraged
11 your commercial guests to go onto Ms. Bassil's property,
12 correct?

13 A. I encouraged the guests to go down the trail
14 that has been used to get down to the beach since I
15 started using it 17 years ago, yes.

16 THE COURT: Mr. Klein, the Court
17 is going to again caution you. Please, only answer
18 the questions. If there's an explanation, your
19 attorney will handle that on redirect.

20 THE WITNESS: I apologize, Your
21 Honor.

22 THE COURT: You need to move this
23 along, Mr. Klein.

24 THE WITNESS: Thank you.

25 ATTORNEY DUENSING: Robin, would

1 you refer the witness to Exhibit 16, please?

2 BY ATTORNEY DUENSING:

3 Q. Mr. Klein, do you recognize this document?

4 A. Can you scroll down until I see a signature,
5 please?

6 Those look like my initials. Those look
7 like my initials and that looks like my signature, yes.

8 Q. All right. Was this -- This was an offer you
9 made to purchase Ms. Bassil's property back in 2014,
10 correct?

11 A. Yes.

12 Q. And would you agree that this offer is
13 considerably less than what Ms. Bassil's asking price
14 was at the time?

15 A. I don't remember what her asking price was at
16 the time. I made an offer based upon speaking with
17 different appraisers about what I should be paid for the
18 property in the market at that time.

19 Q. Can you show me anywhere in this offer where
20 you indicated to Ms. Bassil, that you were making an
21 offer of only \$300,000 because you felt that you already
22 had an interest in her property?

23 A. I don't think I had an interest in her
24 property at that time because it hadn't been 15 years
25 since I was continuously using the paths over here at

1 that point.

2 Q. All right. And if we were to refer to you --
3 There was a second offer that you made. I believe that
4 was Exhibit 17, correct?

5 A. I don't have anything in front of me to look
6 at.

7 ATTORNEY DUENSING: She's going
8 to bring it up, Mr. Klein.

9 Q. Is this the second offer that you made on
10 Ms. Bassil's property?

11 A. Yes. Yes, I see my signature, yes.

12 Q. Okay. And again nowhere in this document do
13 you indicate to Ms. Bassil that you believe you have an
14 ownership interest in her property, correct?

15 A. Correct. That's the same as the answer I just
16 gave. I wasn't using those trails myself continuously
17 for 15 years at that point.

18 Q. So in 2015 when you made this offer, you fully
19 recognized that Ms. Bassil was the lawful owner of this
20 property that you were making an offer on, correct?

21 A. Yes.

22 Q. So there was nothing open and notorious at
23 that time about your claim to Ms. Bassil's property, was
24 there?

25 A. I don't think I can make a claim until I've

1 been doing it for 15 years.

2 Q. All right. So you didn't report to Ms. Bassil
3 that you felt that you had an interest in her property
4 that it was adverse to hers when you made that offer in
5 2015, did you?

6 A. I don't think I could have done that because
7 I didn't have an interest because I wasn't using it for
8 15 years at that point.

9 Q. Right. Mr. Klein, what a -- You seem to be
10 pretty well verse in the law of adverse possession. You
11 spelled it out pretty clearly back in 2008 to
12 Ms. Bassil.

13 Do you understand the concept of color of
14 title?

15 A. Well, you said two things. I was not really
16 aware of the concepts of adverse possession here until
17 Attorney Feuerzeig schooled me on it.

18 Q. And that was back in 2008?

19 A. Yes. And I don't know what color of title
20 means.

21 Q. All right. Have you ever had a deed to
22 Ms. Bassil's property?

23 A. No. I don't believe so, no.

24 Q. Have you ever paid property taxes on
25 Ms. Bassil's property?

1 A. Well, I'm paying property taxes now on the
2 sliver that I bought back then which has a separate
3 parcel number. But I haven't paid any taxes on that
4 property. I'm only paying taxes on property that's in
5 my name.

6 Q. All right. So with regard to parcel 2 D - 12
7 Remainder as it's now known, you never paid any property
8 taxes on that, correct?

9 A. No, I haven't.

10 Q. And you've never offered to reimburse
11 Ms. Bassil some percentage of the taxes that she pays
12 annually on the property, have you?

13 A. No. I have not.

14 Q. You don't have any legal document that
15 purports to show that you have an ownership interest in
16 parcel 2 D - 12 Remainder, do you?

17 A. No, I don't.

18 Q. Now Mr. Klein, I found it interesting and a
19 bit strange that every single one of your witnesses
20 yesterday, said that they all walked across Secret
21 Harbor to go look at this piece of property that you did
22 not own yet.

23 Let me ask you this question, would it have
24 been possible for you to drive from where your first
25 house in Secret Harbor was to the parcel and property

1 known as 2 D - 11 before you purchased it?

2 A. Sure, I drove it many times, but the reason I
3 took my friends up there was that --

4 Q. You've answered my question.

5 A. Sure, you could. Yeah, you could.

6 Q. All right. So if you wanted to just drive and
7 look at the property, you could have just driven and
8 looked at the property, correct?

9 A. Sure.

10 Q. And if you wanted to go to the beach, and do
11 your -- I think you call it -- What was the term?
12 Aquatic respiratory therapy. That's swimming basically,
13 right?

14 A. Yes.

15 Q. If you wanted to go to Secret Harbor and swim,
16 isn't it possible for you to just get in your car and
17 drive down to the public parking lot at Secret Harbor
18 and go for a swim?

19 A. There isn't any public parking lot up at
20 Secret Harbor. They moved the public parking lot up to
21 the abandoned tennis court that I'm in litigation with
22 Secret Harbor right now.

23 Q. Are you telling the Court that when people
24 go to eat at the restaurant at Secret Harbor, there is
25 no way for them to park?

1 A. There is a restaurant parking at Secret
2 Harbor. The public parking they put right next to my
3 house, here.

4 Q. So you could -- There is a road that goes from
5 your house to the beach access at Secret Harbor,
6 correct?

7 A. Yes.

8 ATTORNEY DUENSING: I have
9 nothing further, Your Honor.

10 THE COURT: Attorney Crain?

11 ATTORNEY CRAIN: I don't have
12 anything further of Mr. Klein, Your Honor.

13 THE COURT: Counsel, the Court
14 has a few questions.

15 Mr. Klein, the Court may have missed it
16 yesterday.

17 **EXAMINATION**

18 BY THE COURT:

19 Q. Where do you presently reside or consider your
20 residence?

21 A. I reside at 2 D 11 Estate Nazareth St. Thomas.

22 Q. How many days out of the year?

23 A. Most of the time.

24 Q. Okay.

25 A. Basically, Your Honor, I don't -- Since COVID,

1 I don't go anywhere.

2 Q. Okay. And that photograph admitted by your
3 counsel, Exhibit 3, how high in the air was the drone?

4 A. Can you refresh me? Which one is three,
5 please?

6 THE COURT: Counsel, can you put
7 Exhibit 3 on?

8 ATTORNEY CRAIN: Absolutely, Your
9 Honor.

10 THE COURT: The drone
11 photographs.

12 ATTORNEY DUENSING: Number two,
13 Your Honor. I don't remember which was which.

14 ATTORNEY CRAIN: Right.

15 BY THE COURT:

16 A. That's probably 250 feet, maybe 300 feet if
17 that. I don't know. Something like that. That's a
18 guess, Your Honor.

19 Q. It was your testimony that you took that
20 photograph because you couldn't see the paths from the
21 ground level, correct?

22 A. Well, you couldn't see the paths from -- you
23 couldn't see the paths from the other photographs and
24 it's really hard to see the paths from the ground level
25 on this. You know where they are.

1 Q. Thank you. Thank you, Mr. Klein.

2 And in 2008 when you allegedly met Ms. Bassil
3 for the first time, did she give you permission to walk
4 across 2 D, what is now 2 D 11 - Remainder?

5 A. I'm not sure I understand -- you said 2 D 11.
6 You mean her property?

7 Q. Yes, her property. Yes, did she give you
8 permission to walk across her property?

9 A. No.

10 Q. Did you ask?

11 A. No.

12 Q. And when you installed the gate in January,
13 did you inform Ms. Bassil you were installing that gate?

14 A. No.

15 THE COURT: Attorney Crain or
16 Attorney Duensing, anything further on the Court's
17 questions?

18 ATTORNEY DUENSING: No nothing,
19 Your Honor.

20 ATTORNEY CRAIN: Nothing, Your
21 Honor.

22 THE COURT: Thank you, Mr. Klein.
23 I think your questioning are over. You can mute
24 your mic and we will proceed.

25 Are counsels ready for argument or do

1 you need a brief recess?

2 ATTORNEY DUENSING: Your Honor, I
3 would appreciate just a brief 5-minute recess.

4 ATTORNEY CRAIN: I would make the
5 same suggestion.

6 THE COURT: And does counsel
7 believe we'll still be done by 11:00?

8 ATTORNEY DUENSING: I think so,
9 Judge.

10 THE COURT: Okay, thank you.

11 MR. KLEIN: Your Honor, can I
12 stay in the room and listen?

13 THE COURT: Yes, you can. The
14 Court's going to go on a brief recess for five
15 minutes and resume at 10:20.

16 **(Whereupon, proceedings were in recess from**
17 **10:15 a.m. to 10:21 a.m.)**

18 THE COURT: Ms. Pemberton, are
19 you back with me? I think Ms. Callender-Smith is
20 there too. Are you ready?

21 THE CLERK: Madeline Bassil
22 versus John Klein.

23 THE COURT: Attorney Duensing.

24 CLOSING ARGUMENT:

25 ATTORNEY DUENSING: Yes, Your

1 Honor. May it please the Court?

2 We believe that the evidence that Your
3 Honor has heard within the last two days has
4 overwhelmingly proven that Ms. Bassil is entitled
5 at this stage to a preliminary injunction basically
6 to stop Mr. Klein's trespass and it's interesting
7 that --

8 THE COURT: Attorney Duensing,
9 I'm sorry to interrupt. I noticed that Ms. Bassil
10 and Mr. Klein, I don't know if they have returned.
11 Are you waiving their presence? Did you want to
12 wait for them or did you want to continue?

13 ATTORNEY DUENSING: We can wait,
14 Your Honor, whichever Your Honor prefers.

15 THE COURT: Well, there is
16 Ms. Bassil and Mr. Klein.

17 Okay. Proceed, Attorney Duensing.
18 Thank you.

19 ATTORNEY DUENSING: Thank you,
20 Your Honor.

21 So we believe that the plaintiff has
22 shown entitlement to a preliminary injunction by
23 easily satisfying all four factors that Your Honor
24 should be considering at this point.

25 The first factor is a reasonable

1 probability of success on the merits. We believe
2 quite frankly we've shown actual success on the
3 merits. Mr. Klein freely admits that he is
4 trespassing on Ms. Bassil's property and that he
5 encourages others to trespass on Ms. Bassil's
6 property and I understand that he claims his
7 trespass his excused by doctrine of adverse
8 possession which I'll address shortly. But
9 basically on the question of trespass, the legal
10 definition of trespass in the Virgin Islands is
11 when someone intentionally enters onto the
12 plaintiff's property without plaintiff's
13 permission. Mr. Klein admits that he never even
14 requested Ms. Bassil's permission.

15 The second element is when he remains
16 on Ms. Bassil's property. He's been asked to leave
17 Ms. Bassil's property and stop trespassing. He's
18 refused to stop.

19 A third element is when someone comes
20 onto plaintiff's property without their permission
21 and removes something from plaintiff's property.
22 Mr. Klein freely admits that he has done that and
23 he refuses to leave. And he's actually brought
24 casual laborers onto her property. He is
25 continuing to encourage his commercial guests to

1 traverse his property. This has exposed
2 Ms. Bassil to significant legal exposure for one
3 thing, but also it has caused her tremendous
4 emotional distress.

5 The second element that we have
6 satisfied is the element of irreparable harm.
7 Basically, the Courts of the Virgin Islands and the
8 Supreme Court have defined irreparable harm as the
9 party's right to control their business or their
10 property. There is a certain intrinsic value in a
11 party's right to control their own property and
12 that's the Yusef vs. Ahmad case 2013, 59 V.I. 841.
13 Real property as unique, there is case law going
14 back for centuries describing real property is
15 unique and describing the intrinsic value of being
16 able to control a person's property that simply
17 cannot be remedied by monetary damages. Basically,
18 Mr. Klein has deprived Ms. Bassil of the right to
19 control her property.

20 The third element I think is perhaps
21 even the most critical element in the analysis here
22 because we simply -- I don't see any way that
23 Mr. Klein will prevail on the third element, and
24 that is a question that the Court weighing the
25 relative harm to the parties and in assessing

1 whether if the injunction is imposed whether
2 Mr. Klein would suffer more harm than Ms. Bassil.
3 We believe and submit that it's not even a close
4 question.

5 If the injunction is imposed as we
6 believe that the Court should, the harm to
7 Mr. Klein and his guests is simply that they just
8 have to go a little bit further down the road for a
9 swim at the beach at Secret Harbor.

10 There is nothing that deprives him from
11 being able to go to the grocery store or the
12 airport or the hospital, there's nothing about this
13 trail -- that these trails that he cut, and there's
14 nothing about the trails that he cut that is
15 necessary at all. It's just a mere convenience for
16 Mr. Klein and his guests.

17 Looking at the harm to Ms. Bassil, it's
18 a tremendous harm. I mean, she loses total control
19 of her property. She losses the ability to sell
20 her property if she wants to do that. She loses
21 the ability to go out and get a bank mortgage and
22 develop her property if she wants to do that. So
23 it's not even a close question. And again, looking
24 at the relative harm, I think that's where you can
25 understand the key as to what's really happening

1 here, Judge. There's a lot of smoke that's been
2 put up by Mr. Klein and I think his witnesses can
3 be sort of described as the old AT&T commercial
4 Friends and Family. They all said, you know, very
5 similar stories. Clearly, they have all been
6 coached to say something along the same lines. But
7 what's interesting is, this is what really
8 happened, Judge, okay.

9 Mr. Klein filed a lawsuit against
10 Secret Harbor in October of 2020 because they
11 blocked his access to the beach through the gate
12 and the stairs on the Secret Harbor property.

13 Mr. Klein put in his complaint against
14 Secret Harbor that that was the way for 18 years,
15 he had normally and continuously and regularly
16 access the beach. What happened was, in late 2020
17 that access was blocked.

18 You know, Mr. Klein is a resourceful
19 man. What did he do? He decided to create a new
20 shortcut to the beach and took advantage of the
21 pandemic conditions where people were not freely
22 traveling, when Ms. Bassil was not able to travel
23 to the Virgin Islands to see what's happening on
24 her property. And he cut the trails without
25 anybody's permission to give him a back-up,

1 shortcut and curiously, you know, he did this in
2 almost the exact same time that he was starting to
3 his Airbnb business and he started the Airbnb
4 business at almost the exact same time that Brian
5 Wisehart noted the survey -- he noticed the trails
6 on the survey for the very first time.

7 Mr. Wisehart clearly said that on
8 the 2008 survey that if the trails had existed at
9 that time, they would have been shown on the
10 survey. We also know that in 2008, Ms. Bassil was
11 directly engaged in discussions and legal
12 negotiations with Mr. Klein about his other
13 encroachment on her property. And she testified
14 very clearly that had she been aware of the
15 existence of the trails, then yes that would have
16 been a subject that they would have addressed at
17 that point, as well. But he didn't address it
18 because the trails weren't there. The trails
19 weren't there until the end of 2020 or the
20 beginning of 2021 when Mr. Klein had his other
21 access to the beach blocked.

22 The final factor for the Court to
23 consider is public interest. There is no public
24 interest that is served by allowing Mr. Klein to
25 basically steal property from his neighbors. And

1 we've learned in this case alone that this is the
2 third time by his own admission that he's attempted
3 to take property from his neighbors.

4 We had the time back in 2008 when
5 the first time he threaten Ms. Bassil with adverse
6 possession. We have the ongoing lawsuit against
7 Secret Harbor where Mr. Klein is trying to gain a
8 right to use and possess certain portions of
9 another neighbors's property at Secret Harbor
10 Resort. And we have this case where Mr. Klein is
11 trying to take control of Ms. Bassil's property
12 merely for his own convenience and his own
13 commercial benefit because he's using it to promote
14 his Airbnb business. There's no public interest
15 served by that and you know, private property in
16 the Virgin Islands is sacred. And you know,
17 there's no way a reasonable juror would think that
18 it's in the public's interest to allow Mr. Klein to
19 go around you know, stealing his neighbor's
20 property which is exactly what's happening here.

21 Now, Mr. Klein believes that all of
22 these actions that he freely admits and the
23 trespass is forgiven because he owns parts of
24 Ms. Bassil's property either by adverse possession
25 or prescriptive easement. The standard for adverse

1 possession or prescriptive easement is basically
2 the same six factors. And bear in mind, we don't
3 have to prove this. This is Mr. Klein's obligation
4 to prove by clear and convincing evidence and we
5 believe that he has completely failed to prove his
6 entitlement to a prescriptive easement by clear and
7 convincing evidence.

8 Now, I know and I realize that this is
9 not the final trial on the merits. This is just
10 for purposes for imposing the preliminary
11 injunction but because Mr. Klein has freely
12 admitted his trespass and that of his commercial
13 guests, we submit that it is his obligation and it
14 was his obligation and in these proceedings to
15 prove by clear and convincing evidence that he's
16 entitled to a prescriptive easement.

17 Now, let's look at the factors and the
18 context of the evidence here. First of all, the
19 first factor is his possession has to be
20 uninterrupted and exclusive for 15 years. Well,
21 Your Honor, you heard the testimony of Mr. Terry
22 Anderson who said that as recently as 2009, he was
23 described picking his way down the property to go
24 diving there. So there's nothing exclusive about
25 Mr. Klein's possession of the property for

1 15 years, if the owner or up until shortly before
2 2009, Mr. Anderson was still the owner of the
3 property. He was picking his way down his own
4 property to go for a swim, snorkeling and diving.
5 So there was no exclusive possession by Mr. Klein.

6 The second factor to consider is
7 actual possession. The fact of the matter is
8 Judge, there's not a single survey until January of
9 2021 that shows the existence of those very now,
10 very prominent trails on the property. Aerial
11 photographs taken by Don Herbert who is a
12 professional photographer evidenced in this case
13 and were directed by Sharon Hupprich do not reveal
14 any trails on this property in 2015. And Your
15 Honor, her testimony is from three very well
16 respected realtors in the Virgin Islands with many
17 years of experience. And all three had
18 considerable familiarity even this area from
19 marketing property and managing properties. And
20 Jackie Marin and Lisa Curreri and Sharon Hupprich,
21 all three said that they had never seen these
22 trails on the property when they were out there.
23 Even Rennix Charles who was out there only a couple
24 of months ago shooting a drone video said he
25 couldn't even see the trails from the road.

1 So there's no proof that these trails
2 have actually existed for 15 years other than the
3 friendly testimony of Mr. Klein's basically his
4 close drinking buddies by their own discussions.

5 Number 3 factor is probably the only
6 factor that we're going to agree on, Judge. It's
7 adverse. We definitely will agree that Mr. Klein
8 claims is adverse and we're not going to argue that
9 point.

10 Number 4, is continuous, it has to be a
11 continuous possession for 15 years, again another
12 prior survey shows the existence of trails.

13 Mr. Klein was making offers to purchase the
14 property as recently as 2014 and 2015. And if he
15 believes that he was working on running out the
16 clock on a 15-year continuous adverse possession,
17 why would he be making offers to purchase the
18 property from Ms. Bassil?

19 Number 5 is kind of an interesting
20 factor too, notorious, open and notorious. The
21 fact of the matter is Judge, you can't achieve
22 adverse possession in secret. It can't be
23 something that happens secretly and even one of
24 Mr. Klein's witnesses, I believe it was Mr. Melhem
25 referred to this as a *secret trail*.

1 All of Mr. Klein's witnesses in their
2 testimony said that there was a secret trail that
3 was very narrow. It was covered in canopy, you
4 know, very difficult to observe unless you were
5 actually on the trail itself. You know, we submit
6 that even by Mr. Klein's own witnesses, there was
7 nothing open and notorious in the trail.

8 In fact, Mr. Keating who now works for
9 Mr. Klein over in Jost Van Dyke and was managing a
10 beach property up until I believe 2017, said that
11 he couldn't even see the trails was there until he
12 saw Mr. Klein come out of the bush with his dog.
13 And he had been there -- Mr. Keating had been down
14 on the beach for something like for five years, I
15 believe. So he couldn't observe it from there.
16 None of the realtors, the three realtors who I
17 mentioned before ever observed trails from up on
18 the road above or down below.

19 So there was nothing open and notorious
20 about this trail until January of 2021 when a
21 surveyor, Ryan Wisehart noted that Mr. Klein had
22 opened up the trail. So that was when the trail
23 actually began.

24 Final factor for the Court to consider
25 is his claim. Is Mr. Klein's claim for a

1 prescriptive easement under color of title? He
2 totally fails on that element, Judge. He has
3 absolutely zero color of title. He doesn't have a
4 bit of documentation that suggests that he's
5 claiming an ownership interest in this property. A
6 typical adverse possession cases involves maybe a
7 mistaken boundary or something like that where one
8 party has been paying the property taxes by mistake
9 on a piece of property that they are not technical
10 the owner of. We don't have any situation here
11 where Mr. Klein has this color of title.

12 So, you know, he hasn't proven his case
13 by clear and convincing evidence that he is
14 entitled to a prescriptive easement that would
15 forgive the admitted trespass that he is continuing
16 to commit on my client's property, and he's failed
17 completely on that burden.

18 Your Honor, just consider the evidence
19 in this case, all right. We have presented on
20 behalf of our client. We have presented testimony
21 of professionals who have years of experience here
22 in the Virgin Islands surveyors, realtors, people
23 who were very credible witnesses in this community,
24 they're disinterested. They are not partisans and
25 they made quite clear, Your Honor, that these

1 trails are a new creation done by Mr. Klein to
2 accommodate his Airbnb business after Secret Harbor
3 shut him down.

4 And Mr. Klein, the only evidence that
5 he had to counter this was, you know, no
6 photographs that shows the trails before 2021, no
7 survey showed the trail before 2021, no
8 professional testimony to establish the existence
9 of these trails and basically just a bunch of his
10 buddies who came in and said all pretty much the
11 same thing as if they had all been well coached.

12 So, Your Honor, we submit that we have
13 proven very clearly our entitlement to a
14 preliminary injunction. Thank you, Your Honor.

15 THE COURT: Thank you, Attorney
16 Duensing.

17 Attorney Crain.

18 ATTORNEY CRAIN: Yes, Your Honor.
19 I will try to be brief, cognizant of the Court's
20 time and the court reporter's.

21 I think it's important to remember the
22 posture we're in at the moment. I think Attorney
23 Duensing referenced this isn't a trial on the merits.
24 He's absolutely right. That's not where we are at.
25 Where we're at is a preliminary injunction stage and

1 Courts have routinely said that's very dramatic.

2 The Supreme Court has said that is a far
3 reaching power, very limited circumstances under which
4 something like that should be applied, that's the Yusef
5 case that Mr. Duensing cited. And as the moving party,
6 it's Mr. Duensing's burden to carry these factors as we
7 get here. And I will submit as we go through the
8 evidence, that's not what actually happened here in this
9 case. And I think it is particular important to note
10 that the burden is even heavier, Your Honor, when you're
11 trying to change the status quo. So what we have here
12 --

13 THE COURT: Attorney Crain,
14 sorry. I know you are being cognizant of the time,
15 but can you speak a little slower.

16 ATTORNEY CRAIN: Yes, yes. I
17 appreciate the reminder.

18 So what we have, I think it is important to
19 remember the posture and this isn't the case where
20 Ms. Bassil is asking the Court to maintain the status
21 quo which is your typical preliminary injunction
22 request.

23 She is asking the Court to up-end the status
24 quo and so the 10th Circuit I think it importantly
25 indicates case S-T-F-C-I-L-C Inc., vis a vis -- I will

1 give the Court the citation. It's number 936 F 2nd
2 1096. It's a 10 Circuit case from 1991. I think they
3 draw out this distinction. They say a preliminary
4 injunction that alters the status quo goes beyond the
5 traditional purpose of a preliminary injunction which
6 only reserve the status quo until there is a trial on
7 the merits. And this is one of the important piece in
8 this case. It says, it clarifies what it means to
9 reserve, the status quo is not defined by the party's
10 existing legal rights. It's defined by the reality of
11 the existing status in relationships between the
12 parties, regardless of whether that status may
13 ultimately be found to be in accord with the rights.

14 So in other words, the question for the
15 Court is, are you changing what's happening on the
16 ground right now? And yes, the answer is, they're
17 asking you to do that in this preliminary injunction.
18 And so, when that's the case, the factors must weigh
19 heavily and compellingly even more so than normal which
20 is a very high burden in the plaintiff's favor. And we
21 don't think they've met that burden for such a dramatic
22 remedy.

23 The Court is well aware as is noted when
24 denying the T R O of the four Petrus factors that go
25 into this analysis of a temporary restraining order and

1 let me just start -- what everyone agrees, I think is
2 the most important component of this is irreparable harm
3 and I think strikingly is the piece that Mr. Duensing
4 spent essentially no time on in his argument and
5 truthful spent no time on in the case itself. He seemed
6 to advance a few minutes ago. Two arguments I would say
7 in favor of irreparable harm none of which carry the
8 day.

9 The first one is emotional distress. There
10 was no evidence in this hearing, Your Honor, of
11 emotional distress, any shape or form from Ms. Bassil or
12 any of her witnesses. And so there is no evidence
13 before the Court of any emotional distress.

14 I submit and I think the Court may have
15 referenced in the order previously that emotional
16 distress is something that obviously can be given a
17 monetary value to and is done that way many times.

18 And let me just go back, Your Honor, briefly
19 on the harm piece as the Court noted in its order on the
20 T R O. If you can satisfy the damage with a monetary
21 award, a preliminary injunction is inappropriate. And
22 so nothing has been put forward in argument or evidence,
23 that suggests you can't satisfy the claim with a
24 monetary award. So the emotional stress one of the two
25 arguments that was made just now. The other one being

1 the sale of her property.

2 Again, Your Honor, if she said she had it on
3 the market, but Ms. Curerri said she had it on the
4 market, if it turns out to prevail in this case and
5 after the jury has heard of the evidence in this case,
6 Mr. Duensing is right. This is not all the evidence.
7 This is a very short term, you know, quick to the Court,
8 you know, type of situation. Then the jury can award
9 damages for what loss she had from not selling the home.
10 If they're still inclined to do so, that is a calculable
11 award that can be made. And to the only two arguments
12 of irreparable harm they've made, there is no evidence
13 of emotional distress. There is very limited evidence
14 on the sale piece, but even if you were to give them
15 credit, Your Honor, and say okay fine, they couldn't
16 sell their home or excuse me -- the property, it's clear
17 that they can be awarded damages. So if those are the
18 two arguments, and it's a clear you can get monetary
19 damages, there's truly no irreparable harm. Maybe
20 there's harm which obviously we were denied maybe, but
21 that's not the standard, Judge. You're not sitting here
22 as the jury, you're sitting here in this unique
23 circumstance of applying a dramatic remedy to this case.

24 And so I would submit, Your Honor, there is
25 essentially no evidence on irreparable harm in this

1 case. On the merits of the case, Your Honor, not
2 surprising we disagree, obviously this isn't a situation
3 for the Court to determine, you know, the winner so to
4 speak to the merits. That is for the jury to determine
5 on a later date, but you know, the defendant has put
6 forward substantial evidence on each of the points of
7 the test for adverse possession and for prescriptive
8 easement.

9 I will make a note on the prescriptive
10 easement. I view the elements a little differently
11 apparently than Mr. Duensing. I don't view any sort of
12 color of title or any requirement. You have official
13 documents to get an easement. In fact, that would run
14 contrary to the fact of doctrine. If you have some
15 document saying that I have a deed, it's under the CENNI
16 case which is July 18th, 2016, Superior Court. I'll
17 give you that full cite in just a minute, Your Honor.
18 It's C E N N I v. Estate Chocolate Hole Landowners
19 Association, and it's a 2016 West Law 3981434.

20 And so that case Your Honor, lays out the
21 element of a user part description, a three prong test,
22 adverse use of another's land, continuous and
23 uninterrupted for the 15-year period, the subject that
24 of adverse possession and then essentially known or
25 should have known of the use by the owner. And so, I

1 want to talk about that. That seems to be the sort of
2 known or should have known of the use. It seems to be
3 where the parties maybe disagree for the most in this
4 case. And so since I want to focus on that for a couple
5 of minutes with the Court before I finish up. And so I
6 know or should have known, Ms. Bassil testified she
7 didn't know; fine. She should have known, though. And
8 what you've heard from Ms. Bassil is that you know,
9 essentially she was, you know, an absentee owner with
10 very limited interactions with the property at any
11 point.

12 So what you heard from Ms. Bassil is that
13 she never really walked through the property and never
14 really knew what was going on other than from the road
15 or maybe from when she was standing on the beach. She
16 claimed it wasn't possible to walk through it and I
17 think Ms. Curerri said the same thing, but we know
18 that's not true because we heard from a number of
19 witnesses said they walked the trail and even
20 Mr. Anderson said he walked through it. I think having
21 been a resident of the Virgin Islands, Your Honor, if
22 it's a brush filled piece of property, unless there is a
23 kind of a trail there, you are not just going to walk
24 through pushing aside the bush unless there is something
25 sort of already cut. And so I think Mr. Anderson's

1 testimony actually suggests that there was actually a
2 path to go down the beach that Mr. Klein and others had
3 used previously.

4 And so Ms. Bassil very clearly said she
5 never walked the boundaries of the property. And in
6 this case, the trail exists in two places on what would
7 be the south side of the property close to Mr. Klein's
8 2 D 11 property and the one to the beach. She's never
9 walked the perimeter of the property. And we are not
10 talking about one or a 2-year period. We are talking 15
11 plus years, she's never walked. If you walked down the
12 side as the photographs today show, it's right there.
13 There is no obstruction that prevents you from getting
14 to that trail-head I'll call it, between 2 D 12 and 2 D
15 11. So any effort would have revealed the trail.

16 There is no requirement, Your Honor, open
17 and notorious does not mean you have to put a giant neon
18 sign that says come see my trail. That's not the
19 standard. The standard is that the open and notorious
20 in such, that if someone's exercising reasonable care,
21 they'll find it and that's the case here. If she was
22 using reasonable care, she would have found it.

23 Mr. Duensing suggested that this was some
24 sort of plan with COVID because Ms. Bassil couldn't
25 travel, down here to find them. There is no evidence of

1 that number one, obviously. And number two, Ms. Bassil
2 testified, the last time she was here was six years ago.
3 She had no idea what happened since 2015. She wasn't
4 there in late 2020 and Mr. Klein saw her at the
5 apartment and said let me cut a trail while she is not
6 around; that's not what happened.

7 THE COURT: Attorney Crain.

8 ATTORNEY CRAIN: Yes, Your Honor.

9 THE COURT: Are you suggesting
10 that somebody that lives off island and owns
11 property here cannot rely on the observation of
12 their friends or their realtor, as you're
13 suggesting that the Court rely on Mr. Klein's
14 friends and associates' information?

15 ATTORNEY CRAIN: I'm suggesting
16 it's all evidence, Your Honor. But what I'd
17 suggest to the Court is that no one has testified
18 that they walked the boundaries of the property not
19 just our folks and Ms. Bassil. No one has not
20 walked the boundaries of the property.

21 THE COURT: And why should the
22 Court only focus on the person who's only
23 physically walked the property when the testimony
24 before the Court is from individuals as they
25 couldn't walk the property.

1 ATTORNEY CRAIN: Well, you heard
2 Mr. Klein said you can walk down the side of his
3 driveway and without --

4 THE COURT: Then that individual
5 will be trespassing on Mr. Klein's property,
6 correct?

7 ATTORNEY CRAIN: No, Your Honor.
8 The boundary line is right there. The parcels meet
9 up and so next to his driveway is Ms. Bassil's
10 property. And so you can walk right down there and
11 the trail is there, it could be seen. And you can
12 walk up on the beach, you know, to see the trail as
13 people testified.

14 So there is no testimony from anybody
15 that anything was done other than looking from the
16 road and looking from the beach and then I think
17 Ms. Marin said that she was able to see from the
18 back of 2 D 13. She was there on occasion and
19 didn't see any trails, right? So that --

20 THE COURT: I believe Ms.
21 Hupprich testified to that, as well.

22 ATTORNEY CRAIN: I'm sorry.
23 Ms. Hupprich. I apologize, Your Honor.

24 THE COURT: There were two people
25 who observed the property from 2 D - 13, correct?

1 ATTORNEY CRAIN: There are two
2 people that came to testify that they have seen,
3 that they at times were in the rear of 2 D 13 and
4 didn't look over at 2 D 12. Yes, Your Honor, yes.

5 THE COURT: Not that they didn't
6 look over. They didn't observe any trails,
7 correct?

8 ATTORNEY CRAIN: That's true;
9 they did say that. Yes, Your Honor.

10 I will note Mr. Duensing also talked
11 about, that's balance by the other testimony that
12 there were trails obviously in this case.
13 Mr. Duensing suggests that they may have been well
14 coached which isn't true, but the testimony from
15 the variety of people, from a variety of
16 backgrounds, from a variety of places was that they
17 walked trails. They may not have been as clean or
18 as clear as they are now, but they existed and they
19 walked them on a regular basis.

20 I think it's important to talk about
21 the surveyor Your Honor, as well. Mr. Duensing
22 made a point on the survey piece of it. And so I
23 think Mr. Wisehart was very clear that at least on
24 cross-examination, he wanted to try to suggest that
25 the survey didn't show it in 2008. That's true.

1 There were no trails on the survey in 2008, but he
2 also admitted that he doesn't know what they did or
3 did not do in 2008; he wasn't there. He doesn't
4 know. He testified he didn't know whether they
5 went in the interior. They did a boundary survey.
6 That doesn't include the interior. He testified
7 about that.

8 So I'd submit to the Court that
9 Mr. Wisehart -- The survey shows what it shows, but
10 Mr. Wisehart doesn't have any information about
11 what was actually done in 2008.

12 And so, Your Honor, I think that what
13 you have on that piece of it Your Honor as what I
14 would describe more traditionally as a dispute of
15 facts between the parties. I'm not suggesting
16 there isn't evidence that people have introduced,
17 that they didn't see trails. There is also
18 evidence to the contrary and so what you're left
19 with is a disputed fact. And that's for a jury to
20 decide, and so I would suggest to the Court
21 particularly in a case where there is zero
22 irreparable harm. I don't see how the Court can
23 possibly award an injunction in a case where there
24 is no irreparable harm regardless of the merits
25 analysis. But certainly when there's conflicting

1 evidence that ultimately a jury will decide.

2 So the other point, Your Honor, is that
3 Exhibit 15 from the defendants introduce today that
4 Mr. Klein testified about shows the trail in 2004.
5 So Mr. Duensing says hey, you know, there was no
6 evidence other than testimony of the existence of
7 the trail. Mr. Klein testified about it by the
8 temporary meter base and the trails did change in
9 location over the 16, 17, 18-year period. So there
10 is evidence pictorially and testimonies about the
11 existence of the trail dating back to 2004 even
12 2003 on some of the testimony prior to Mr. Klein's
13 purchase of the property.

14 So we would submit, Your Honor, that
15 there is evidence of each of the elements of
16 adverse possession and prescriptive easement. We
17 would submit to the Court that there is no evidence
18 or really any viral argument that this couldn't be
19 determine with a monetary award and so there is no
20 irreparable harm. And last two pieces, Your Honor,
21 of it while less important than the irreparable
22 harm piece, the third piece is the balance of the
23 harm and so we are talking about a monetary harm to
24 Ms. Bassil arguably.

25 Mr. Klein suffers financial harm if

1 they're shut off and he suffers a personal harm in
2 the sense you heard him testified the need to
3 access a point to the beach for his own personal
4 aquatic swimming and for his own health.

5 So Ms. Bassil who's not on island and
6 who's not using the property, only suffers a
7 financial harm. Mr. Klein who's living next door
8 suffers both a financial harm and a personal harm.

9 And the last piece Your Honor, is the
10 public's interest. Mr. Duensing, I think wants the
11 Court to believe and I'm sure he would in closing
12 argument try to make Mr. Klein to be sort of a
13 boogie man so-to-speak and just a bad actor and how
14 can you allow someone to do this?

15 The legislature is the one who set up
16 these rules about adverse possession and
17 prescriptive easement. So, the idea that the
18 public would find it important that you must have a
19 preliminary injunction, when the legislation
20 specifically allows you to make a claim for adverse
21 possession if you meet certain element suggests the
22 public interest isn't necessarily in their favor
23 and maybe isn't in favor at all in this case.

24 And so while I think the third and the
25 fourth are a little less important, Your Honor,

1 than irreparable harm piece, I do think they are
2 important. And I do think they are important and I
3 think they weigh in Mr. Klein's favor when you look
4 at the evidence in the case. I think what we have
5 at the end of the day Your Honor is a request for
6 dramatic remedy and when you look at the four
7 factors, you know, the dramatic remedy to change
8 the status quo in the current situation with a
9 dispute over the success of the merits with viable
10 claims on both parties potentially. Irreparable
11 harm, no evidence of irreparable harm, limited
12 evidence of any harm, but no evidence of
13 irreparable harm, a balancing that favors Mr. Klein
14 due to his own personal need to get to the water
15 and lack of access and then the public interest.
16 And so we'd ask the Court when considering the
17 factors in the dramatic nature and this is a very
18 specific, to be used only in specific circumstances
19 to deny the preliminary injunction.

20 On the last point, Mr. Duensing talked
21 about trespass. The Court has been very clear that
22 the trespass is not an irreparable harm. This is
23 the S-B-R-M-C-O-A-L-L-C the More House Real Estate
24 investment case from the Superior Court in 2015,
25 Your Honor. It's 62 V.I. 168 and the Court in that

1 case said that there is no -- The interference with
2 property rights is not irreparable harm in itself.
3 So that's really the argument. The fact that he
4 trespass means irreparable harm. The V.I. Courts
5 have already addressed that issue and there is no
6 other evidence than irreparable harm. So we'd ask
7 the Court on those grounds to deny the preliminary
8 injunction.

9 THE COURT: Attorney Crain.

10 ATTORNEY CRAIN: Yes, Your Honor.

11 THE COURT: If the Court
12 understands your argument or claims or Mr. Klein's
13 claim is that he had began adverse possession in
14 2004 and there --

15 ATTORNEY CRAIN: Go ahead.

16 Sorry, Your Honor.

17 THE COURT: And thereof the
18 15 years, according to your theory would have come
19 up in 2019, correct?

20 ATTORNEY CRAIN: Yes. What I
21 would say is, I don't want to put a specific date
22 on it, in the sense that I can't identify it was
23 June 1st of 2014 or some date in 2003. But what
24 his testimony is that he first used the trail in
25 2003.

1 THE COURT: Let's just put it
2 this way, the adverse possession claim would have
3 according to Mr. Klein's 15 years be prior to 2020,
4 correct?

5 ATTORNEY CRAIN: I think that's
6 fair Your Honor that would have been 15 years, but
7 of course, you never know and it's hard to say
8 exactly, you know, what the exact date is, but I
9 think it is fair to say it was around that time.
10 Yes, Your Honor.

11 THE COURT: And in order to claim
12 property by adverse possession, he would have had
13 to have a Court determine that prior to today,
14 correct?

15 ATTORNEY CRAIN: Well, not to
16 claim it Your Honor, but I mean I would argue that
17 once you meet the elements, you're the owner of the
18 property. But ultimately, I would agree the
19 process ultimately is for, you know, if you are
20 going to try to sell it or anything like that, you
21 ultimately would want a jury to award you, confirm
22 your legal right to the claim, yes.

23 THE COURT: And that's never been
24 done?

25 ATTORNEY CRAIN: No, Your Honor;

1 it's not.

2 THE COURT: And you want the
3 Court to be guided by a 10th circuit case that you
4 cited on the basis of not granting a preliminary
5 injunction because in this matter it will be
6 changing the status quo. Why is not the status quo
7 maintaining Ms. Bassil's right as an owner of the
8 property to not have people trapesing across it.

9 ATTORNEY CRAIN: Well, that's not
10 -- I was using that as a guide, Your Honor. No one
11 has -- I am not aware of a Virgin Islands Court
12 that has addressed specifically the status quo
13 question. So I was -- I'm not telling you that
14 you're bound by that. I was using that as an
15 example.

16 THE COURT: Because your very own
17 case as the Court finds that the four factors are
18 satisfied overwhelmingly there that the Court can
19 issue the preliminary injunction.

20 ATTORNEY CRAIN: It doesn't mean
21 that you can't do it. You're right about that,
22 Your Honor. It just raises -- it's a high bar to
23 start. It raises the bar even more, right? When
24 it's not --

25 THE COURT: But you agree there

1 is sufficient local cases that this court be bound
2 by or guided by that deal with preliminary
3 injunctions. We don't have to refer to the 10th
4 Circuit or provide a bank's analysis, do we?

5 ATTORNEY CRAIN: Well, I agree
6 that there is sufficient cases on the idea of the
7 preliminary injunction. What I do agree with is
8 there are sufficient cases dealing with when you're
9 altering the status quo. And I would argue that
10 the status quo in this case has the 10th Circuit
11 references, is the circumstances on the ground at
12 the time not, not the argument that she owns the
13 property. And the circumstances on the ground at
14 the time are that Mr. Klein has for 15 years and
15 continues to use the trail. That's the current
16 circumstance that we find ourselves in.

17 THE COURT: That's your
18 interpretation. If the Court finds otherwise, the
19 Court's entitled to, correct?

20 ATTORNEY CRAIN: Certainly, Your
21 Honor. I can't instruct the Court on what to find.

22 THE COURT: Consistently -- well,
23 not consistently. I've heard now that Mr. Klein
24 will be irreparably harmed because he can't access
25 the beach and you referenced the pandemic and both

1 counsels has referenced the pandemic. But wasn't
2 Mr. Klein's access to the beach restricted during
3 the pandemic and should the Court ignore the fact
4 the rest of the public if they wanted to access the
5 Secret Harbor Beach would have to do so through the
6 Secret Harbor property and not trapes across 2 D 13
7 or 2 D - 11 or even possible his own property.

8 ATTORNEY CRAIN: Let me -- I'm
9 not sure I understand, but let me try to do the
10 best I can, Your Honor.

11 What I think Mr. Klein was saying is that
12 his best access point and the one he's been using for
13 15 years, he's testified that he uses another one as
14 well. But you know, was this access point -- with
15 regard to COVID, what I think he's saying is that it is
16 dangerous for him to walk up the street all way to
17 Secret Harbor and there is a very limited if any parking
18 at Secret Harbor. There is restaurant parking, but
19 there is not beach parking. The beach parking is over
20 closer to his house.

21 THE COURT: This is the rest of
22 the public bound by those restrictions as well,
23 though. Why should Mr. Klein have a special
24 privilege because he owns property there, and take
25 advantage of the fact that Ms. Bassil hasn't been

1 able to build a house there or resides in New York
2 and relies on her friends and other people to
3 update her on her property?

4 ATTORNEY CRAIN: Well, again it
5 goes back to the status quo, Your Honor. And
6 that's what he's been doing for 15 years and too
7 what he has been saying is that he has been relying
8 upon that for 15 plus years and now you're saying
9 he has to do it a different way.

10 THE COURT: In 2008, he became
11 aware that Ms. Bassil owned that property; did he
12 not?

13 ATTORNEY CRAIN: Yes, I think.

14 THE COURT: And then in 2013 and
15 2014 he attempted to buy that property, correct?

16 ATTORNEY CRAIN: Yes. That's the
17 evidence. Yes, Your Honor.

18 THE COURT: All right.

19 Attorney Duensing, any rebuttal?

20 ATTORNEY DUENSING: Just very
21 briefly. First of all, Your Honor, we agree that
22 this is an area in which there is sufficient case
23 law right here in the Virgin Islands. It's an area
24 of the property of the rights of the Virgin Islands
25 in my experience is one of the more heavily

1 litigated areas so there is an abundance of case
2 law right here in this jurisdiction.

3 We also agree with Your Honor
4 description of the true status quo. Let's face it.
5 If status quo changed after Secret Harbor blocked
6 Mr. Klein's access across its property, that's when
7 he created these trails on Ms. Bassil's property as
8 his back up plan. So he didn't have to go down the
9 road like the rest of the public because he does
10 feel he is entitled to special treatment. He does
11 feel that he's entitled to take his neighbor's
12 property which is exactly what he is trying to do
13 here.

14 This is a very unique piece of
15 property, Your Honor. We have heard I believe from
16 Ms. Curreri and Terry Anderson and perhaps one of
17 the other realtors as well that this is the last
18 undeveloped piece of waterfront property on the
19 Leeward side of Secret Harbor. I know that
20 Mr. Klein continues to try to denigrate the
21 condition of the property what he describes to me
22 is a fairly typical undeveloped property here in
23 the Virgin Islands. Not only property is scarce on
24 the island, the waterfront properties such as
25 Ms. Bassil's is extremely rare in this point in our

1 development Your Honor and that's what makes this
2 piece of property unique.

3 The Supreme Court of the Virgin Islands
4 has said that a person's right to control their
5 business or person's right to control their
6 property has a certain intrinsic value that cannot
7 be compensated adequately by some kind of a
8 monetary award, and that's exactly the situation we
9 have here.

10 THE COURT: I am sorry, Attorney
11 Duensing, the Ahmad case, the Yusef Green Ahmad,
12 and I believe there's another one. Don't those
13 two cases refer to actual businesses?

14 ATTORNEY DUENSING: They are
15 referring to actual businesses, but in our view
16 that the control of a person's business is really
17 just another form of control of a person's
18 property. And what I was getting ready to say is
19 that Mr. Klein is seeking to take control of
20 Ms. Bassil's property. That's what he's trying to
21 do. He is going to dictate where she is going to
22 build the house if she ever decides to build a
23 house. By the existing trails, he is going to
24 severely restrict what she can do with her
25 property. He's exposing her to immeasurable

1 potential liability by allowing the commercial
2 guests to trapes across his property. In that
3 short video clip that we watched yesterday, the
4 very first person seen in the video slipped and
5 tripped and fell and nearly fell off the cliff to
6 the rocks below.

7 THE COURT: I don't think it was
8 that dramatic, Attorney Duensing. They didn't
9 fall.

10 ATTORNEY DUENSING: She did fall.

11 THE COURT: I saw her stumble off
12 the cliff. I didn't see not see that, but the
13 evidence is -- the video is in for the Court to
14 review.

15 ATTORNEY DUENSING: Having
16 represented Pueblo for many many years, I've seen
17 people file lawsuits for much less than a slip and
18 fall than that, Your Honor. Unfortunately, but Mr.
19 Klein cares so little about Ms. Bassil's potential
20 liability exposure that he did not include her in
21 the waiver that he got for himself and he did not
22 get liability insurance for her even though he is
23 actively marketing her property for commercial
24 purposes.

25 So I'm not going rehash my little

1 argument, Judge. In terms of the trespass, we
2 don't need any more evidence of trespass as
3 suggested by Attorney Crain.

4 Mr. Klein freely admits it's trespass
5 and it can be seen on the video. So we submit that
6 we are absolutely entitled to the injunctive
7 relief. You know, Ms. Bassil did not sit back on
8 her rights. Ms. Bassil acted very quickly as soon
9 as she learned from her good friend Lisa Curreri
10 and that there was an active trespass and the
11 construction of trails on her property.

12 Ms. Bassil acted very quickly to try to remedy that
13 situation and we submit that she is entitled to the
14 relief that she requested, Your Honor.

15 THE COURT: Thank you, Counsel.
16 We will wrap up briefly here. The Court has two
17 issues that were raised by counsel and not -- I
18 don't believe were fully briefed in any of the
19 motions just briefly touched on it here. Well at
20 least Attorney Duensing believes that real
21 property, the actual property according to Ahmad
22 and it escapes the Court, the other citation is to
23 be considered intrinsic business property or
24 commercial property.

25 I would ask the parties to brief the

1 issue as to why the Court should consider
2 Ms. Bassil's real property or not consider it under
3 that theory of detriment to her business. And the
4 issue of the status quo, why should the Court
5 maintain a status or why is the Court obligated to
6 maintain a status quo pursuant to 10 Circuit case
7 law as opposed to the law that's already -- that
8 the Court is already guided by here in the Virgin
9 Islands.

10 I would ask the parties to submit any
11 case law, further argument by Friday. The Court is
12 taking this hearing under advisement and after
13 receiving any briefing that the parties wish to
14 submit. And I would say by noon. So it will be
15 simultaneous filings. It is not to go back and
16 forth. It's to provide the Court with any guidance
17 of any case law on the party's position. After
18 receipt of the submissions, the Court will review
19 those and hopefully issue an opinion next week.

20 ATTORNEY DUENSING: Thank you,
21 Your Honor.

22 ATTORNEY CRAIN: Thank you, Your
23 Honor.

24 THE COURT: Anything further,
25 Attorney Duensing?

1 ATTORNEY DUENSING: Nothing
2 further, Your Honor.

3 THE COURT: Attorney Crain?

4 ATTORNEY CRAIN: Nothing further,
5 Your Honor. Thank you for your indulgence.

6 THE COURT: Ms. Bassil, Mr.
7 Klein, thank you for your patience in assisting
8 moving this matter forward. We will, the Court
9 will do its best to get a decision out next week.

10 ATTORNEY DUENSING: Thank you,
11 Your Honor.

12 ATTORNEY CRAIN: Thank you,
13 Judge.

14 MR. KLEIN: Thank you, Your
15 Honor.

16 THE COURT: Okay. That concludes
17 that business. Everyone may be excused. Have a
18 good day. Thank you everyone.

19 **(HEARING ADJOURNED AT 11:13 a.m.)**

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CERTIFICATE OF REPORTER

I, MYKA V. CALLENDER-SMITH, an Official Reporter of the Superior Court of the Virgin Islands, certify that in my official capacity of reporting by machine shorthand, I did transcribe the proceedings in the case of **MADELINE A. BASSIL v. JOHN KLEIN** in said court via zoom, on July 28, 2021, which consist of 97 pages.

IN WITNESS WHEREOF, I affix my signature this 1st day of July, 2022, which certifies this to be a true and accurate transcript.

/s/ Myka V Callender-Smith
MYKA V. CALLENDER-SMITH, CSR.
OFFICIAL COURT REPORTER I

FILED

July 30, 2021
ST-2021-CV-00148
TAMARA CHARLES
CLERK OF THE COURT

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

MADELINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

ST-2021-CV-148

**ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and,
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

**DEFENDANT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

NOW COMES Defendant John Klein ("Defendant"), by counsel, pursuant to the Court's July 28, 2021 oral Order, and for his Supplemental Brief in Opposition to Plaintiff's Motion for Preliminary Injunction, states as follows:

Plaintiff's Motion should be denied because, despite all the evidence and legal argument the Court has received on Plaintiff's Motion, she offers no evidentiary or legal support for her claim of irreparable harm—which is the key element of her Motion. She offered no evidence of her claimed emotional distress. She offered no evidence that her purported inability to sell Parcel 2D-12 is not capable of being remedied by a potential future monetary award. Instead, Plaintiff's sole argument is that real property has such intrinsic value that the Court can presume irreparable harm. Plaintiff's argument is nothing more than a red herring. If the Court adopts Plaintiff's argument, it would rewrite Virgin Islands law, as evidenced by the numerous prior decisions of this Court and the Supreme Court of the Virgin Islands that are analyzed below. While Plaintiff hoped that perhaps she might evade her burden to produce any evidence at all in support of her Motion, what analysis of applicable law in fact reveals is that Plaintiff bears an especially heavy burden to support her claim, since she seeks to alter the status quo by enjoining

Mr. Klein from using the paths in the same manner he has been using them for over fifteen years. Plaintiff's Motion crumbles under the especially heavy burden it bears, and the Court should deny injunctive relief.

I. The Virgin Islands does not recognize any rule that real property has some particularized intrinsic value such that violation of one's alleged real property rights constitutes *per se* irreparable harm.

Plaintiff cannot establish an irreparable injury, as she is required to do in order to support a claim for injunctive relief, merely because she has alleged that Mr. Klein is interfering with rights she claims to have in the disputed real property. The Virgin Islands does not recognize any rule that interference with one's alleged real property rights constitutes a *per se* irreparable injury. In Yusuf v. Hamed, the single case referenced by Plaintiff, the Supreme Court of the Virgin Islands recognized that inability to exert control over one's business may constitute an irreparable harm. 59 V.I. 841, 854-55 (2017). The Court's analysis was very specific to control of a business¹, as the Court's ruling focused on its recognition that "a party's right to control a business 'has intrinsic value' that cannot be compensated by money damages." Id. at 854 (quoting Wisdom Imp Sales Co. v. Labatt Brewing Co., 339 F.3d 101, 114 (2d Cir. 2003); citing Mack v. Davis, 2013 Guam 13 ¶ 23)). Importantly, the Yusuf Court also observed that there was specific evidence of very extreme harms that were resulting from Hamed's inability to exert control over the business: "the Superior Court did not clearly err in finding that Hamed was

¹ There can be no dispute that Parcel 2D-12 is nothing like a business. There is no actual operation, business license or employees. A business requires daily, if not hourly, work and oversight to flourish and sustain. An undeveloped parcel of land is stagnant, just hoping it appreciates with the market. Control over a business is tantamount to its survival. The wrong move kills businesses. Control over an undeveloped parcel of land is essentially irrelevant to its appreciation, and Plaintiff has not provided any testimony suggesting otherwise. Moreover, in this case, there is no risk to the value of Parcel 2D-12 by the continued use of the paths. The land remains. In fact, the maintenance and use of the paths over the years has improved the property.

likely to suffer irreparable harm absent an injunction in light of the evidence that Yusuf attempted to unilaterally fire employees, including Hamed's sons Mufeed and Waleed, repeatedly threatened to close down the stores, increased the rent for Plaza East in an attempt to evict the store from its location in United's shopping center, and removed \$2.7 million from a Plaza Extra operating account over Hamed's objections, violating the two-signature requirement.” Id. at 855.

Under those extraordinary facts, the irreparable harm that Hamed was facing in the absence of injunctive relief was clear, as Yusuf’s unilateral actions were destroying important components of the grocery store business in a way that went beyond mere mathematical computation of the lost profits that resulted, but instead involved very fundamental damage to the business’ goodwill, reputation, and ability to function as a going concern in the future. These types of injuries, once incurred, cannot feasibly be “undone” at the conclusion of trial. See Opticians Assoc. of Am. v. Independent Opticians of Am., 920 F.2d 187, 195 (3d Cir. 1990) (“Grounds for finding irreparable harm include loss of control of reputation, loss of trade, or loss of good will.” (citing 2 J. McCarthy, Trademarks and Unfair Competition § 32:44 (2d ed. 1984))). Thus, the Yusuf decision was little more than a reaffirmation of the traditional, guiding principle of injunctive relief, that it is only warranted in instances where an award of monetary damages would be inadequate to fully compensate a party. In fact, since Yusuf was decided, the Supreme Court of the Virgin Islands has rejected a request for injunctive relief in a dispute between business partners because there was no evidence of irreparable injury. See 3RC & Co., Inc. v. Boynes Trucking System, Inc., 63 V.I. 544, 559-60 (2015) (party to joint venture agreement had no claim for injunctive relief against fellow party to joint venture agreement because its claim was “a simple contract dispute involving money damages,” and did not involve any irreparable harm).

The Virgin Islands has never recognized that mere interference with one's alleged real property rights constitutes a *per se* irreparable harm, and in fact this Court has previously rejected that very contention. In SBRMCOA, LLC v. Morehouse Real Estate Investments, LLC, plaintiffs asserted rights in a disputed parcel, with the underlying purpose of the suit being to quiet title by determining each party's respective legal claim to the parcel. 62 V.I. 168, 176 (V.I. Super. Ct. 2015). Like Plaintiff in the instant case, the plaintiffs in SBRMCOA, LLC had no evidence of any irreparable injury they were actually facing due to defendants' conduct in using the disputed parcel, and so they attempted to support their claim for injunctive relief with "non-binding authority, without stating why this Court should rely on that authority, for the assertion that when a party is denied its use of a property right, irreparable injury is presumed." Id. at 201. This Court refused to recognize any such presumption as a rule of Virgin Islands law, and instead analyzed the case—much like the Court in Yusuf and 3RC & Co., Inc.—according to the traditional standard of whether plaintiffs had presented evidence of any alleged harm they were facing that was actually irreparable. Id.

In SBRMCOA, LLC, there was no such irreparable harm; although defendants had denied plaintiffs' access to a road on the disputed parcel, in violation of plaintiffs' asserted property rights as a putative easement holder in the parcel, the evidence also showed that defendants merely intended to "redirect traffic to a different road," and that although they were denying plaintiffs' access to the disputed parcel, defendants did "not intend to destroy the existing concrete driveway." Id. As the Court noted, "the 'damage' could be undone by simply re-opening the road," and plaintiffs "will still have an entry and exit point to reach their properties." Id. at 201-02. This is in accord with the analysis of Yusuf and 3RC & Co., Inc., and with the fundamental principles underlying injunctive relief—that it is a remedy to be used

sparingly, and only when such relief is necessary to preserve the current state of affairs such that a claim for relief will not be rendered effectively meaningless by actions taken by a party during the pendency of litigation. In SBRMCOA, LLC, there was no wrecking ball at the gate, preparing to knock down a sacred monument; the driveway plaintiffs claimed a right to would still be sitting exactly where it was at the conclusion of the litigation and, if it was determined that plaintiffs had been improperly denied access to it during the pendency of litigation, they could be compensated for such injury at the conclusion of litigation. See id. Thus, there was no need for the “extraordinary remedy of injunction,” irrespective of the fact that the case involved the parties’ alleged real property rights. See id. at 202-03.

Sam’s Food Distributors, Inc. v. NNA & O, LLC should also be read for the proposition that mere interference with another’s real property rights is not a *per se* irreparable harm under Virgin Islands law. In Sam’s Food Distributors, Inc., plaintiff sought a permanent injunction, which requires at the outset that the Court fully determine the merits of the case (rather than forming a preliminary impression based upon a party’s likely success on the merits). S. Ct. Civ. No. 2018-0048, 2020 WL 3086468, at *5 (V.I. June 9, 2020). The Supreme Court of Virgin Islands first determined, on the merits, that plaintiff held an express easement over a disputed parcel for the purposes of ingress and egress, which also included the incidental right to stop, load, and unload. Id. at *7. Having so decided, and it being undisputed that defendant had denied plaintiff said rights in the subject parcel, the Court nonetheless analyzed whether plaintiff suffered an irreparable harm by being denied its property rights when determining whether an injunction should be issued in favor of plaintiff. Id. at *7-*8 (determining that defendant’s refusal to allow plaintiff to use its easement rights to access the cargo bay doors of plaintiff’s warehouse constituted an irreparable injury because without this access, plaintiff’s only means of

accessing its warehouse was through a people-sized door, which was causing irreparable harm to plaintiff's business of storing furniture in the warehouse).

The analysis in Sam's Food Distributors, Inc. is entirely in accord with SBRMCOA, LLC, and again affirms that Virgin Islands law does not recognize that interference with a real property interest is a *per se* irreparable harm. If the Virgin Islands recognized Plaintiff's asserted notion of a *per se* irreparable harm, the Sam's Food Distributors, Inc. Court would not have needed to engage in any analysis as to what utility plaintiff could receive by using a cargo bay door rather than a people-sized door. It would have been more than sufficient for the Court to determine that plaintiff did, in fact, possess the property rights they asserted in the subject parcel, and that defendant was, in fact, interfering with plaintiff's property rights by obstructing plaintiff's access to the cargo bay doors. Because no such rule is recognized under Virgin Islands law, however, the Court proceeded in its analysis of whether plaintiff was suffering an irreparable harm before determining that injunctive relief was warranted.

Just as courts in the Virgin Islands have done in Yusuf, 3RC & Co., Inc., SBRMCOA, LLC, and Sam's Food Distributors, Inc., this Court should engage in an analysis of whether Plaintiff has suffered an irreparable harm when determining whether injunctive relief is warranted. The Court should determine that Plaintiff's invocation of a purported "*per se* rule" is little more than a red herring, intended to distract from the reality that Plaintiff has not presented any evidence that she will suffer a irreparable harm in the absence of injunctive relief. She has not presented any evidence of emotional distress, nor is such a purported injury irreparable. She has not presented evidence to suggest that her purported inability to sell her property is not subject to a monetary award. And, she has not established that the continued use of the trails by

Mr. Klein or other individuals causes her irreparable harm.² Because Plaintiff lacks evidence of an irreparable harm, which is the key element of a claim for injunctive relief, her claim fails.

II. Plaintiff is seeking to alter the status quo, and thus bears an exceptionally heavy burden.

Because Plaintiff’s Motion for a Preliminary Injunction seeks to alter the status quo, she faces an exceptionally heavy burden in establishing her right to the relief sought. As was very recently recognized in the Virgin Islands in the George v. Mullgrav case, a movant seeking a preliminary injunction which alters the status quo faces an exceptionally heavy burden:

Ordinarily, a preliminary injunction is designed to preserve the status quo during the interim period before resolution of the merits of a complaint. Parkell v. Senato, 639 F. App’x 115, 116 (3d Cir. 2016). The Court has the authority to issue a “mandatory injunction”—effectively altering the status quo—only when

² Although not included in her Motion, Plaintiff appeared to argue in her rebuttal closing that she could be irreparably harmed if someone injures themselves while using the trails and if that person filed a lawsuit against her. Plaintiff’s argument is not persuasive. First, a preliminary injunction is not a proper remedy for potential harms, only imminent ones. There is no evidence of any imminent lawsuit. And, in any event, the proper lawsuit is one brought against Mr. Klein as the owner of the paths. Second, courts that have addressed this argument have specifically rejected it. See e.g., Norton v. Dubrey, 116 A.D.3d 1215, 1216 (N.Y. App. Div. 2014) (finding a lack of irreparable harm warranting injunctive relief in a dispute between neighbors over their respective rights in a disputed parcel because “[a]lthough defendants voiced concern regarding potential liability in the event that the tenant or his guests are injured on the premises, this potential harm is both remote and speculative. Moreover, defendants have an adequate remedy at law and can be fully compensated by monetary damages for any such liability.” (collecting cases)); County of Suffolk v. Givens, 106 A.D.3d 943, 944 (N.Y. App. Div. 2013) (“Although the plaintiff alleges that it might be subject to liability in the event that a tenant is injured at the premises and brings suit, it failed to show that this potential harm was imminent and not remote or speculative.” (collecting cases)). Third, the Court can eliminate any potential risk without altering the status quo and imposing the drastic remedy that is a preliminary injunction. Mr. Klein testified that if she is not already included, he would include Ms. Bassil on waivers that guests sign. Mr. Klein is also willing to sign a defense and/or indemnity agreement with Ms. Bassil with regard to any potential claims or to pay a reasonable sum for liability insurance for Ms. Bassil. Finally, and consistent with the other claimed irreparable harm, if Ms. Bassil incurs any costs or expenses associated with a potential lawsuit, those “damages” can be remedied by a monetary award. After all, any potential claim by the individual would be for monetary damages.

the moving party meets “a particularly heavy burden in demonstrating its necessity.” Lane v. New Jersey, 725 F. App’x 185, 187 (3d Cir. 2018) (citation omitted); see also Communist Party of Ind. v. Whitcomb, 409 U.S. 1235, 1235 (1972) (a mandatory injunction is an “extraordinary remedy [to] be employed only in the most unusual case”); Hope v. Warden York County Prison, 972 F.3d 310, 320 (3d Cir. 2020) (plaintiffs seeking mandatory injunction requiring their release from detention bore a particularly heavy burden on showing substantial likelihood of success and that their “right to relief [is] indisputably clear.”).

George v. Mullgray, Civil No. 2013-0047, 2021 WL 1397124, at *4 (D.V.I. Apr. 9, 2021). The movant faces this heavy burden because “[t]he sole purpose of a preliminary injunction is to preserve the status quo pending a trial on the merits.” Samuel v. Virgin Island Joint Board of Elections, Civil No. 2012-0094, 2013 WL 106686, at *5 (D.V.I. Jan. 6, 2013). In addition to courts here in the Virgin Islands, the Third Circuit has also repeatedly recognized the heavy burden faced by a movant seeking a preliminary injunction which alters the status quo. Trinity Indus., Inc. v. Chicago Bridge & Iron Co., 735 F.3d 131, 139 (3d Cir. 2013) (when a mandatory injunction is sought, “the moving party’s ‘right to relief must be indisputably clear’” (quoting Communist Party of Ind., 409 U.S. at 1235)); Acierno v. New Castle County, 40 F.3d 645, 653 (3d Cir. 1994) (“A party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity.” (citing Punnett v. Carter, 621 F.2d 578, 582 (3d Cir. 1980)).

The “status quo” may be defined as “the situation that currently exists.” “Status quo,” Black’s Law Dictionary (11th ed. 2019). “The status quo is not defined by the parties existing legal rights; it is defined by the reality of the existing status and relationships between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties’ legal rights.” SCFC ILC, Inc. v. Visa USA, Inc., 936 F.2d 1096, 1100 (10th Cir. 1991). Thus, preserving the status quo requires freezing the parties in exactly the position they occupied at the time that a legal challenge has been presented to the

Court, although this may mean that it will ultimately be determined that one party has committed a continuing violation of another party's legal rights during the pendency of litigation. See, e.g., Rialto Theatre Co. v. City of Wilmington, 460 F.2d 281, 282 (3d Cir. 1972) (determining, in dispute over the constitutionality of a warrant, that the status quo was for the government to retain the films it had seized pursuant to the warrant, although this continuing seizure may have violated the constitutional rights of the films' owner).

In the context of an adverse possession or prescriptive easement claim, where the adverse possessor has been consistently using the disputed property for many years prior to the bringing of a legal challenge over ownership to the disputed property, preservation of the status quo involves the adverse possessor continuing his or her use of the disputed property during the pendency of the litigation. Maturo v. Digiola, 2019 WL 6880593, at *6 (Conn. Super. Ct. Nov. 21, 2019); Reese v. Dore, 2019 WL 4885939, at *3 (Pa. Super. Ct. Oct. 3, 2019); Farid v. DiLieto, 2014 WL 5472182 at *10 (Conn. Super. Ct. Sept. 30, 2014); Westpac Aspen Investments, LLC v. Residences at Little Neil Development, LLC, 284 P.3d 131, 138 (Colo. Ct. App. 2011).

Here, the evidence presented at the July 27-28 evidentiary hearing, which included testimony from numerous non-party eyewitnesses, established that Mr. Klein has been consistently using the disputed property for over fifteen years prior to the commencement of the parties' competing claims to determine their respective rights to the disputed property. Thus, Mr. Klein's consistent use of the disputed property is the status quo. Plaintiff's Motion, seeking injunctive relief to alter that status quo, therefore must show that her right to a preliminary injunction is "indisputably clear." Trinity Indus., Inc., 735 F.3d at 139 (quoting Communist Party of Ind., 409 U.S. at 1235).

Rather than “indisputably clear” proof, at the hearing Plaintiff instead failed to offer any evidence of any irreparable harm she would face if Mr. Klein was permitted to continue using the paths during the pendency of this litigation. Plaintiff merely doubled-down on her assertion that she would like to sell the disputed property, still without offering any evidence that Mr. Klein’s mere physical presence on the paths is singularly obstructing this goal. In fact, Plaintiff’s evidence continues to undermine any such claim, as she has continued to attribute her inability to sell the disputed property to Mr. Klein’s claim of *legal right* to the property. See, e.g., May 20, 2021 Mot. to Reconsider Ex. 5 ¶ 19 (Plaintiff’s Affidavit, in which she states that “[a]s a direct result of Klein’s actions, my attorney advised me that I must remove the Parcel from the MLS due [to] the adverse possession claims of Klein.”) Mr. Klein’s claim of legal right to the disputed property would not be extinguished by an injunction temporarily barring him from using the paths during the pendency of this litigation.³ Thus, Plaintiff has certainly not established

³ To the extent Plaintiff is suggesting that Mr. Klein be enjoined from entering the disputed property because she believes it would aid her in selling whatever interest she has in the disputed property while the parties’ competing claims are still being adjudicated by this Court, (a) she has not presented any evidence from which the Court could determine that an injunction would have any such effect, and (b) this is a completely un-workable plan for the disposition of the disputed property that the Court should reject out of hand. In Fenster v. Dechabert, this Court granted a temporary restraining order to a plaintiff asserting a claim of specific performance entitling her to purchase a disputed parcel. Case No. SX-16-CV-343, 2016 WL 3913574 at *9 (V.I. Super. Ct. July 13, 2016). The temporary restraining order enjoined one of the defendants, the record owner of the disputed parcel, from conveying the parcel to a codefendant, who both defendants asserted had an option contract to purchase the disputed parcel that was superior to plaintiff’s contractual right to purchase. Id. at *1-*2. Although defendants contended that injunctive relief was not warranted because the putative purchaser was already a party to the case, and thus could be ordered by the Court to convey the disputed parcel to plaintiff as readily as the putative seller in the event that plaintiff prevailed on her claim of specific performance, the Court found this to be a nonsensical idea, recognizing that it would “instigate a nightmarish battle between the parties regarding the state of the Property while owned by [the putative purchaser],” creating “highly contentious superfluous litigation” which “wastes the time and resources of the Court” and which the Court found to be “so easily avoided by merely preserving the status quo until an evidentiary proceeding can be held to resolve the underlying title issues.” Id. at *8-*9. Put simply, there is absolutely no purpose served by encouraging Plaintiff to sell whatever interest

“indisputably clear” proof that injunctive relief is warranted for any reason related to her alleged desire to sell the disputed property, because the harm she has asserted would be equally occasioned either with or without the injunctive relief she seeks.

CONCLUSION

For the foregoing reasons, and in light of the evidence and argument presented at the July 27-28 evidentiary hearing, Defendant respectfully asks that this Court deny Plaintiff’s Motion for a Preliminary Injunction and grant Defendant such further relief as the Court deems appropriate.

Respectfully submitted,

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she has in the disputed property while the parties’ respective interests in the property are still being determined by this Court, as this would only add exponentially more litigation, and more uncertainty of title, to the dispute over ownership of the subject parcel.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record:

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

MADELINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST- 2021-CV-148

ACTION FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, TRESPASS, DECLARATORY
JUDGMENT, QUIET TITLE, and
DAMAGES FOR SLANDER OF TITLE
and INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

PLAINTIFF’S POST HEARING BRIEF

Plaintiff, Madeline A. Bassil, through undersigned counsel, Duensing & Casner, hereby files her brief in response to the Court’s questions following the preliminary injunction hearing on July 27 and 28, 2021.

Status Quo

The Court does not need to look any further than the Supreme Court of the Virgin Islands for guidance as to the meaning of the status quo in an injunction. The Supreme Court clearly and unequivocally states that the Superior Court was correct in its observation that: “one of the goals of the preliminary injunction analysis is to maintain the status quo, defined as **the last, peaceable, noncontested status of the parties.**” *Yusuf v. Hamed*, 59 V.I. 841, 856 (2013) (emphasis added); *see also Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.* 6 V.I. 584, 601 (V.I. 2018) (a case involving an injunction request to enjoin a coffee shop from operating due to allegations of breach of contract where the V.I. Supreme Court determined that

the status quo, defined as “the last, peaceable, non-contested status of the parties,” was before the coffee shop opened).¹

In this case, the last peaceable moment was prior to the start of this litigation. In that last peaceable moment, Plaintiff was the only record owner of Parcel 2D-12 Remainder Estate Nazareth (the “Parcel” or “Parcel 2D-12 Remainder”). During this peaceable moment, she was sleeping soundly knowing she was the owner of a beautiful and unique waterfront Parcel by her favorite place on St. Thomas—Secret Harbor. She slept well knowing she had clear title and that she had control over her Parcel, and she could choose to build a home, obtain a mortgage on the property, gift her Parcel to her daughter, or sell her Parcel to a third-party. The evidence clearly shows she had no open and notorious notice of any trespass or unwanted visitors or guests to her property, and she should not have been worried that there were trespassers on her Parcel.

The peace ended when Plaintiff discovered that Defendant had illegally, without permission, and secretly cut trails through her Parcel and that Defendant was advertising his AirBnb accommodations as having a “private path” to beach access at Secret Harbor. Plaintiff immediately leapt into action by sending a cease-and-desist letter to Defendant in February 2021. In response, Defendant expressed, through his Counsel, that he had a defense and that he purported that his trespass was legal because he had acquired rights to the paths via adverse possession. Defendant’s defense is clearly contested by Plaintiff, such that the current state of affairs between Bassil and Klein is clearly contested and lacking peace, in this adversarial process.

¹ In addition to the recent cited V.I. Supreme Court decision in *Gourmet Gallery*, several Superior Court decisions have followed the definition of “status quo” in *Yusuf* as “the last, peaceable, non-contested status of the parties.” See, e.g., *Advanced Surgical v. Cintron*, 2017 V.I. LEXIS 63, 33-34 (V.I. Super. Ct. 2017); *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC* 62 V.I. 168 (V.I. Super. Ct. 2015); *Fenster v. Dechabert*, 2016 V.I. LEXIS 90, 24-26 (V.I. Super. Ct. 2016).

The last uncontested moment is the time when Plaintiff owned clear title to her Parcel and Defendant had not asserted any claim to her Parcel. Simply because Defendant claims to have rights, does not make it so. To hold that the current status quo, in which Defendant and his commercial guests are actively trespassing and making use of Plaintiff's Parcel without her permission, creates an incentive for persons to act with impunity by taking what they want, and then simply arguing that it is the current status quo and that the Court must uphold the current status quo. Defendant's proposal of keeping the current non-peaceable and contested state as the status quo produces absurd results, and only serves to reward bad behavior and incentivizes the parties to escalate the dispute so the party with the most recent activity has the upper hand in the dispute. Holding that the status quo is the current disputed state of affairs would also make it nearly impossible to obtain an injunction to stop someone from continuing bad behavior.

As recognized by the Court during closing argument, Defendant does not hold title or any claim or color of title to the Parcel. Further, Defendant has never sought a Court Order finding that he is the owner of any portion thereof through either adverse possession or prescriptive easement, until now, in his Counterclaim to Plaintiff's initial Complaint. While it is acknowledged that this injunction request is not a trial on the merits of Defendant's counterclaims, the record is insufficient to establish that Defendant has any rights to use the Parcel 2D-12 Remainder or any portion thereof. Moreover, the record reflects that during the alleged fifteen-year period of adverse possession, Defendant, without ever openly and notoriously asserting any possessory rights to the Plaintiff during the requisite time period, attempted on multiple occasions to purchase Parcel 2D-12 Remainder from Bassil, who is the titleholder of record. As such, it would be improper for the Court to find that the last peaceable, non-contested status of the parties is that Defendant is somehow the owner of Parcel 2D-12

Remainder or has a prescriptive easement for his and his commercial guests' exclusive use across Bassil's property when it is highly unlikely, based on the record, that Defendant will succeed on his adverse possession and prescriptive easement claims.²

Notwithstanding the clear precedent established by the V.I. Supreme Court, which withstood a Banks' analysis in the Superior Court and has continued to be employed by the V.I. Supreme Court, Defendant requests that the Court disregard this Court's prior rule and adopt a standard set forth in *SCFCILC, Inc. v. VISA USA, Inc.*, 936 F.2d. 1096 (10th Cir. App. 1991). The standard set forth in *SCFCILC* would require extensive analysis on the designation of the nature of the injunctive relief into three categories: "(1) a preliminary injunction that disturbs the status quo; (2) a preliminary injunction that is mandatory as opposed to prohibitory; and (3) a preliminary injunction that affords the movant substantially all the relief he may recover at the conclusion of a full trial on the merits." *Id.* at 1098-99. There is no need for the Court to engage in such a practice, especially when the Supreme Court has already established a precedent. Equally compelling, the Tenth Circuit has largely abandoned its own standard. *See Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1261 (10th Cir. App. 2005) ("Simply stated, the requirement that a movant requesting a disfavored injunction must make a showing that the traditional four factors weigh heavily and compellingly in his favor is no longer the law of the Circuit."). The Tenth Circuit in *Schrier* determined that although the majority of courts sitting *en banc* voted to affirm the core holding of *SCFC ILC, Inc.*, it jettisoned that part of *SCFC ILC* which describes the showing the movant must make when the movant requests a disfavored injunction as "heavily

² It should be emphasized that the status quo concerns the balancing of harms analysis. Here, Bassil has real property interests that have been affected by Defendant and his commercial guests' improper trespass upon her land and unauthorized changes made to the landscape. Defendant, on the other hand, concedes he utilized multiple means to access the beach at Secret Harbor and not exclusively Plaintiff's property. Defendant further concedes that he is able to access the beach without the use of Plaintiff's property. So the harm to Plaintiff is substantial and the harm to Defendant, if any, is *de minimis*.

and compellingly.” *Id.* There is simply no reason to depart from the Supreme Court’s clear precedent.

Irreparable Harm

Plaintiff will undoubtedly suffer from irreparable harm if Defendant is allowed to continue to use her Parcel 2D-12 Remainder on St. Thomas. Because this dispute involves real property, the question of irreparable harm is the simplest of the preliminary injunction factors to satisfy. The issue has been well-settled for decades. Courts in the Virgin Islands are familiar with the concept that the loss of real property is always an irreparable injury. In *Gladfelter v. Fairleigh Dickinson Univ.*, 25 V.I. 91 (V.I. Super Ct. 1990), the Virgin Islands Court granted plaintiffs’ request for a preliminary injunction, finding that plaintiffs would suffer irreparably injury if they lost a right of first refusal to purchase the laboratory facility. The Court stated:

“In *United Church, Etc. v. Medical Center Commission*, 689 F.2d 693, 701 (7th Cir. 1982), the court stated that **“it is settled beyond the need for citation that a given piece of property is considered to be unique, and its loss is always an irreparable injury”**. Other authorities have indicated that a preliminary injunction is appropriate where property is involved, since **property is always unique under general principles of the law of equity**, and its possible loss or destruction usually constitutes irreparable harm. See *Bennett v. Dunn*, 504 F. Supp. 981 (D. Nev. 1980); 42 *Am. Jur.* 2d “Injunctions” §§ 48-49 (1969).”

25 V.I. at 99 (emphasis added).

Several other Virgin Islands cases are also informative on the question of irreparable harm and real property. *Hansen v. Gov't of the V.I.*, 53 V.I. 58 (V.I. Super. Ct. 1999) involved an exchange agreement that would divest plaintiffs of the use of Camp Arawak on St. Croix. Camp Arawak was donated to the Government of the Virgin Islands via a warranty deed that contained a provision that the people of the Virgin Islands and its visitors “shall enjoy the benefits of this land and the historic structures located there on in perpetuity.” 53 V.I. at 67-8. The Government

of the Virgin Islands accepted Camp Arawak “knowing that it is being given to the people in perpetuity for the express and direct purpose of beach, park, and other public recreational use.” *Id.* at 68. The plaintiffs in *Hansen* sought an injunction to prevent the Government from implementing the exchange agreement, which would allow a sixty thousand square foot rocket factory to be erected on the Camp. *Id.* at 90. The Government argued that the plaintiffs could not be irreparably harmed because they would still have access to alternative recreational and historical sites on St. Croix, they would still have access to the beach and shorelines of the Camp, the Coastal Zone Management process would preserve the historic structures and artifacts, and the historic buildings would be restored and available for tours. *Id.* The Court explained that the “Government and CST [Caribbean Space Technologies, LLC] simply fail to recognize the value of property ownership. They do not address the intangible benefits associated with property ownership, such as the increased sense of pride, well-being and security attendant to the right to choose when and how to use, maintain and cherish one’s property or to prohibit its unauthorized use.” *Id.* at 90-1.

In this case, Plaintiff testified about her visits in 2012, with her friend Hilvania, and in 2015, with her sister. On both occasions, she testified about those very intangible benefits of property ownership by explaining that she wanted to “show off” her property to her friends and family. Plaintiff is quite proud of her ownership of her Parcel on St. Thomas. She specifically mentioned that she showed off her Parcel via the road and via the beach—essentially the two reasonable access points from which to view her Parcel. These circumstances mirror the irreparable harm that the plaintiffs in *Hansen* faced when the Government attempted to deprive them of the use of Camp Arawak. Here, Defendant wishes to completely divest Plaintiff of the ability to choose when and how to use, maintain, cherish, and prohibit the use of her own Parcel.

With regard to his business operations, Defendant purports to suffer similar speculative harms as those claimed by the defendants in *Hansen*. Defendant testified that his AirBnb operation has only been in existence since January 2021. In *Hansen*, CST had only been in existence for 18 months and could not prove that competitors would get a head start in an increasingly competitive market. *Id.* at 92. Here, Defendant cannot prove that he will be harmed if his commercial guests walk or drive to the public beach access instead of by trespassing on Plaintiff's Parcel. Defendant purports to be harmed by being unable to swim at Secret Harbor without access to Plaintiff's Parcel. This is simply untrue—he can use the public beach access at Secret Harbor or drive to any other beach on St. Thomas. Simply stated, Defendant's purported harm is not only speculative, it requires continuing trespassing on Plaintiff's Parcel.

The Supreme Court of the Virgin Islands has also explained the meaning of irreparable harm in the context of being able to exercise control over business operations. The ownership of real property is not necessarily a business operation; nevertheless, the same concept of being able to control one's business applies to being able to control one's ownership of real property. The Supreme Court has clearly explained that “[a] moving party will satisfy this test if it can demonstrate that its monetary damages are either difficult to ascertain or are inadequate” and that a moving party's loss cannot be a matter of simple mathematic calculation. *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (V.I. 2018). As previously held by Virgin Islands Courts, all real property is unique. Harm to the ownership of real property is always irreparable—that is well-established.

The Supreme Court has also explained that “although the loss or interference with a party's right to control a business implicates money damages, courts have recognized that it can also constitute irreparable harm.” *Yusuf v. Hamed*, 59 V.I. 841, 854 (2013). The loss of real

property deprives the owner of the real property from the right to control her own Parcel, which has intrinsic value. The loss of this intrinsic value to control one's real property is analogous to the right to control one's business. The Supreme Court has explained that "a party's right to control a business 'has intrinsic value' that cannot be compensated by money damages." *Id.* (citations omitted). Here, Plaintiff's loss of the ability to control her Parcel has intrinsic value that cannot be compensated by money damages, and it is therefore irreparable harm.

As recently as 2020, the Supreme Court had the opportunity to address an issue regarding an easement used in a business context. The Supreme Court "start[ed] with the proposition that private persons, in the exercise of their constitutional right of freedom of contract, may ordinarily impose whatever restrictions upon the use of land which they convey to another that they desire to impose." *Sam's Food Distribs., Inc. v. NNA&O, LLC*, 73 V.I. 453, 463-64 (V.I. 2020). This right includes the right to refrain from granting **any** rights whatsoever. Indeed, in this case, Plaintiff has testified that she has **never** granted Defendant any rights to access her property at all, by easement or otherwise. In *Sam's Food*, NNA&O purchased a lot at auction, which enabled it to obtain an express easement over the lot it purchased. 73 V.I. at 458. The predecessor of the lot had entered into a lease agreement with Sam's Food's predecessor in interest for increased access to the lot for permanent parking. *Id.* The dispute arose when NNA&O asked Sam's Food to stop using NNA&O's building to mount electrical conduit used to provide electricity to the neighboring building. *Id.* at 459. Sam's Food countered that the conduit was mounted on its wall and not NNA&O's and that NNA&O's easement was only for ingress and egress. NNA&O sought a preliminary and permanent injunction to "enjoin SMI from: (1) blocking NNA&O's access to any of its eight entry doors at its commercial warehouse, (2) blocking its ingress, egress, loading, unloading or parking on Lot 171, and (3) mounting its

electrical conduits on NNA&O's warehouse.” *Id.* The Superior Court relied on the holding in *Yusuf* to conclude that “NNA&O would suffer irreparable harm if SMI was not enjoined from blocking NNA&O's access to its eight cargo bay doors, because without such access, NNA&O would effectively be incapable of utilizing its warehouse for its reasonable, intended commercial use: the storage of furniture.” *Id.* at 468. The Supreme Court affirmed the Superior Court’s finding of irreparable harm.

Sam’s Food helps to illustrate in this case, the fact that Defendant has absolutely **no** rights to Plaintiff’s Parcel. He has never been granted an easement, he has never been deeded any part of Parcel 2D-12 Remainder, he has never entered into a lease agreement with Plaintiff. Perhaps most important, Defendant never revealed to Plaintiff his trespass and commercial use of the trails he has carved out on her Parcel. Adverse claims to another’s real property cannot be a secret, they must be open and notorious. Defendant has intentionally hidden from Plaintiff his use of the Plaintiff’s Parcel. Plaintiff has suffered and she will continue to suffer irreparable harm from the lack of control of her own Parcel, just as NNA&O would have suffered irreparable harm from being incapable of using its lot for its intended use. Here, Plaintiff is being thwarted from using her Parcel for her intended uses — her use and enjoyment without Defendant and his commercial guests trespassing on her Parcel.

Curiously, at the hearing, Counsel for Defendant referenced *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168 (Super. Ct. 2015) to support his argument that the Court should deny an injunction. However, *SBRMCOA* actually supports Plaintiff’s position. In *SBRMCOA*, the defendants owned the property plaintiffs claimed an easement over—here the opposite is the case—Plaintiff is the record owner of Parcel 2D-12 Remainder, and Defendant claims he has rights to access Plaintiff’s Parcel. In *SBRMCOA*, the dispute arose when the

defendants wanted to change the easement rights that had already been granted to the plaintiffs. Again, here, Defendant has never been granted any rights to Plaintiff's Parcel. The dispute between Bassil and Klein would more closely mirror *SBRMCOA*, if Klein had acquired rights to an easement, which he has not, and then Bassil had prevented Klein from accessing the easement. The defendants in *SBRMCOA* took physical action to prevent plaintiffs from accessing the easement and the plaintiffs wanted the access restored; the plaintiffs then sought to the Court's help to enjoin the defendant from continuing to block plaintiffs' access to the easement. Again, this is the opposite scenario of that of the instant case—Plaintiff, as the rightful and record owner of Parcel 2D-12 Remainder has not taken any physical action from which she must be enjoined. Defendant, on the other hand, continues to trespass and to encourage others to trespass on Plaintiff's Parcel without any authority that would validate his trespass. Under these circumstances, the Plaintiff urgently needs the Court's help to prevent trespass on her own Parcel.

In *SBRMCOA*, the Superior Court denied plaintiffs' motions for a temporary restraining order and a preliminary injunction and noted that plaintiffs' claim on the merits was weakened by defendants' argument based on the doctrine of unclean hands. 62 V.I. at 206. The doctrine of unclean hands applies to the facts of this case as well. The Superior Court explained, "It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been **honesty and fair dealing.**" *Id.* at 205-6 (emphasis added). The evidence from multiple witnesses indicate that Defendant purposefully kept the trespass a secret. To acquire rights to real property by adverse possession, the party seeking those rights must act in a manner that is open and notorious. Here, the evidence shows that Defendant has not acted in a manner that is open

and notorious. The photos and the surveys admitted into evidence show that the paths, even today, are fully carved out in the interior, but not on the boundaries near the road. Renix Charles testified that when flying his drone, he was standing on the cul-de-sac like area of the Estate Road, and that from there he could not see a trail on Parcel 2D-12 Remainder. Further, Defendant's own witness used the term "secret path." To describe the path. Defendant has intentionally improved the trails on the interior of the Parcel, while also intentionally obscuring the entrance to the trails by the Estate Road. Even now, because the trails are obscured from the road, the trails arguably do not meet the open and notorious standard required to acquire real property rights by adverse possession.

In *SBRMCOA*, the Court found that plaintiffs had unclean hands: "[a]t the hearing, Defendants provided testimony from Craig Cerny [plaintiff] showing that he broke into the work area at the pool deck, destroyed barriers, trespassed on Beachside's property, and removed Beachside's personal property." 62 V.I. at 206. Similarly, here, Defendant has admitted to his own trespass on Plaintiff's Parcel, he has admitted to cutting the trails and paths on Plaintiff's Parcel, he has admitted to the removal of bush and natural items of the Parcel, and he has admitted to advertising and encouraging the trespass of others.³ Clearly, Defendant comes to the case with unclean hands, not only by trespassing, but by then hiding his trespass, and by attempting to secure rights by secret adverse possession. Defendant has **no** rights to Plaintiff's

³ Judge Francois conducted a Banks Analysis and concluded that the soundest rule for the Virgin Islands to establish the elements of a trespass claim is:

A defendant will be liable to a plaintiff for trespass if the defendant: (1) intentionally enters onto the plaintiff's property without the plaintiff's permission; (2) remains on plaintiff's property without plaintiff's permission despite being obligated to leave; (3) places something on the plaintiff's property without the plaintiff's permission; or (4) removes something from the plaintiff's property without the plaintiff's permission.

Anduze v. Leader, 63 V.I. 347, 353-54 (V.I. Super. Ct. 2015).

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2021, caused a true and correct copy of the foregoing document to be served via EMAIL, and Superior Court C-Track E- filing System on:

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FILED

August 16, 2021

ST-2021-CV-00148

TAMARA CHARLES

CLERK OF THE COURT

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

MADELINE A. BASSIL,

Plaintiff,

v.

JOHN KLEIN,

Defendant.

Case No.: ST-2021-CV-148

**ACTION FOR TEMPORARY
RESTRAINING ORDER,
INJUNCTIVE RELIEF, TRESPASS,
DECLARATORY JUDGMENT,
QUIET TITLE, and DAMAGES FOR
SLANDER OF TITLE and
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

2021 VI Super 88

MEMORANDUM OPINION AND ORDER

¶1 **THIS MATTER** is before the Court on the following:

1. Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, filed April 26, 2021;
2. Defendant's Opposition to Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, filed May 7, 2021;
3. Plaintiff's Reply to Defendant's Opposition to Plaintiff's Emergency Motion for a Temporary Restraining Order and a Motion to Reconsider Denial of Temporary Restraining Order, filed May 20, 2021;
4. Defendant's Opposition to Plaintiff's Motion to Reconsider Denial of Temporary Restraining Order, filed June 3, 2021;
5. Defendant's Answer and Counterclaim, filed June 4, 2021;
6. Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion to Reconsider Denial of Temporary Restraining Order, filed June 21, 2021; and
7. Plaintiff's Answer to Counterclaim, filed June 23, 2021.

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Upon denying Plaintiff's Motion for a Temporary Restraining Order, the Court determined it would schedule an evidentiary hearing on Plaintiff's application for a preliminary injunction on July 27, 2021, and July 28, 2021. Having heard evidence and argument from both parties, the Court grants Plaintiff's Motion for a Preliminary Injunction.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶2 Plaintiff Madeleine A. Bassil ("Bassil") is the owner of Parcel No. 2D-12 Remainder Estate Nazareth, St. Thomas, U.S. Virgin Islands ("Parcel 2D-12"). Bassil and Terry Anderson purchased Parcel 2D-12 in 2002 and owned it jointly until 2006 when the property was deeded Bassil after the couple's divorce.¹ Bassil has been the sole owner of Parcel 2D-12 since 2006.² Bassil lives in New York and occasionally visits her St. Thomas property.³

¶3 Defendant John Klein ("Klein") is the owner of Parcel No. 2D-11 Estate Nazareth St. Thomas, U.S. Virgin Islands ("Parcel 2D-11") and a full-time resident of the Virgin Islands. Klein's property directly abuts Bassil's property to the south.⁴ Klein purchased Parcel 2D-11 in 2004 and alleges that at that time, a single trail or walking path started at his parcel and traversed through Plaintiff's parcel to the beach.⁵ In 2005, Klein began construction on his current residence on Parcel 2D-11 and constructed an additional walking path that started at a different part of his parcel and joined with the prior path.⁶ Both path traverse through Bassil's property. Klein alleges that throughout the construction of his current residence, he was regularly on site to oversee the construction and to use the paths to access the public beach.⁷ He maintains that for the last 16 years, he has consistently maintained, improved, and used the paths to access the public beach.⁸

¶4 Bassil alleges that there was no path at the time Klein began construction of his residence in 2005, and that as of April 2015, she was unable to walk her property because the bush was so dense.⁹ Anderson, Bassil's ex-husband, testified that there was no established walking path on the property while he lived there and co-owned it, but one could carefully "pick" their way through the brush to access the beach, which he last did in the spring of 2009.¹⁰ Bassil maintains that she was not aware of any paths on her property until January 21, 2021, when her real estate agent and friend, Lisa Curreri, informed her that bush, vegetation, trails, and steps had been cut through and

¹ Pl.'s Compl. 2.

² Pl.'s Compl. 2. Trial Ex. 10 (admitted into evidence).

³ Pl.'s Emergency Mot. for TRO and Prelim. Inj. 1.

⁴ Pl.'s Compl. 2.

⁵ Def.'s Opp'n to Pl.'s. Emergency Mot. for TRO and Prelim. Inj. 2.

⁶ Def.'s Opp'n to Pl.'s. Emergency Mot. for TRO and Prelim. Inj. 2.

⁷ Def.'s Opp'n to Pl.'s Emergency Mot. for TRO and Prelim. Inj. 3.

⁸ Def.'s Opp'n to Pl.'s Emergency Mot. for TRO and Prelim. Inj. 3.

⁹ Pl.'s Compl. 5.

¹⁰ Anderson Test. July 27, 2021.

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across her parcel and over Parcel No. 2D-13 to reach the Secret Harbor Beach.¹¹ Bassil confirmed the existence of these paths through a survey of her property conducted by Brian Moseley & Associates in January 2021.¹² It was also around this time, Bassil also became aware that Klein had been listing his home to rent on AirBnB and advertising a “private path to a gorgeous white sand beach.”¹³

¶5 On or about February 15, 2021, Klein was served with a Cease-and Desist Letter from Bassil’s attorney urging Klein to cease and desist all activity on Plaintiff’s parcel.¹⁴ Klein’s counsel responded that Klein is not required to cease and desist any activity on Plaintiff’s parcel because he has acquired the rights to it by adverse possession.¹⁵ This is not the first property dispute between Bassil and Klein, and it is not the first time Klein has claimed adverse possession over Bassil’s property. In 2008, when Klein was constructing his current home, his construction activities encroached onto Bassil’s property. Bassil testified that Klein extended his driveway and built a wall on her property.¹⁶ Klein testified that dirt he was excavating fell onto Bassil’s property.¹⁷ In email correspondence between Bassil and Klein from April 2008 through June 2008, the parties discussed an agreement in which Klein would purchase the disputed sliver of land from Bassil. However, during this exchange, Klein asserted that he owned the disputed property by adverse possession.¹⁸ This claim was not litigated, and Bassil agreed to sell the piece of land to Klein. On February 9, 2015, Klein offered to buy Bassil’s Parcel 2D-12, described as “vacant waterfront land approximately .535 acres,” and Bassil rejected.¹⁹

¶6 Bassil filed a complaint regarding the present dispute on April 20, 2020, seeking Action for Temporary Restraining Order, Injunctive Relief, Trespass, Declaratory Judgment, Quiet Title, and Damages for Slander of Title and Intentional Infliction of Emotional Distress. Bassil then filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction on April 26, 2021. Klein filed an Opposition to Plaintiff’s Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction on May 7, 2021. The Court denied Plaintiff’s Motion for a Temporary Restraining Order on May 14, 2021, and scheduled an evidentiary hearing on Plaintiff’s Motion for Preliminary Injunction. On May 20, 2021, Bassil filed a reply to Defendant’s Opposition to Plaintiff’s Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction and a Motion to Reconsider Denial of Temporary Restraining Order. Klein filed an Opposition to Plaintiff’s Motion to Reconsider Denial of Temporary Restraining Order on June 3, 2021, and an Answer and Counterclaim on June 4, 2021. Bassil filed a reply to Defendant’s Opposition to Plaintiff’s Motion to Reconsider Denial of Temporary Restraining

¹¹ Pl.’s Compl. 3.

¹² Pl.’s Compl. 3, Ex. C and Trial Ex. 2-M (admitted into evidence).

¹³ Pl.’s Compl. Ex. E.

¹⁴ Pl.’s Compl. Ex. D.

¹⁵ Pl.’s Compl. 4.

¹⁶ Bassil Test. July 27, 2021.

¹⁷ Klein Test. July 27, 2021.

¹⁸ Pl.’s Hr’g Ex. 18. (admitted into evidence July 27, 2021).

¹⁹ Pl.’s Hr’g Ex. 16 and 17 (admitted into evidence July 27, 2021).

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Order on June 21, 2021, and an Answer to Counterclaim on June 23, 2021. The parties appeared before the Court via Zoom for an evidentiary hearing on July 27 and 28, 2021. On July 30, 2021, both parties filed supplemental post-hearing briefs regarding the factors for determining injunctive relief.

II. LEGAL STANDARD

A. Motion for Preliminary Injunction

¶7 A preliminary injunction is considered an “extraordinary and drastic remedy” that is “never awarded as of right, but only ‘upon a clear showing that the plaintiff is entitled to such relief.’”²⁰ The issuance of a preliminary injunction is governed by Rule 65 of the Virgin Islands Rules of Civil Procedure.²¹ Before or after beginning a hearing on a motion for a preliminary injunction, this rule allows for the Court to advance the trial on the merits and consolidate it with the hearing.²² In considering whether to grant or deny a preliminary injunction, Virgin Islands Courts must consider four factors, known as the *Petrus* factors:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably harmed by the denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting preliminary relief will be in the public interest.²³

The Supreme Court of the Virgin Islands has established that the soundest rule for applying this four-factor standard is to use a “sliding scale test” that balances the four factors.²⁴ Courts are to consider evidence demonstrated by the parties regarding all four factors, but a party moving for a preliminary injunction “must demonstrate primarily that irreparable harm is likely without the injunction.”²⁵ Irreparable injury on its own, however, is not enough to support a claim for equitable relief, and there must also be a plausible claim on the merits.²⁶

²⁰ See *Yusuf v. Hamed*, 59 V.I. 841, 847 (V.I. 2013) (quoting *Munaf v. Geren*, 553, U.S. 674, 689-90 (2008)).

²¹ See V.I. R. Civ. P. 65 (providing in part that “the court may issue a preliminary injunction only on notice to the adverse party”).

²² See V.I. R. Civ. P. 65(a)(2) (leaving the decision to consolidate the hearings to the Court’s discretion but ensuring that the Court preserve any party’s right to a jury trial).

²³ See *Yusuf*, 59 V.I. at 847 (citing *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012) (quoting *Illes v. de Jongh*, 638 F.3d 169, 172 (3d Cir. 2011), and adopting the Third Circuit preliminary injunction standard).

²⁴ See *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 553 (V.I. 2015).

²⁵ See *id.* at 554 (providing that “a party seeking injunctive relief must demonstrate that the injunction is necessary to avoid ‘certain and imminent harm for which a monetary award does not adequately compensate’”); see also *Hansen v. Virgin Islands Water and Power Authority*, 55, V.I. 309, 314 (V.I. Super. Ct. 2011) (providing that a showing of irreparable injury “is a necessary prerequisite for a preliminary injunction”).

²⁶ See *3RC & Co.*, 63 V.I. at 554 (citing *Marco St. Croix, Inc. v. V.I. Hous. Auth.*, 62 V.I. 586, 590 (V.I. 2015)).

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1. Reasonable Probability of Success on the Merits

¶8 In order for a moving party to show a reasonable probability of success on the merits, the party only needs to show “a reasonable chance, or probability, of winning.”²⁷ The moving party does not need to show that it will actually prevail on the merits at trial, or that its success is “more likely than not.”²⁸ It is appropriate and necessary for the Court to make findings of fact in deciding a preliminary injunction and evaluating this factor, but a jury will ultimately determine the factual issues presented in the case.²⁹ The moving party’s chance of succeeding on the merits is evaluated in combination with the moving party’s claim of injury.³⁰ In some cases, where the risk of irreparable harm to the moving party is substantial, the showing of a likelihood of success on the merits may be weaker.³¹ However, if the likelihood of success on the merits is very strong, a showing of irreparable harm is less decisive.³²

¶9 In *Yusuf v. Hamed*, the Supreme Court of the Virgin Islands found that the Superior Court did not err in holding that the party moving for a preliminary injunction had established a reasonable probability of success on the merits.³³ The moving party put forth a partnership claim, and the Superior Court correctly found that there was evidence showing the formation of an at-will partnership.³⁴ Although the opposing party argued that the evidence only established “competing inferences regarding the existence of a partnership agreement that must be resolved by a jury,” the Superior Court did not err in finding that the moving party had a reasonable chance of succeeding on the merits because their findings of fact did not bind the jury in determining the merits.³⁵

2. Irreparable Harm

¶10 In the context of a preliminary injunction, Virgin Islands courts define irreparable injury or harm as harm that is “certain and imminent for which a monetary award does not adequately compensate.”³⁶ The Supreme Court of the Virgin Islands has confirmed that irreparable harm is the primary factor a moving party must demonstrate in order to succeed on a motion for a

²⁷ See *Yusuf*, 59 V.I. at 849 (citing *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011)).

²⁸ See *id.*

²⁹ See *id.* at 853.

³⁰ See *3RC & Co.*, 63 V.I. at 555 (quoting *Commonwealth v. County of Suffolk*, 418 N.E.2d 1234, 1235 (Mass. 1981)).

³¹ See *id.*

³² See *id.* at 556 (citing *District of Columbia v. Greene*, 806 A.2d 216, 223 (D.C. 2002)).

³³ See *Yusuf*, 59 V.I. at 853.

³⁴ See *id.* at 848 (finding evidence of equal sharing of profits and losses, joint management, and joint contributions to operating expenses).

³⁵ See *id.* at 853.

³⁶ See *id.* at 854 (quoting *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003)); see also *3RC & Co.*, 63 V.I. at 554 (emphasizing that a party seeking injunctive relief needs to demonstrate a harm “without an adequate legal remedy”).

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preliminary injunction.³⁷ However, irreparable harm alone is not enough, and the moving party also needs to demonstrate some likelihood of success on the merits.³⁸ A moving party will successfully demonstrate irreparable harm if it can show that “monetary damages are either ‘difficult to ascertain or are inadequate.’”³⁹ A moving party will fail to demonstrate irreparable harm if the evidence provides that the plaintiff’s loss can be determined by a simple mathematic calculation.⁴⁰

¶11 In cases where parties have sought preliminary injunctions for businesses, the Supreme Court of the Virgin Islands has determined that the right to control a business has “intrinsic value that cannot be compensated by money damages,” even though the loss of or interference with a party’s business implicates money damages.⁴¹ Similarly, in preliminary injunction cases involving real property, Virgin Islands courts have acknowledged the “intangible benefits associated with property ownership” and that monetary compensation is inadequate to remedy the harm of past property deprivation.⁴² Courts in these cases have also recognized that the possible loss or destruction of real property usually constitutes irreparable harm since property is always unique under general principles of law and equity.⁴³ However, the Supreme Court of the Virgin Islands does not recognize a rule that presumes irreparable injury when a party is denied its use of a property right.⁴⁴ If a party is moving for a preliminary injunction based on the loss or deprivation of a real property right, the party must demonstrate sufficient evidence of irreparable harm that the Court can evaluate using the *Petrus* factors.⁴⁵

3. Harm to the Nonmoving Party

¶12 While weighing the preliminary injunction factors, the Court must determine whether the nonmoving party will be irreparably harmed by the injunction.⁴⁶ Even if the moving party successfully demonstrates a substantial risk of irreparable harm if no injunction is granted, this

³⁷ See *3RC & Co.* at 554.

³⁸ See *id.* (citing *Marco St. Croix, Inc. v. V.I. Hous. Auth.*, 62 V.I. 586, 590 (V.I. 2015)).

³⁹ See *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (V.I. 2018) (citing *Yusuf*, 59 V.I. at 854).

⁴⁰ See *id.*

⁴¹ See *Yusuf*, 59 V.I. at 854; see also *Sam’s Food Distributors, Inc. v. NNA&O, LLC*, 73 V.I. 453, 468 (V.I. 2020).

⁴² See *Hansen v. Gov’t of the Virgin Islands*, 53 V.I. 58, 91 (Terr. Ct. 1999) (finding that the defendants opposing a preliminary injunction do not address the intangible benefits associated with property ownership such as “the increased sense of pride, well-being and security attendant to the right to choose when and how to use, maintain and cherish one’s property or to prohibit its unauthorized use”).

⁴³ See *Gladfelter v. Fairleigh Dickinson Univ.*, 25 V.I. 91, 99 (Terr. Ct. 1990) (recognizing that other authorities have indicated that a preliminary injunction is appropriate where property is involved).

⁴⁴ See *SBRMCOA, LLC, v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 201 (V.I. Super. Ct. 2015)

⁴⁵ See *id.* at 202 (determining that plaintiffs failed to present evidence that relocating a guard shack that blocked access to their property will cause imminent and irreparable harm because plaintiffs still have an entry and exit point to reach their properties).

⁴⁶ See *Yusuf*, 59 V.I. at 856 (noting that the Superior Court was required to examine “whether and to what extent the nonmoving parties will suffer irreparable harm if the preliminary injunction is issued”).

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“must be balanced against any similar risk to the other party in the light of the chance of each party to succeed on the merits.”⁴⁷ If the moving party makes a strong showing on the merits and a weaker showing of irreparable harm, injunctive relief may still be appropriate if the nonmoving party’s likelihood of suffering irreparable harm when the injunction is granted is similarly low.⁴⁸ In balancing the likelihood of harm to each party, the Court should aim to maintain the status quo, which is defined as “the last, peaceable, noncontested status of the parties.”⁴⁹ Defendants opposing a preliminary injunction will not suffer irreparable harm if granting the injunction simply maintains the status quo.⁵⁰

4. Public Interest

¶13 In considering the public interest when evaluating a motion for a preliminary injunction, courts “should seek to prevent the parties from halting ‘specific acts presumptively benefitting the public...until the merits [can] be reached and a determination made as to what justice require[s].’”⁵¹ Courts of equity should exercise their sound discretion and “pay particular regard for the public consequences in employing the extraordinary remedy of injunction.”⁵² This factor will typically favor the moving party if the party “demonstrates both a likelihood of success on the merits and irreparable injury.”⁵³ If a moving party fails to make a showing on these two factors, a court need not make a finding on the public interest factor.⁵⁴

III. ANALYSIS

A. The Court will grant Bassil’s motion for a preliminary injunction because she has showed a reasonable likelihood of succeeding on the merits of her trespass claim and that she will suffer irreparable harm if an injunction is not granted.

¶14 In evaluating Bassil’s motion for a preliminary injunction, the Court considered the pleadings, evidence, and arguments presented by both parties and applied them to the *Petrus*

⁴⁷ See *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 555 (V.I. 2015) (quoting *Commonwealth v. County of Suffolk*, 418 N.E.2d 1234, 1235 (Mass. 1981)).

⁴⁸ See *id.* at 556 (citing *Yusuf*, 59, V.I. at 854).

⁴⁹ See *Yusuf*, 59 V.I. at 856-57 (finding that a preliminary injunction maintained the status quo by assuring that the parties retained equal control over their business pending trial).

⁵⁰ See *SBRMCOA, LLC, v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 202 (V.I. Super. Ct. 2015).

⁵¹ *Yusuf*, 59 V.I. at 858 (quoting *Cont’l Grp., Inc. v. Amoco Chemicals Corp.*, 614 F.2d 351, 358 (3d. Cir. 1980)).

⁵² See *id.*; see also *Virgin Islands Taxi Association v. West Indian Co., Ltd.*, 65 V.I. 155, 177 (V.I. Super. Ct. 2016) (denying an injunction as against the public interest when it would prevent a company from stimulating the tourism economy in the Virgin Islands).

⁵³ See *3RC & Co., v. Boynes Trucking Sys.*, 63 V.I. 544, 558 (V.I. 2015) (citing *Yusuf*, 59 V.I. at 858 n.11).

⁵⁴ See *id.* at 560 (confirming that the Superior Court did not err in omitting a finding on the public interest factor when denying a motion for a preliminary injunction because the moving party failed to make any showing on the likelihood of success on the merits and irreparable harm).

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factors outlined by the Supreme Court of the Virgin Islands in *Yusuf v. Hamed*.⁵⁵ Using the Supreme Court’s requisite “sliding-scale” test, this Court considered evidence regarding all four factors and weighed each one against each other. As proscribed by the Supreme Court, this Court gave greater weight to the factors of likelihood of success on the merits and irreparable injury.⁵⁶ Balancing the four factors, this Court finds that Bassil demonstrated a reasonable probability of success on the merits of her trespass claim, that she will suffer irreparable harm if the injunction is not granted, that Klein will not suffer greater harm if the injunction is granted, and that an injunction is in the public’s interest. While the Court made findings of fact in determining the reasonable probability of success on the merits, this Court did not consolidate the preliminary injunction hearing with a trial on the merits as is allowed at the Court’s discretion per Rule 65 of the Virgin Islands Rules of Civil Procedure.⁵⁷ The merits of Bassil’s trespass claim and Klein’s adverse possession claim have not been adjudicated at this time.

1. Bassil demonstrated a reasonable probability of success on the merits of her trespass claim.

¶15 In order to demonstrate a reasonable probability of success on the merits, a moving party does not need to show that they will actually succeed on the merits of their claim at trial. A moving party only needs to show a reasonable chance, or a probability, of winning.⁵⁸ Here, Bassil has demonstrated a reasonable probability of succeeding on her trespass claim at trial. The Court is not persuaded that Klein’s defense of adverse possession overcomes Bassil’s trespass claim to the extent that she may not have a reasonable chance of succeeding at trial. These findings, however, are not binding on a jury, and these claims may be fully adjudicated at a trial on the merits.

i. Trespass

¶16 The Virgin Islands Code outlines civil actions for nuisance, waste, and trespass only in reference to injury to trees, timber, or shrubs.⁵⁹ Trespass of this nature allows for treble the amount of damages allowed, unless the trespass was “casual or involuntary.”⁶⁰ Although not expressly defined in the Virgin Islands code, courts in the Virgin Islands recognize civil trespass and have acknowledged that “all jurisdictions recognize a cause of action against one who

⁵⁵ See *Yusuf*, 59 V.I. at 847 (citing *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012) (quoting *Illes v. de Jongh*, 638 F.3d 169, 172 (3d Cir. 2011) (providing the four factors as whether the movant has shown: (1) a reasonable probability of success on the merits; (2) irreparable harm; (3) that the nonmoving party will not suffer even greater harm; and (4) granting the injunction is in the public interest).

⁵⁶ See *3RC & Co.*, 63 V.I. at 554 (determining that a moving party must primarily demonstrate that irreparable harm is likely without the injunction but that there must also be a plausible claim on the merits).

⁵⁷ See V.I. R. Civ. P. 65(a)(2).

⁵⁸ See *Yusuf*, 59 V.I. at 850 (citing *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011)).

⁵⁹ See 28 V.I.C. § 336 (allowing for a plaintiff to receive damages if someone cuts down, girdles, or otherwise injures or carries off any tree, timber, or shrub from the plaintiff’s land).

⁶⁰ See *id.*

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intentionally enters onto the property of another, intentionally places something on the property of another without permission, or intentionally removes something from the property of another without permission.”⁶¹ In *Anduze v. Leader*, the Superior Court of the Virgin Islands performed a *Banks* analysis to determine the soundest rule for trespass for the Virgin Islands:

A defendant will be liable to a plaintiff for trespass if the defendant: (1) intentionally enters onto the plaintiff’s property without the plaintiff’s permission; (2) remains on plaintiff’s property without plaintiff’s permission despite being obligated to leave; (3) places something on the plaintiff’s property without the plaintiff’s permission; or (4) removes something from the plaintiff’s property without the plaintiff’s permission.⁶²

¶17 In *Alleyne v. Diageo USVI, Inc.*, the Superior Court recognized intentional trespass and negligent trespass as separate torts.⁶³ The Court adopted the definition of intentional trespass from the Restatement (Second) of Torts:

One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally (a) enters land in possession of the other, or causes a thing or third person to do so or, (b) remains on the land, or (c) fails to remove from the land a thing which he is under a duty to remove.⁶⁴

¶18 In this case, Bassil has demonstrated a reasonable probability of success on her claim of trespass. Bassil alleges that Klein has intentionally trespassed on her property by entering her property without her permission and by cutting down and injuring trees, brush, and shrubbery. By cutting the brush to create a trail, Bassil asserts trespass that entitles her to treble damages pursuant to § 336 of title 28 of the Virgin Islands Code. Evidence presented by both parties supports Bassil’s claim of trespass. Bassil testified that she has never allowed Klein to enter her property or cut trails through her brush. Email correspondence between Bassil and Klein from 2008 show that she did not permit him to enter her property or place anything on her property at that time. She provided photographs and surveys from 2021 showing the paths Klein created without her permission. By his own admission, Klein has never sought permission from Bassil to enter her property or cut brush on her property to create a trail. Klein also testified to allowing and encouraging others to use the trails on Bassil’s property, including his personal friends and his AirBnB guests. Klein maintains that he has not trespassed on Bassil’s property because the

⁶¹ See *Anduze v. Leader*, 63 V.I. 347, 353 (V.I. Super. Ct. 2015).

⁶² See *id.* at 353-354 (adopting a rule for intentional trespass similar to the trespass rule from the Restatement of Torts but highlighting that the removal of an object from the property of another may also constitute a trespass).

⁶³ See *Alleyne v. Diageo USVI, Inc.*, 63 V.I. 384, 417 (V.I. Super. Ct. 2015) (determining that the best rule for the Virgin Islands is to recognize intentional trespass and negligent trespass as separate torts due to concerns about foreclosing access to justice).

⁶⁴ See *id.* at 410; see also RESTATEMENT (SECOND) OF TORTS § 158.

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property is his by adverse possession.⁶⁵ However, as in *Yusuf v. Hamed*, Klein’s claim merely creates a “competing inference” that can only be determined by a jury at a trial on the merits which has yet to be done. The Court does not find Klein’s adverse possession claim to be so strong that Bassil has no chance of succeeding on the merits of her trespass claim. Bassil has provided evidence that she could reasonably succeed on a trespass claim, and she therefore has satisfied this preliminary injunction factor.

2. Bassil demonstrated that she will suffer irreparable harm if an injunction is not granted.

¶19 The primary factor that a moving party needs to show in order to successfully maintain a preliminary injunction is irreparable harm. This factor must also be shown in conjunction with a reasonable probability of success on the merits.⁶⁶ Irreparable harm must be imminent, and a claim that can be easily calculated or remedied by money damages is not sufficient.⁶⁷ The damage or loss of a property right is not automatically presumed to constitute irreparable harm in the Virgin Islands, but similarly to operating a business, real property ownership includes “intangible benefits” for which a monetary damage award is not always adequate.

¶20 In this case, Bassil is asserting damage to her property and loss of use and enjoyment of her property resulting from Klein’s alleged trespass. This harm is not only imminent but is currently and continually happening. Evidence of photographs and land surveys demonstrate trails cut into Bassil’s property against her wishes, and video surveillance on Bassil’s property shows numerous people on her property using these trails without her permission. While trespass is a harm that can be remedied by a monetary award, calculating the exact harm in money damages would be difficult to ascertain. Klein testified that not only has he been using the trails on Bassil’s property, but he has allowed and encouraged others to do so as well. Of particular note is that he advertises the use of a “private path to the beach” to his AirBnB guests. Calculating a damages award from each of these trespassing guests would be quite difficult, as it is unclear how many guests may have used or continue to use this path. Klein also testified that he does not currently include Bassil in any liability waivers signed by his AirBnB guests, nor does he have insurance on the portion of Bassil’s land that his guests traverse to access the beach.⁶⁸ This exposes Bassil to liability from every potential personal guest and AirBnB guest of Klein if they were to be injured while using the path on her property. Additionally, due to the present dispute caused by Klein’s entrance onto her property and Klein’s claim of adverse possession, Bassil does not currently have clear title to her property to be able to list it or sell it on the MLS market. Correcting this

⁶⁵ See 28 V.I.C § 11 (defining adverse possession in the Virgin Islands as the “uninterrupted, exclusive, actual, physical adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more shall be conclusively presumed to give title thereto, except as against the government”).

⁶⁶ See *3RC & Co., v. Boynes Trucking Sys.*, 63 V.I. 544, 554 (V.I. 2015).

⁶⁷ See *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (V.I. 2018) (citing *Yusuf*, 59 V.I. at 854).

⁶⁸ Klein Test. July 27, 2021.

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harm will require a potentially lengthy litigation process, which will involve time and effort that may not be adequately resolved with a monetary award.

¶21 While the Court is not convinced by Bassil’s argument that real property has the same intrinsic value as operating a business, the Court acknowledges that real property ownership has similar intangible benefits to operating a business, and other Virgin Islands courts have recognized that the past deprivation of a right to real property can constitute an irreparable harm. Under general principles of law and equity, every piece of real property is unique, and property ownership provides intangible benefits that cannot easily be remedied with monetary damages.⁶⁹ Here, both Bassil and Klein have demonstrated that Bassil’s parcel is particularly unique. As evidenced by photographs and the testimony of real estate agents, Bassil’s property is one of the last undeveloped beach front properties near Secret Harbor beach. More importantly, the parcel is hers to choose how to maintain and use and to prohibit its unauthorized use, despite Klein’s characterization of Bassil as a non-resident, absentee property owner. Klein’s interference with Bassil’s property infringes on these intangible benefits of property ownership that belong to Bassil. Between the continuing damage to Bassil’s property, the potential liability Bassil is exposed to by Klein’s activities on her property, and the past deprivation of her rights to use and maintain her unique parcel as she sees fit, Bassil has successfully demonstrated a risk of irreparable harm for which a monetary award would be inadequate and that would warrant a preliminary injunction.

3. Bassil demonstrated that Klein will not suffer greater harm if an injunction is granted.

¶22 While Bassil has demonstrated a likelihood of succeeding on the merits of her trespass claim and that she will suffer irreparable harm without a preliminary injunction, the Court must also consider the potential for irreparable harm to Klein if an injunction is granted. In balancing the potential harm to each party, the Court aims to maintain the status quo, or “the last, peaceable, noncontested status of the parties.”⁷⁰

¶23 Here, it is clear that Klein will not suffer an irreparable harm if an injunction is granted. The harm that Klein asserts is the loss of private beach access. Even though Klein testified to needing to regularly swim in saltwater for lung therapy, the Court is not persuaded that he is entitled to private beach access through someone else’s property in order to access the beach for this purpose. An injunction would not deprive him of access to and from his property, and he can still access the beach like the rest of the public beachgoers. Additionally, the Court is not persuaded by Klein’s arguments that there should be a heightened standard or heavier burden for Bassil on this factor because she is looking to alter the status quo. The status quo is defined by the

⁶⁹ See *Hansen v. Gov’t of the Virgin Islands*, 53 V.I. 58, 91 (Terr. Ct. 1999) (acknowledging that an intangible benefit of property ownership includes “the right to choose when and how to use, maintain and cherish one’s property or to prohibit its unauthorized use”).

⁷⁰ See *Yusuf v. Hamed*, 59 V.I. 841, 856 (V.I. 2013).

Virgin Islands Supreme Court as “the last, peaceable, noncontested status of the parties” which in this case would be in 2015 when Klein attempted to purchase Bassil’s parcel, and she declined. At this time, Klein acknowledged that the parcel belongs to Bassil, and she did not give him permission to purchase, use, or access her property. These circumstances are the status quo, not Klein’s use of the trails on Bassil’s property to access the beach for his own private use. Since Klein will not suffer greater harm by an injunction, this factor weighs in favor of granting an injunction.

4. Bassil demonstrated that an injunction is in the public’s interest.

¶24 In considering the public’s interest, courts evaluating motions for a preliminary injunction should carefully regard consequences of an injunction on the public and should aim not to halt any activities that benefit the public.⁷¹ When a moving party successfully demonstrates irreparable harm and a reasonable probability of success on the merits, the public interest consideration typically weighs in the moving party’s favor.⁷² If a moving party fails to make a showing on these two factors, however, a court need not analyze the public interest factor.⁷³

¶25 Here, having demonstrated a reasonable probability of success on the merits of her trespass claim and irreparable harm without an injunction, this factor weighs in Bassil’s favor. Additionally, granting an injunction in this case will have little to no consequence on the public. No public activities will be halted by this injunction, and members of the public will not be impacted by an injunction that prevents one resident from accessing the beach through his neighbor’s private property. Although the legislature allows for Virgin Islands citizens to assert a claim to property through adverse possession, as Klein points out, the Court does not find that it is in the public’s interest to encourage neighbors to encroach on each other’s property for this purpose. This will lead to disputes and litigation that will take up the Court’s time and resources at the expense of the taxpaying public. The Court agrees with Bassil that the public’s interest is better served by discouraging trespass between neighbors. Due to the lack of consequences this injunction would have on the public, and the Court’s interest in discouraging trespass and disputes between neighbors, the public’s interest favors granting an injunction.

IV. CONCLUSION

¶26 Based on the foregoing analysis, the Court concludes that Bassil has successfully demonstrated each of the four *Petrus* factors entitling her to a preliminary injunction. A preliminary injunction is a drastic remedy that this Court does not consider lightly. As the moving party, Bassil had the burden of presenting evidence on each factor, and she had to primarily show that she would be irreparably harmed without an injunction and that she had a reasonable probability of succeeding on the merits of her claims. Using a sliding scale method, the Court

⁷¹ See *id.* at 558.

⁷² See *3RC & Co.*, 63 V.I. at 558.

⁷³ See *id.* at 560.

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weighed these factors along with the potential harm to Klein that would be caused by an injunction and the public's interest in granting the injunction.

¶27 The Court finds that the evidence presented by Bassil at an evidentiary hearing on July 27-28, 2021, shows that she has a reasonable probability of succeeding on her claim of trespass. Klein's defense of adverse possession was not clear or convincing enough to prevent Bassil's trespass claim from proceeding to a trial on the merits. As to irreparable harm, the harm is imminent because the damage to Bassil's property has already occurred from Klein's cutting of trails on her property, and he continues to use and encourage others to use the trails on her property. The unknown number of trespassers on her property makes a damages award difficult to ascertain and exposes her to vast potential liability. Additionally, Klein's encroachment on Bassil's property interferes with her rights to use and maintain her property as she sees fit. The evidence presented does not suggest that Klein would suffer even greater harm if an injunction were granted because issuing an injunction would maintain the status quo regarding Bassil's property ownership, and the only harm Klein would suffer would be losing private beach access to which he is not entitled. Finally, the public will not be impacted by this injunction, and the public's interest is served by discouraging trespass between neighbors. Having considered the parties evidence and arguments and applying them to the *Petrus* factors, this Court finds in favor of a preliminary injunction.

¶28 Accordingly, it is hereby

ORDERED that Plaintiff's Motion for a Preliminary Injunction, filed May 7, 2021, is **GRANTED**; and it is further

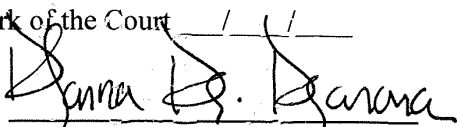
ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record.

DATED: August 16, 2021



HON. SIGRID M. TEJO
Judge of the Superior Court of the Virgin Islands

ATTEST:
TAMARA CHARLES
Clerk of the Court

By: 
Donna B. Donovan
Court Clerk Supervisor 8/18/2021

FILED

September 30, 2021 10:53 AM

SCT-Civ-2021-0044
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JOHN KLEIN,

S. Ct. Civ. No. SCT-Civ-2021-0044

Appellant/Defendant,

Re: Super. Ct. Civ. No. ST-2021-
CV-00148

v.

MADLINE A. BASSIL,

Appellee/Plaintiff.

DEFENDANT'S AMENDED NOTICE OF APPEAL

NOW COMES Defendant John Klein (“Defendant”), by counsel, and pursuant to Rule 4 of the Virgin Islands Rules of Appellate Procedure and files this Amended Notice of Appeal of the Superior Court’s Memorandum Opinion and Order dated August 16, 2021 (**Exhibit 1**). Appellant intends to raise the following issue on appeal:

1. Whether the Superior Court erred in granting the Plaintiff’s Motion for Preliminary Injunction.

Dated: September 30, 2021

Respectfully submitted,

JOHN M. KLEIN

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2021, the foregoing was served via U.S. mail, postage prepaid thereon to counsel of record and the Clerk of the Supreme Court of the Virgin Islands. I also electronically filed the foregoing with the Clerk of the Court, which will send notification of such filing to all counsel of record:

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