

APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME I

Counsel for Appellants

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VOLUME IV

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VOLUME V

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VOLUME VI

Trial Transcript Vol. VII 1795

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Deposition of James Jordan 1992

Trial Transcript Jury Instructions and Verdict Form 2079

SUPREME COURT OF THE VIRGIN ISLANDS

WARREN MOSLER, CHRIS HANLEY, and
CHRISMOS CANE BAY, LLC.,

Appellant,

vs.

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Appellee.

SCT-CIV-2022-_____

Civil No.: ST – 2005-CV-00368
ACTION FOR DAMAGES

NOTICE OF APPEAL

Pursuant to Supreme Court Rule 4(a), the Defendants below, Warren Mosler, Chris Hanley and Chrismos Cane Bay LLC, hereby give their Notice of Appeal of the Judgment entered below, appealing the following Superior Court orders entered by the Honorable Harold W.L. Willocks, to the Supreme Court of the Virgin Islands:

1. Entry of Judgment against said Defendants for \$100,000, and the accompanying Order and Memorandum Opinion dated September 12, 2022, denying Defendants' Rule 50 motion in part regarding the following issues addressed in the Superior Court's September 12th Memorandum Opinion, which Defendants/Appellants contend constitute reversible error:

- Finding that Defendants were liable for Intentional Misrepresentation pursuant to Count VIII.
- Finding that Damages were proven as to the Intentional Misrepresentation claim asserted in Count VIII.
- Finding that Count VIII was not merged into the contract claims pursuant to the gist of the action doctrine, requiring dismissal.
- Finding that Mosler and Hanley were personally liable for the acts of Chrismos Cane Bay LLC.

2. Order and accompanying Memorandum Opinion dated September 12, 2022, denying Defendants' Rule 59(a) Motion For A New Trial based on the misconduct of Plaintiffs' counsel in her closing arguments.
3. Order dated December 3, 2021, denying Defendants' pretrial motion in limine to exclude certain racial statements the Plaintiffs contend that the Defendants allegedly made to them.
4. The Defendants/Appellants reserve the right to assert additional errors if there is a cross-appeal filed in this case that may require certain alternate reasons for granting the Rule 50 motion on Counts IV, V, VI, VII, VIII, IX, X and XI to be addressed that were not reached by the Superior Court, as said Counts were dismissed for other reasons which mooted the need to address these issues below.

As required by Rule 4(c), Warren Mosler's address is 1215 King Cross St., Christiansted, USVI 00820, which is also the address for Chrisomos Cane Bay, LLC. The address for Chris Hanley is 5063 Gallows Bay, Christiansted, St. Croix, USVI 00820.

Dated: September 27, 2022

Respectfully submitted,

/s/ Joel H. Holt

Joel H. Holt (VI Bar No. 6)

Law Offices of Joel H. Holt

2132 Company St., Suite 2

Christiansted, VI 00820

Tel: (340) 773-8709

Email: holtvi@aol.com

Counsel for Defendants/Appellants

**CERTIFICATE OF PAGE LIMITATION COMPLIANCE AND
CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that this document complies with the page limitation set forth in Rule 6-1(e), and was served on September 27, 2022 via the Court's C-track system:

Lee J. Rohn, Esq.
Lee J. Rohn & Ass.
1101 King Street, Suite 2
Christiansted, VI 00820-4909
lee@rohnlaw.com

and by mail and hand delivery as required by Rule 4(f) of the V.I. Rules of Appellate Procedure:

Honorable Harold W.L. Willocks
Administrative Judge, Superior Court
R.H. Amphlett Leader Justice Complex
Superior Court of the Virgin Islands
Christiansted, St. Croix 00821

/s/ Joel H. Holt

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

WARREN MOSLER, CHRIS
HANLEY, and CHRISMOS CANE
BAY, LLC,

Appellants,

v.

JOSEPH GERACE, VICTORIA
VOOYS d/b/a CANE BAY BEACH
BAR,

Appellees.

SCT-CIV-2022-0049

RE: SX-2005-CV-00368

NOTICE OF CROSS-APPEAL

Appellees, JOSEPH GERACE and VICTORIA VOOYS, by and through undersigned counsel, pursuant to V.I.R. App. P. 5(a)(3), file their notice of cross-appeal identifying the following orders/rulings¹ of the Superior Court of the Virgin Islands and the issues to be raised on cross-appeal:

- Did the Superior Court err in its September 13, 2022, Memorandum Opinion & Judgment vacating the jury verdict as to breach of contract, breach of duty of good faith and fair dealing, defamation, and punitive damages?
- Did the Superior Court err in its September 13, 2022, Memorandum Opinion &

LEE J. ROHN AND
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¹ Appellees also appeal all other rulings adverse to them that led to the entry of judgment.

NOTICE OF CROSS APPEAL

Page 2

Judgment vacating the jury verdict as to breach of contract, breach of duty of good faith and fair dealing, defamation, and punitive damages based on issues never raised by Defendants?

- Did the Superior Court err in its bench rulings during trial limiting/barring various testimony of Plaintiffs' witnesses?
- Did the Superior Court err when it failed to promptly enter judgment as required by V.I.R. Civ. P. 58(b) resulting in a delay of six (6) months and the loss of thousands of dollars of post-judgment interest?
- Did the Superior Court err in failing to award Plaintiffs pre-judgment interest from the date of the jury verdict to entry of judgment where Plaintiffs requested prejudgment interest, the Defendants objected to prejudgment interest, but failed to deposit the funds into the registry of the Court?

NOTICE OF CROSS APPEAL

Page 3

RESPECTFULLY SUBMITTED,
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Appellees/Cross-Appellants

DATED: October 7, 2022

BY: /s/ Rhea R. Lawrence

Rhea Lawrence, Esq.
V.I. Bar No. 1192
1108 King Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 778-8855
rhea@rohnlaw.com

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on October 7, 2022, I electronically filed the foregoing with the Clerk of the court using the VIJEFS system, which will send a notification of such filing (NEF) to the following:

ADDITIONAL SERVICE BY EMAIL:

Joel Holt, Esq.
Law Offices of Joel Holt
Quinn House
2132 Company Street, Suite 2
Christiansted, VI 00820
Email Address: holtvi@aol.com
Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC.

ADDITIONAL SERVICE BY HAND DELIVERY:

Honorable Harold W.L. Willocks
Superior Court of the Virgin Islands
R.H. Amphlett Leader Justice Complex
St. Croix, VI 00820

BY: /s/ Rhea R. Lawrence

Superior Court of the Virgin Islands
Docket Sheet

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS

FILED

October 21, 2022 01:39 PM

SCT-Civ-2022-0049
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
539	10-21-2022 09:24 AM	Superior Court Transmittal - Superior Court Record	Official		Superior Court e-Record Forwarded to the Supreme Court	
538	10-11-2022 05:33 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Notice of Cross Appeal from VI Supreme Court the Supreme Court Received	
537	10-10-2022 11:19 AM	Financial - Payment Received	Official		Receipt #: 227648 Payor: JOSEPH GERACE, Amount: \$104,000.00	
536	10-07-2022 12:24 PM	Notice - Notice of Compliance with Court's Order	Official		Notice of Posting Bond Filed by Joel H. Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
535	10-04-2022 03:51 PM	Superior Court Transmittal - Other	Official		Order of the Superior Court Entered October 4, 2022 forwarded to the Supreme Court.	
534	10-04-2022 02:51 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
533	10-04-2022 02:49 PM	Order - Order	Official		Order Granting Defendants Motion to Stay Execution of the Judgment dated September 12, 2022.	Hon. Harold W.L. Willocks
532	09-30-2022 02:16 PM	Notice - Notice to the Court	Official		Notice to the Court re: Verdict Form Filed by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
531	09-28-2022 09:00 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Scheduling Order received from Supreme Court of the Virgin Islands. ORDERED that pursuant to V.I.R.APP.P. 11(b), the Clerk of the Superior Court SHALL FILE the E-RECORD on or before October 10, 2022.	Supreme Court of the Virgin Islands
527	09-28-2022 11:45 AM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Docketing Order received from the Supreme Court. Appeal Docket as SCT-CIV-2022-0049.	Supreme Court of the Virgin Islands
526	09-28-2022 11:44 AM	Notice - Notice Of Appeal Received	Official		Notice of Appeal Received From the Supreme Court of the VI	Supreme Court of the VI
530	09-28-2022 08:26 PM	Notice - Notice to the Court	Official		Notice of No Objection to Defendants' Rule 62(d) Motion to Post a Supersedeas Bond	Lee J. Rohn, Esq. On Behalf of JOSEPH GERACE
529	09-28-2022 12:18 PM	Notice - Proposed Order	Official		Proposed Order	Joel H. Holt On Behalf of WARREN MOSLER

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
528	09-28-2022 12:17 PM	Motion - Motion Received	Official		Defendant's Rule 62(d) Motion to Post a Supersedeas Bond and Stay Execution Pending Appeal Filed by Joel H. Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
525	09-13-2022 03:55 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
524	09-13-2022 03:53 PM	Order - Memorandum Opinion And Order	Official		Memorandum Opinion And Order Signed	Hon. Harold W.L. Willocks
523	09-13-2022 03:49 PM	Order - Judgment	Official		Judgment Signed	Hon. Harold W.L. Willocks
522	07-26-2022 02:49 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
519	07-26-2022 02:40 PM	Order - Order	Official		Order on Motions, Stipulations, and Requests Signed by Judge Harold W.L. Willocks.	
521	07-26-2022 02:46 PM	Order - Order	Official		Order Striking Motions, Responses, and Replies Signed by Judge Harold W.L. Willocks.	
520	07-26-2022 02:43 PM	Order - Order	Official		Order Signed by Judge Harold W.L. Willocks. Ordered that the Order dated and entered April 28, 2022, Scheduling a Show cause hearing and Striking several post-trial motion papers from the record is VACATED in its entirety.	
518	06-10-2022 11:47 AM	Response - Reply	Official		Defendants' Reply to Plaintiff's Renewed Motion to Enter Judgment Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
517	06-10-2022 11:43 AM	Notice - Proposed Order	Official		Proposed Order to enter judgment Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, Esq. On Behalf of JOSEPH GERACE
516	06-10-2022 11:42 AM	Motion - Motion Received	Official		Renewed motion to enter judgment and Order Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, Esq. On Behalf of JOSEPH GERACE
515	06-07-2022 05:01 PM	Notice - Stipulation Received	Official		Joint Stipulation Re Court Order Dated June 6, 2022	Lee J. Rohn, Esq. On Behalf of JOSEPH GERACE
514	06-06-2022 03:14 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
513	06-06-2022 03:13 PM	Order - Order To Comply (Days)	Official		21 Day Order To Comply Signed by Judge Harold W.L.	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Willocks	
512	05-05-2022 12:01 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	Janeen Maranda, CCII
511	04-29-2022 02:15 PM	Notice - Notice to the Court	Official		Notice to the Court regarding orders not received and response to show cause order Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
510	04-28-2022 12:18 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
509	04-28-2022 12:10 PM	Order - Order	Official		Order Scheduling Show cause	Hon. Harold W.L. Willocks
505	04-27-2022 05:13 PM	Response - Response	Official		Defendant's Supplemental Response to Plaintiff's Revised Opposition to Defendant's Post-Trial Motions	Joel H. Holt On Behalf of WARREN MOSLER
508	04-28-2022 09:34 AM	Motion - Motion Received	Official		Plaintiffs' Statement of Facts in Evidence filed by Plaintiffs. Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, Esq.
507	04-28-2022 09:31 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
506	04-28-2022 09:31 AM	Motion - Opposition Motion	Official		Opposition to Defendants' Rule 59(a) Motion filed by Plaintiffs. Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, Esq.
504	04-27-2022 03:21 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
503	04-27-2022 03:20 PM	Motion - Opposition Motion	Official		Opposition to Defendants' Rule 50(B) Motion	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
502	04-27-2022 03:09 PM	Response - Reply	Official		Defendants' Reply to Plaintiffs' Opposition to Defendants' Post-Trial Motion	Joel H. Holt On Behalf of WARREN MOSLER
501	04-27-2022 09:07 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
500	04-27-2022 09:03 AM	Order - Order	Official		Corrected Memorandum Opinion and Order	Hon. Harold W.L. Willocks
499	04-26-2022 09:46 AM	Notice - Proposed Order	Official		Proposed Order in opposition Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
498	04-26-2022 09:44 AM	Motion - Opposition Motion	Official		Opposition to defendants' rule 50(B) and rule 59(A) motion and Order Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
497	04-22-2022 04:09 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
496	04-22-2022 04:07 PM	Order - Memorandum Opinion And Order	Official		Memorandum Opinion And Order Signed	Hon. Harold W.L. Willocks
495	04-22-2022 09:19 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
493	04-20-2022 05:45 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
492	04-20-2022 05:45 PM	Motion - Motion Received	Official		Corrected Motion to Exceed Page Limit	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
491	04-20-2022 05:43 PM	Response - Response	Official		Defendants' Response to Plaintiffs' Request to Exceed Page Limitation	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
494	04-22-2022 09:18 AM	Order - Order	Official		Order Granting Motion for Extension of time	Hon. Harold W.L. Willocks
490	04-19-2022 04:20 PM	Notice - Proposed Order	Official		Proposed Order to exceed page limit Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
489	04-19-2022 04:19 PM	Motion - Motion Received	Official		Motion to exceed page limit and Order Received Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
488	04-12-2022 05:05 PM	Response - Response to Opposition	Official		Defendant's Opposition to Plaintiffs' Request for Extension of Time	Joel H. Holt On Behalf of WARREN MOSLER
487	04-11-2022 05:16 PM	Notice - Proposed Order	Official		Proposed Order for extension of time Submitted by Lee Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
486	04-11-2022 05:16 PM	Motion - Motion for Extension of Time	Official		First Motion for two-week Extension of Time and Order Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
485	03-24-2022 05:02 PM	Response - Opposition Received	Official		Defendants' Opposition to plaintiffs' request for pre-judgment interest Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC Joel H. Holt On Behalf of WARREN MOSLER

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
484	03-24-2022 11:42 AM	Notice - Proposed Order	Official		Proposed Order of judgment Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
483	03-24-2022 11:41 AM	Motion - Motion Received	Official		Motion to enter judgment and order Received Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
482	03-23-2022 04:27 PM	Motion - Motion Received	Official		Defendant's post-trial rule 50(b) and rule 59 (a) motion and exhibit Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC Joel H. Holt On Behalf of WARREN MOSLER
480	03-04-2022 11:34 AM	Transcript - Electronic Transcript Of Proceedings	Official		Transcript request for Hearing of 2/22/02-3/3/2022 filed by Joel H. Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
479	03-03-2022 04:22 PM	Disposition - Verdict Reached	Official		Verdict Reached	
478	03-03-2022 12:37 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
481	03-09-2022 10:35 AM	Notice - Proposed Jury Instructions Received	Official		Final Jury Instructions Received	
477	03-02-2022 04:32 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
476	03-01-2022 04:16 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
475	03-01-2022 11:41 AM	Response - Response	Official		Response to Defendant's Brief and Supplemental to Brief	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
474	03-01-2022 11:38 AM	Notice - Notice of Filing	Official		Notice of Filing Amended Verdict Form	Joel H. Holt On Behalf of WARREN MOSLER
473	03-01-2022 08:21 AM	Notice - Notice of Filing	Official		Notice of Filing Proposed Verdict Form	Joel H. Holt On Behalf of WARREN MOSLER
472	02-28-2022 03:00 PM	Hearing - Defendant's Exhibit List Received	Official		Defendant's Exhibit List	Joel H. Holt On Behalf of WARREN MOSLER
470	02-28-2022 02:48 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding completed by Janeen Maranda	
471	02-28-2022 02:54 PM	Notice - Notice of Filing	Official		Notice of Filing Supplement to Defendants' Trial Brief	Joel H. Holt On Behalf of WARREN MOSLER

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
467	02-28-2022 10:10 AM	Motion - Motion Received	Official		Plaintiffs' Brief on Certain Issues Raised by Defendants' Rule 50(a) Motion filed by Plaintiffs. Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, Esq.
469	02-28-2022 11:20 AM	Notice - Notice of Filing	Official		Defendants Trial Brief Re Their Rule 12(b)(6) Motions	Joel H. Holt On Behalf of WARREN MOSLER
468	02-28-2022 11:16 AM	Motion - Motion Received	Official		Plaintiffs' Objection to Defendants' Jury Instruction	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
466	02-27-2022 06:50 PM	Hearing - Defendant's Exhibit List Received	Official		Defendant's Exhibit List	
465	02-27-2022 06:49 PM	Notice - Plaintiff/Petitioner's Exhibit List	Official		Plaintiff Exhibit List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
461	02-25-2022 05:05 PM	Notice - Notice of Filing	Official		Notice of Filing redacted trial transcript of James Jordan Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
462	02-26-2022 09:08 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
464	02-27-2022 06:36 PM	Hearing - Defendant's Exhibit List Received	Official		Defendant's Exhibit List	Joel H. Holt On Behalf of WARREN MOSLER
463	02-27-2022 06:35 PM	Notice - Plaintiff/Petitioner's Exhibit List	Official		Plaintiff Exhibit List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
458	02-24-2022 03:36 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding by Janeen Maranda	
456	02-24-2022 11:02 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
455	02-24-2022 11:01 AM	Motion - Motion Received	Official		Motion to Allow Alexandria Myers to Testify as a Rebuttal Witness via Zoom at Trial	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
460	02-24-2022 03:43 PM	Hearing - Defendant's Exhibit	Official		Defendant's Exhibit	Joel H. Holt On Behalf of WARREN MOSLER
459	02-24-2022 03:42 PM	Notice - Plaintiff/Petitioner's Exhibit List	Official		Plaintiff Exhibit List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
457	02-24-2022 03:35 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding By Janeen Maranda	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
454	02-22-2022 07:50 PM	Notice - Notice of Filing	Official		Notice of Filing Plaintiffs' Fifth Amended Exhibit List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
453	02-22-2022 05:47 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
452	02-22-2022 05:46 PM	Response - Reply Motion	Official		Reply to Defendants' Response to Plaintiffs' Motion to Allow Darlene Flobeck and John Reid to Testify by Zoom and for Sanctions	
451	02-22-2022 03:46 PM	Notice - Notice to the Court	Official		Case Information Cover Sheet (Jury Selection)	
450	02-22-2022 03:24 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding completed by Janeen Maranda Jury Selection	
449	02-22-2022 08:18 AM	Motion - Motion Received	Official		Plaintiffs' Amended Witness List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
448	02-22-2022 08:17 AM	Notice - Notice to the Court	Official		Notice of Withdrawal of Plaintiffs' Exhibit 13	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
447	02-22-2022 08:15 AM	Notice - Notice of Filing	Official		Notice of Filing Plaintiffs' Fourth Amended Exhibit List with - Fourth Amended Exhibit List "A"	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
446	02-22-2022 08:14 AM	Motion - Motion Received	Official		Plaintiffs' Proposed Jury Verdict Form	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
445	02-22-2022 08:13 AM	Notice - Notice of Filing	Official		Notice of Filing Proposed Jury Verdict Form	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
443	02-21-2022 03:38 PM	Notice - Notice to the Court	Official		Notice of Withdrawal of Subpoena Duces Tecum	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
444	02-21-2022 03:39 PM	Notice - Notice of Filing	Official		Defendants' Proposed Supplemental Voir Dire	Joel H. Holt On Behalf of WARREN MOSLER
442	02-21-2022 03:36 PM	Notice - Notice of Filing	Official		Defendants' Notice of Withdrawal of Previous Objection to Certain Exhibits	Joel H. Holt On Behalf of WARREN MOSLER
441	02-21-2022 03:36 PM	Notice - Notice of Filing	Official		Defendants' Notice of Withdrawal of Motion to Quash Subpoena to Hunt Logan	Joel H. Holt On Behalf of WARREN MOSLER

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
440	02-21-2022 03:36 PM	Notice - Proposed Order	Official		Proposed Order	Joel H. Holt On Behalf of WARREN MOSLER
439	02-21-2022 03:34 PM	Motion - Motion Received	Official		Defendants' Motion to Allow Chris Howell to Testify via Zoom at Trial	Joel H. Holt On Behalf of WARREN MOSLER
438	02-21-2022 10:53 AM	Motion - Motion Received	Official		Defendants' motion to allow Linda Ayer Holt to testify VIA Zoom at trial and Order Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
437	02-18-2022 05:07 PM	Notice - Notice Of Service	Official		Notice Of Proof of Service of Trial Subpoena	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
436	02-18-2022 04:04 PM	Motion - Motion Received	Official		Defendant's Motion to quash subpoena to hunt Logan Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
433	02-18-2022 01:50 PM	Notice - Notice of Filing	Official		Notice of Filing Plaintiffs' Third Amended Exhibit List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
435	02-18-2022 03:29 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
434	02-18-2022 03:28 PM	Motion - Motion Received	Official		Amended Motion to Allow Roger Morgan to Testify via Zoom at Trial	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
432	02-18-2022 01:47 PM	Response - Response	Official		Defendants' Response to Plaintiff's Motion to Allow Darlene Flobeck to Testify via zoom at Trial	Joel H. Holt On Behalf of WARREN MOSLER
431	02-18-2022 01:45 PM	Response - Response	Official		Defendant's Response to Plaintiff's Motion to Allow John Reid to Testify via zoom at Trial	Joel H. Holt On Behalf of WARREN MOSLER
430	02-18-2022 09:35 AM	Notice - Notice of Filing	Official		Notice of Filing Original Deposition Transcripts	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
429	02-17-2022 03:27 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
428	02-17-2022 02:05 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
427	02-17-2022 02:01 PM	Motion - Motion Received	Official		Motion to Allow John Reid to Testify via Zoom at Trial	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
426	02-17-2022 10:38 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
425	02-17-2022 10:38 AM	Motion - Motion Received	Official		Motion to Allow Darlene Flobeck to Testify via zoom at Trial	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
424	02-17-2022 10:37 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
423	02-17-2022 10:36 AM	Motion - Motion Received	Official		Motion for Leave to Bring Limited Electronic Devices into the Superior Court Courtroom for the Trial in this matter	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
421	02-17-2022 09:38 AM	Response - Reply Motion	Official		Plaintiffs' Reply to Defendants' Objection to Amend the Complaint	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
420	02-17-2022 09:37 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
419	02-17-2022 09:37 AM	Motion - Opposition Motion	Official		Opposition to Motion to Exclude Witnesses Identified by Plaintiffs	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
418	02-17-2022 09:27 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
417	02-17-2022 09:26 AM	Motion - Opposition Motion	Official		Opposition to Motion in Limine to Limit Trial Testimony of Witnesses	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
416	02-17-2022 09:25 AM	Response - Response	Official		Response to Defendants' Objections to Plaintiffs' Exhibits	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
415	02-17-2022 09:23 AM	Response - Reply Motion	Official		Reply to Defendants' Opposition to the Filing of an Amended Joint Final Pretrial Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
414	02-17-2022 09:23 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
413	02-17-2022 09:22 AM	Motion - Opposition Motion	Official		Plaintiffs' Opposition to Defendants' Motion to Add Exhibit	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
412	02-17-2022 09:17 AM	Notice - Notice of Filing	Official		Defendants' Notice of Filing Proposed Jury Instructions	Joel H. Holt On Behalf of WARREN MOSLER
409	02-16-2022 04:56 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, Esq.
408	02-16-2022 04:55 PM	Motion - Motion Received	Official		Plaintiff Victoria Vooy's'	Lee J. Rohn, Esq.

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
422	02-17-2022 10:33 AM	Notice - Proposed Order	Official		Resposne to Defendants' Motion In Limine: Plaintiff's Physical Injuries Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
407	02-16-2022 04:49 PM	Motion - Motion Received	Official		Plaintiffs' Response in Opposition to Defendant's Motion In Limine: Hearsay	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
411	02-16-2022 05:30 PM	Response - Reply Motion	Official		Plaintiffs' Reply to Defendants' Response to Motion to Exclude all References to the Now Dismissed Co-Defendants	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
410	02-16-2022 05:29 PM	Response - Reply Motion	Official		Plaintiffs' Reply to Defendants' Response to Motion Re "Violent Acts"	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
406	02-16-2022 01:28 PM	Motion - Motion Received	Official		Defendants' Motion to Exclude Witnesses Identified by Plaintiffs	Joel H. Holt On Behalf of WARREN MOSLER
405	02-16-2022 01:28 PM	Motion - Motion Received	Official		Defendants' Motion to Add Exhibit	Joel H. Holt On Behalf of WARREN MOSLER
404	02-16-2022 01:27 PM	Motion - Motion Received	Official		Motion in Limine Re Trial Testimony of Certain of the Plaintiffs' Named Witnesses	Joel H. Holt On Behalf of WARREN MOSLER
403	02-16-2022 09:31 AM	Motion - Motion Received	Official		Plaintiffs' Objections to Defendants' Exhibits	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
402	02-16-2022 09:08 AM	Notice - Notice of Filing	Official		Notice of Remote Videotaped Trial Deposition of James Jordan	Joel H. Holt On Behalf of WARREN MOSLER
401	02-15-2022 04:15 PM	Response - Objection Received	Official		Defendants' Objections to Plaintiffs' Proposed Exhibits	Joel H. Holt On Behalf of WARREN MOSLER
398	02-15-2022 10:35 AM	Notice - Notice Of Service	Official		Notice Of Proof of Service of Trial Subpoenas	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
400	02-15-2022 12:03 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
399	02-15-2022 12:03 PM	Motion - Motion Received	Official		Motion to Allow Roger Morgan to Testify via Zoom	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
396	02-14-2022 05:04 PM	Motion - Motion Received	Official		Plaintiffs' Proposed Jury Instructions	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
392	02-14-2022 04:14 PM	Response - Response	Official		Response to Defendants' Objections to Plaintiffs' Proposed Voir Dire	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
395	02-14-2022 04:29 PM	Service - Subpoena Received	Official		Subpoena Duces Tecum to Custodian of Records of St. Croix Avis Received	
394	02-14-2022 04:28 PM	Notice - Notice to the Court	Official		Notice of Subpoena Duces Tecum	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
393	02-14-2022 04:27 PM	Notice - Notice to the Court	Official		Notice of Intent to Serve Subpoena	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
391	02-11-2022 12:34 PM	Response - Response	Official		Defendants' Response to Motion Re Violent Acts Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
390	02-11-2022 12:33 PM	Response - Objection Received	Official		Defendants' Objection to Motion to Amend Complaint Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
389	02-11-2022 12:33 PM	Service - Return of Service of Subpoena	Official		Return of Service of Subpoena - S. Rosbach	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
388	02-11-2022 12:32 PM	Response - Opposition Received	Official		Defendants' Opposition to the Plaintiffs' filing of an Amended JFPTO Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
387	02-11-2022 12:31 PM	Service - Return of Service of Subpoena	Official		Return of Service of Subpoena - G. Groner	Joel H. Holt On Behalf of WARREN MOSLER
386	02-11-2022 12:29 PM	Response - Objection Received	Official		Defendants' Objection to Plaintiffs' Proposed Voir Dire Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
385	02-11-2022 12:28 PM	Service - Return of Service of Subpoena	Official		Return of Service of Subpoena - H. Rusbach Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
384	02-11-2022 12:27 PM	Response - Response	Official		Defendants' Response to Motion to Exclude Reference to Bentley Defendants submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
383	02-11-2022 10:54 AM	Notice - Notice of Filing	Official		Notice of Filing Plaintiffs' Second Amended Exhibit List A Exhibit: Second Amended Exhibit List A	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
382	02-11-2022 09:39 AM	Notice - Notice to the Court	Official		Notice of Intent to Serve Subpoena	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
381	02-10-2022 05:12 PM	Notice - Notice of Filing	Official		Notice of Filing amended join final pretrial order and Exhibit Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
380	02-10-2022 12:45 PM	Notice - Proposed Order	Official		Proposed Order for Motion to Amend the Complaint to Conform to the Evidence	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
379	02-10-2022 12:43 PM	Motion - Motion To Amend Received	Official		Motion to Amend the Complaint to Conform to the Evidence with Exhibits	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
378	02-10-2022 11:18 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CII
377	02-10-2022 11:02 AM	Notice - Proposed Order	Official		Proposed Order for defendants' motion in limine re Plaintiff's Physical Injuries Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
376	02-10-2022 11:00 AM	Notice - Proposed Order	Official		Proposed Order for the motion in limine re Hearsay Testimony Submitted by	
369	02-09-2022 05:00 PM	Order - Order	Official		Order Granting Joint Stipulation of Dismissal with Prejudice as to Claims and Counterclaims by and against Plaintiffs, Defendant Maria Bentley, and Defendant CB3, Inc.	Hon. Harold W.L. Willocks
375	02-10-2022 10:58 AM	Motion - Motion Received	Official		Defendant's Motion in limine: Plaintiff's physical injuries Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
374	02-10-2022 09:57 AM	Motion - Motion Received	Official		Defendants' Motion in limine: Hearsay Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
372	02-10-2022 09:40 AM	Notice - Proposed Order	Official		Proposed Order as to the evidence Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
371	02-10-2022 09:38 AM	Motion - Motion Received	Official		Motion in limine as to evidence that the Bentleys were originally sued in this matter or that case has settled as to Maria Bentley or CB3 and Order Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
373	02-10-2022 09:50 AM	Notice - Notice of Filing	Official		Notice of Filing Defendant's	Joel H. Holt On

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Amended Exhibit List	Behalf of CHRISMOS CANE BAY, LLC
367	02-09-2022 03:47 PM	Motion - Motion Received	Official		Plaintiffs' objection to defendants' proposed voir dire Received	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
370	02-10-2022 09:31 AM	Notice - Proposed Voir Dire Received	Official		Plaintiffs' Proposed Voir Dire Received	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
366	02-09-2022 03:46 PM	Notice - Notice to the Court	Official		Plaintiffs' Witness List	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
368	02-09-2022 03:54 PM	Notice - Notice of Filing	Official		Notice of Filing Plaintiffs' Amended Exhibit List "A"	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
365	02-09-2022 12:36 AM	Notice - Notice of Filing	Official		Defendants' Proposed Voir Dire filed by Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC. Submitted by Joel H. Holt, Esq.	Joel H. Holt, Esq.
364	02-09-2022 12:35 AM	Notice - Notice of Filing	Official		Defendants' Witness List filed by Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC. Submitted by Joel H. Holt, Esq.	Joel H. Holt, Esq.
363	02-08-2022 02:36 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
362	02-08-2022 02:34 PM	Motion - Motion Received	Official		Motion in Limine to Prevent Defendants from Eliciting Testimony or Presenting Evidence as to Violence by the Plaintiffs	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
361	02-08-2022 11:49 AM	Notice - Notice of Filing	Official		Notice of Intent to Serve Subpoena Submitted by Joel Holt, Esq.	Joel Holt, Esq.
360	02-08-2022 10:48 AM	Notice - Notice of Filing	Official		Notice of Filing notice of intent to serve subpoena Submitted by Joel Holt, Esq.	Joel Holt, Esq.
359	02-04-2022 08:35 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CII
358	02-04-2022 08:31 AM	Order - Order	Official		Order that Attorney H.A. Curt Otto is no longer Counsel is Denied as Moot	Hon. Harold W.L. Willocks

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
357	02-02-2022 04:56 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE MARIA BENTLEY
356	02-02-2022 04:54 PM	Motion - Motion Received	Official		Joint Stipulation of Dismissal With Prejudice as to Plaintiffs and Maria Bentley, and CB3	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE MARIA BENTLEY
355	02-01-2022 11:45 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
354	01-28-2022 07:57 AM	Motion - Motion Received	Official		Request for Date Certain for Scheduled Jury Trial	MARIA BENTLEY
353	01-27-2022 04:17 PM	Notice - Proposed Order	Official		Proposed Order to withdraw	H.A. CURT OTTO On Behalf of DAVID BENTLEY
352	01-27-2022 04:16 PM	Notice - Exhibit	Official		Exhibit Submitted by H.A. Curt Otto, Esq.	H.A. CURT OTTO On Behalf of DAVID BENTLEY
351	01-27-2022 04:14 PM	Motion - Motion Received	Official		Notice to the court of filing "Notice of death" in 2009 and Motion to withdraw as Counsel, Exhibit and Order Submitted by H.A. Curt Otto, Esq.	H.A. CURT OTTO On Behalf of DAVID BENTLEY
397	02-15-2022 07:39 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
350	01-26-2022 11:07 AM	Response - Response	Official		Response to declaration of counsel and Exhibits Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
349	01-25-2022 12:58 PM	Notice - Notice to the Court	Official		Notice of exhibits for deposition of James Jordan Submitted Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
348	01-18-2022 05:38 PM	Notice - Notice of Filing	Official		Notice of Filing declaration of counsel for the Chrismos defendants and Exhibit Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
347	01-14-2022 04:42 PM	Notice - Proposed Order	Official		Proposed Order for Opposition	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
346	01-14-2022 04:40 PM	Response - Opposition Received	Official		Opposition To "Objection" to Notice Of Deposition Duces Tecum and Request James Jordan To Order to Comply With the Subpoena Duces Tecum	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
345	01-13-2022 05:12 PM	Response - Objection Received	Official		Objection to notice of deposition duces tecum Received Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of WARREN MOSLER
344	01-12-2022 04:55 PM	Notice - Notice to the Court	Official		Notice of deposition duces tecum for James Jordan Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
343	01-12-2022 04:54 PM	Notice - Notice to the Court	Official		Notice of deposition of James Jordan Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
342	12-21-2021 09:26 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCI
341	12-21-2021 09:24 AM	Order - Order	Official		Order	Hon. Harold W.L. Willocks
340	12-16-2021 10:52 AM	Notice - Proposed Order	Official		Proposed Order Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
339	12-16-2021 10:50 AM	Response - Reply Motion	Official		Reply to plaintiff's response to defendant's motion to take trial testimony by video recording and order Submitted by Joel Holt, Esq.	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
338	12-10-2021 04:45 PM	Response - Response	Official		Response to defendant's motion to take trial testimony by video conferencing Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
337	12-08-2021 11:57 AM	Notice - Proposed Order	Official		Proposed Order for Motion To Take Trial Testimony By Video Recording	Joel H. Holt, Esq.
336	12-08-2021 11:56 AM	Motion - Motion Received	Official	Granted	Motion to Take Trial Testimony By Video Recording	Joel H. Holt, Esq.
335	12-05-2021 09:55 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCI
334	12-05-2021 09:50 AM	Order - Order	Official		Order on Motion for Limine Denied	Hon. Harold W.L. Willocks
332	12-01-2021 03:51 PM	Answer - Amended Answer Received	Official		First Amended Answer	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC Joel H. Holt On Behalf of WARREN MOSLER
333	12-01-2021 03:56 PM	Answer - Amended Answer Received	Official		First Amended Answer	Joel Holt, Esq.

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
331	11-30-2021 03:35 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCI
330	11-30-2021 03:34 PM	Order - Order	Official		Order	Hon. Harold W.L. Willocks
329	11-30-2021 03:27 PM	Order - Order	Official		Order on Motion to conduct Additional Depositions	Hon. Harold W.L. Willocks
328	10-28-2021 02:30 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding by Janeen Maranda	
327	10-04-2021 07:38 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
326	10-04-2021 07:30 PM	Order - Order	Official		Order Scheduling Status Conference	
325	09-07-2021 03:53 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
324	09-07-2021 03:46 PM	Order - Order	Official		Order Granting Motion for Extension of time.	Hon. Harold W.L. Willocks
323	09-01-2021 10:46 AM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE Lee J. Rohn, Esq.
322	09-01-2021 10:41 AM	Opposition Motion - Opposition Motion	Official		Opposition to Defendant Motion to Exclude New Allegations	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE Lee J. Rohn, Esq.
321	08-26-2021 11:31 AM	Notice - Notice to the Court	Official		Plaintiff's Notice of No Objection to Chrisomos Defendants' Motion to Amend their Answers	Lee J. Rohn, Esq.
320	08-25-2021 08:38 AM	Notice - Proposed Order	Official		Proposed Order for extension of time Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
319	08-25-2021 08:37 AM	Motion - Motion for Extension of Time	Official		Unopposed Motion for Extension of Time Submitted by Lee J. Rohn, Esq.	Lee J. Rohn, Esq.
315	08-16-2021 11:44 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	janeen Maranda, CCI
318	08-16-2021 12:02 PM	Response - Response to Opposition	Official		Defendants' Reply to Plaintiffs' Opposition to Their Motion in Limine re Racial Comments	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
316	08-16-2021 11:45 AM	Motion - Motion Received	Official		Motion to Exclude New Factual Allegations or to Reopen Discovery	Joel H. Holt On Behalf of WARREN MOSLER
313	08-16-2021 11:39 AM	Response - Reply	Official		Reply to Plaintiffs' Motion to File a Sur-Reply re Taking a Second Deposition of Each	Joel H. Holt On Behalf of WARREN MOSLER

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Plaintiff	
312	08-13-2021 02:48 PM	Notice - Proposed Order	Official		Proposed Order	Lee J. Rohn, Esq.
311	08-13-2021 02:46 PM	Motion - Motion Received	Official		Motion to File Sur-Reply	Lee J. Rohn, Esq.
310	08-12-2021 04:20 PM	Notice - Proposed Order	Official		Proposed Order-Opposition to Motion Regarding Alleged Racial Comments	
309	08-12-2021 04:20 PM	Response - Opposition Received	Official		Opposition to Motion Regarding Alleged Racial Comments	
317	08-16-2021 11:47 AM	Order - Order	Official		Joint Final Pretrial Order Signed by Presiding Judge Harold W.L. Willocks.	
314	08-16-2021 11:42 AM	Order - Order	Official		Order granting Motion to be removed as counsel in case (H.A. Curt Otto)	
308	08-10-2021 08:11 AM	Motion - Motion Received	Official		Joint Final Pretrial Order	HENRY L FEUERZEIG On Behalf of MARIA BENTLEY Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE Joel H. Holt On Behalf of WARREN MOSLER
304	08-09-2021 03:17 PM	Notice - Proposed Order	Official		Proposed Order - Motion to be Removed from Case	
303	08-09-2021 03:16 PM	Motion - Motion Received	Official		Motion to be Removed from Case	
305	08-09-2021 04:10 PM	Notice - Notice to the Court	Official		Notice to the Court	Joel Holt, Esq.
307	08-09-2021 04:16 PM	Notice - Proposed Order	Official		Proposed Order - Chrismos Defendants' Motion to Amend Their Answers	
306	08-09-2021 04:15 PM	Motion - Motion To Amend Received	Official		Chrismos Defendants' Motion to Amend Their Answers	Joel Holt, Esq.
302	08-03-2021 04:20 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	Janeen Maranda, CCII
301	08-03-2021 04:15 PM	Order - Order	Official		Order Granting Motion to Attend Status Conference via zoom.	Hon. Harold W.L. Willocks
300	07-28-2021 08:29 AM	Motion - Motion Received	Official		Motion to Attend Status Conference by Zoom w/ Proposed Order for Motion to Attend Status Conference by Zoom	MARIA BENTLEY
299	07-26-2021 02:01 PM	Motion - Motion Received	Official		Motion in Limine Re Racial	Joel H. Holt On

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Comments	Behalf of
						CHRISMOS CANE BAY, LLC
298	07-26-2021 01:56 PM	Response - Response to Opposition	Official		Reply to Plaintiffs' Opposition to Defendants' Motion to Conduct Additional Depositions	Joel H. Holt On Behalf of CHRISMOS CANE BAY, LLC
297	07-22-2021 04:36 PM	Notice - Proposed Order	Official		Proposed Order re:Opposition to Defendants' Motion to Conduct Additional	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
296	07-22-2021 04:35 PM	Response - Opposition Received	Official		Opposition to Defendants' Motion to Conduct Additional Discovery	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
295	07-22-2021 08:59 AM	Notice - Notice Of Service	Official		Notice Of Service of Plaintiffs' Portion Of The Joint Final Pretrial Order	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
294	07-12-2021 03:20 PM	Motion - Motion Received	Official		Motion to Conduct Additional Depositions	Joel Holt, Esq.
293	06-24-2021 02:24 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
292	02-25-2021 12:27 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
291	12-01-2020 01:55 PM	Notice - Mediation Report	Official		Mediation Report	David E. Nichols, Esq.
290	12-01-2020 10:42 AM	Notice - Notice to the Court	Official		Notice to the Court received	Lee J. Rohn, ESQ. On Behalf of JOSEPH GERACE
289	09-10-2020 12:45 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Completed by Janeen Maranda	
288	08-08-2019 12:04 AM	Service - Certified/Registered Mail Return Receipt Received	Official		Certified/Registered Mail Return Receipt Received	
287	07-31-2019 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/30/2019, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARK W. ECKARD, ESQ.	
286	07-30-2019 12:04 AM	Order - Order Signed	Official		ORDER GRANTING MOTION TO DISCHARGE THE SHOW CAUSE HEARING, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
285	07-23-2019 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/19/2019, JOEL	

Superior Court of the Virgin Islands

Docket Sheet

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
284	07-23-2019 12:04 AM	Hearing - Matter Rescheduled For Hearing	Official		HOLT, ESQ., LEE J. ROHN, ESQ., NARIA BENTLEY, PRO-SE MATTER RESCHEDULED FOR HEARING 09/10/2020 09:00 A.M.	
283	07-22-2019 12:04 AM	Order - Proposed Order	Official		PROPOSED SCHEDULING ORDER & SCHEDULING ORDER SUBMITTED BY LEE J., ROHN, ESQ. AND JOEL HOLT, ESQ.	
282	07-19-2019 12:04 AM	Order - Order Signed	Official		SCHEDULING ORDER, SIGNED BY JUDGE HAROLD W.L. WILLOCKS	
281	07-11-2019 12:04 AM	Order - Proposed Order	Official		PROPOSED SCHEDULING ORDER AND ORDER RECEIVED, SUBMITTED BY LEE J. ROHN, ESQ. & JOEL HOLT, ESQ.	
280	07-10-2019 12:04 AM	Motion - Motion Received	Official		MOTION TO DISCHARGE THE SHOW CAUSE HEARING FILED BY ATTY JOEL HOLT, WITH PROPOSED ORDER	
279	06-18-2019 12:04 AM	Notice - Notice To The Court Received	Official		NOTICE OF WITHDRAWAL AS CO-COUNSEL FOR DEFENDANT RECEIVED, SUBMITTED BY MARK ECKARD, ESQ. & JOEL HOLT, ESQ.	
278	06-13-2019 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 06/11/2019, LEE J. ROHN, ESQ., MARK W. ECKARD, ESQ., JOEL HOLT, ESQ., MARIS BENTLEY, via certified mail/e-mail	
277	06-11-2019 12:04 AM	Order - Order Signed	Official		ORDER TO SHOW CAUSE, SIGNED BY JUDGE HAROLD W.L. WILLOCKS	
276	06-06-2019 12:04 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 08/29/2019 09:00 A.M.	
275	06-06-2019 12:04 AM	Hearing - Record Of Proceeding	Official		RECORD OF PROCEEDING COMPLETED	
274	06-06-2019 12:04 AM	Hearing - Hearing	Official		HEARING CONCLUDED	
273	02-19-2019 12:04 AM	Hearing - Review Hearing Scheduled	Official		REVIEW HEARING SCHEDULED 06/06/2019 09:00 A.M.	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
272	02-19-2019 12:04 AM	Order - Order Scheduling Hearing	Official		ORDER SCHEDULING REVIEW SIGNED 06/06/2019 09:00 A.M.	
271	02-19-2019 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/15/2019, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARK W. ECKARD, ESQ., MICHAEL MOURIDY, ESQ., MARIA BENTLEY, pro se	
270	02-15-2019 12:04 AM	Order - Order Signed	Official		ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION TO CONTINUE REVIEW, HEARING, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
269	02-13-2019 12:04 AM	Motion - Motion To Continue	Official		EMERGENCY MOTION TO CONTINUE REVIEW HEARING SCHEDULED FOR FEBRUARY 1, 4, 2019 FILED BY ATTY LEE ROHN	
268	10-18-2018 12:04 AM	Hearing - Review Hearing Scheduled	Official		REVIEW HEARING SCHEDULED 02/14/2019 09:00 A.M.	
267	10-18-2018 12:04 AM	Order - Order Scheduling Hearing	Official		ORDER SCHEDULING REVIEW SIGNED 02/14/2019 09:00 A.M.	
266	10-18-2018 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 10/16/2018, LEE J. ROHN, ESQ., JOEL HOLT, ESQ.	
265	10-16-2018 12:04 AM	Order - Order Signed	Official		ORDER SCHEDULING REVIEW HEARING, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
264	08-23-2018 12:04 AM	Notice - Notice Of Filing Received	Official		NOTICE FROM THE US COURT OF APPEALS FOR THE THIRD CIRCUIT - WRIT OF CERTIORARI IS DECIDED. THE COURT LACK JURISDICTION TO HER THIS APPEAL AND DISMISSED THE PETITION FOR CERTIORARI REVIEW.	
263	09-13-2016 12:04 AM	Notice - Notice Of Filing Received	Official		MANDATE OF THE SUPREME COURT RECEIVED	
262	08-22-2016 12:04 AM	Notice - Notice Of Filing Received	Official		OPINION AND JUDGMENT OF THE SUPREME COURT	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					RECEIVED	
261	08-24-2015 04:54 PM	Brief - Appellee's Brief	Official		Courtesy Copy of Brief of Government of the Virgin Islands to the Supreme Court Filed by Pamela R. Tepper, Esq., Solicitor General	
260	06-01-2015 12:04 AM	Order - Proposed Order	Official		SCHEDULING ORDER RECEIVED, SUBMITTED BY THE SUPREME COURT OF THE VIRGIN ISLANDS	
259	05-28-2015 12:04 AM	Notice - Notice To The Court Received	Official		E-RECORD SUBMITTED TO SUPREME COURT; CERTIFIED DOCKET AND ORDERS	
258	05-14-2015 12:04 AM	Notice - Notice Of Appeal Received	Official		NOTICE OF APPEAL RECEIVED FILED IN SUPREME COURT OF THE VIRGIN, ISLANDS	
257	04-29-2015 12:04 AM	Motion - Motion Received	Official		MOTION FOR FEES RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
256	04-16-2015 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 04/14/2015, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARIA BENTLEY AND CB3, INC., PRO-SE, ALL JUDGES OF THE SUPERIOR COURT OF THE VIRGIN ISLANDS, ALL MAGISTRATES OF THE SUPERIOR COURT OF THE VIRGIN ISLANDS, LAW LIBRARY/LAW LIBRARY/BLUE BOOK/IT	
255	04-14-2015 12:04 AM	Order - Memorandum Opinion And Order	Official		MEMORANDUM OPINION AND ORDER, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
254	02-12-2015 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/11/2015, LEE J.ROHN, ESQ, JOEL HOLT, ESQ., MARIA BENTLEY, PRO-SE	
253	02-11-2015 12:04 AM	Order - Order Signed	Official		ORDER SCHEDULING TELEPHONIC STATUS CONFERENCE, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
252	12-04-2014 12:04 AM	Hearing - Hearing	Official		STATUS HEARING SCHEDULED 04/09/2015 09:00 A.M.	
251	12-04-2014 12:04 AM	Order - Order Fixing Hearing Date	Official		ORDER FIXING HEARING DATE 04/09/2015 09:00 A.M.	
250	09-11-2014 12:04 AM	Hearing - Hearing	Official		STATUS HEARING SCHEDULED 12/04/2014 09:00 A.M.	
249	09-11-2014 12:04 AM	Order - Order Fixing Hearing Date	Official		ORDER FIXING HEARING DATE 12/04/2014 09:00 A.M.	
248	09-04-2014 12:04 AM	Hearing - Record Of Proceeding	Official		RECORD OF PROCEEDING COMPLETED	
247	08-07-2014 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/30/2014, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARIA BENTLEY-PRO- SE	
246	07-30-2014 12:04 AM	Order - Order Signed	Official		ORDER FOR TELEPHONIC STATUS CONFERENCE/CALENDAR CALL, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
245	08-07-2013 12:04 AM	Case Initiation - Response/Request For Production Of Documents Rec'd	Official		GOVERNMENT OF THE VIRGIN ISLANDS RESPONSE TO CONSTITUTIONAL, CHALLENGE OF 5 V.I. 547, SUBMITTED BY BERNARD VANSLUTMAN, ESQ.	
244	07-22-2013 12:04 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/17/2013, TRUDY FENSTER, ESQ., JOEL HOLT, ESQ., MARIA BENTLY, PRO- SE	
243	07-17-2013 12:04 AM	Order - Order Signed	Official		ORDER SCHEDULING A SHOW CAUSE ON DEFENDANT'S MOTION TYO DISMISS FOR, FAILURE TO POST BOND., SIGNED BY JUDGE HAROLD W.L. WILLOCKS	
242	06-06-2013 12:04 AM	Case Initiation - Response/Request For Production Of Documents Rec'd	Official		DEFENDANTS' RESPONSE TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS, FOR FAILURE TO POST BOND, SUBMITTED BY JOEL HOLT, ESQ.	
241	06-04-2013 12:04 AM	Case Initiation - Response/Request For	Official		PLAINTIFFS' RESPONSE IN OPPOSITION TO	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Production Of Documents Rec'd			DEFENDANTS' MOTION TO DISMISS, FOR FAILURE TO POST BOND AND BRIEF IN SUPPORT AND ORDER, SUBMITTED BY LEE J. ROHN, ESQ.	
240	05-22-2013 12:03 AM	Motion - Motion For Dismissal Received	Official		MOTION TO DISMISS FOR FLAIURE TO POST BOND AND ORDER RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
239	04-18-2013 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 04/15/2013, TRUDY FENSTER, ESQ., JOEL HOLT, ESQ., MARIA BENTLEY, PRO SE	
238	04-15-2013 12:03 AM	Order - Order Signed	Official		ORDER ON DEFENDANT'S DEMAND FOR SECURITY FOR COST IS GRANTED, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
237	04-12-2013 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 04/11/2013, TRUDY FENSTER, ESQ., JOEL HOLT, ESQ., MARIA BENTLEY, Pro Se	
236	04-12-2013 12:03 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 09/04/2014 10:00 A.M.	
235	04-11-2013 12:03 AM	Order - Order Signed	Official		SCHEDULING ORDER, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
234	03-27-2013 12:03 AM	Order - Proposed Order	Official		JOINT PROPOSED SCHEDULING ORDER AND ORDER, SUBMITTED BY TRUDY FENSTER, ESQ. & JOEL HOLT, ESQ.	
233	03-13-2013 12:03 AM	Notice - Notice Of Entry	Official		Notice of Entry of Order	
232	03-07-2013 12:03 AM	Hearing - Record Of Proceeding	Official		RECORD OF PROCEEDING COMPLETED	
231	03-07-2013 12:03 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 05/30/2013 09:00 A.M.	
230	03-07-2013 12:03 AM	Hearing - Hearing	Official		HEARING CONCLUDED	
229	03-06-2013 12:03 AM	Order - Order Granting	Official		Order Signed by Judge	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Harold W.L. Willocks Granting in Part Motion to Strike filed by Plaintiffs and Granting Motion filed by Defendant Maria Bentley to Vacate Default.	
228	03-06-2013 12:03 AM	Motion - Reply Received	Official		REPLY TO OPPOSITION TO DEMAND FOR SECURITY COSTS, SUBMITTED BY JOEL HOLT, ESQ.	
227	03-01-2013 12:03 AM	Motion - Motion Received	Official		MOTION TO WAIVE OR IN THE ALTERNATIVE REDUCE DEMAND FOR SECURITY, COSTS FILED BY LEE J. ROHN, ESQ.	
226	03-01-2013 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/28/2013, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARIA BENTLEY, PROSE	
225	02-28-2013 12:03 AM	Order - Order Signed	Official		ORDER ON PLAINTIFF'S MOTION TO QUASH THE SUBPOENA DUCES TECUM TO THE, DEPARTMENT OF FINANCE, GOVERNMENT INSURANCE FUND IS GRANTED, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
224	02-28-2013 12:03 AM	Order - Order Signed	Official		ORDER ON PLAINTIFF'S MOTION TO QUASH THE SUBPOENA DUCES TECUM TO, AMY DE WILDE IS GRANTED, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
223	02-28-2013 12:03 AM	Order - Order Signed	Official		ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS AGAINST DEFENDANT, CHRISMOS CAN BAY LLC., FOR FAILURE TO COMPLY WITH COURT'S JULY 9,, 2010 ORDER., SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
222	02-11-2013 12:03 AM	Case Initiation - Memorandum	Official		BENCH MEMORANDUM OF DEFENDANTS MOSLER, HANDLEY AND CHRISMOS,	

Superior Court of the Virgin Islands

Docket Sheet

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					LLC IN RESPONSE TO COURT ORDER DATED JANUARY 23, 2013 JOEL HOLT,, ESQ.	
221	02-08-2013 12:03 AM	Notice - Notice To The Court Received	Official		PLAINTIFF'S BENCH BRIEF AS TO OUTSTANDING ISSUES FILED BY, LEE J. ROHN, ESQ.	
220	01-31-2013 12:03 AM	Notice - Demand For Cost Security Received	Official		DEMAND FOR COSTS SECURITY AND ORDER RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
219	01-24-2013 12:03 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 03/07/2013 09:00 A.M.	
218	01-24-2013 12:03 AM	Hearing - Record Of Proceeding	Official		RECORD OF PROCEEDING COMPLETED BY JANEEN MARANDA	
217	01-24-2013 12:03 AM	Hearing - Hearing	Official		HEARING CONCLUDED	
216	01-23-2013 12:03 AM	Order - Order Signed	Official		ORDER SIGNED THAT THE PARTIES SUBMIT A BENCH BRIEF SUMMARIZING THE, FACTS, ISSUES AND APPLICABLE LAW, AS WELL AS THE CURRENT POSTURE OF, THE CASE, INCLUDING COPIES OF ANY AND ALL PENDING MOTIONS BEFORE, THE COURT WITHIN 20 DAYS OF THE DATE OF ENTRY OF THIS ORDER, SIGNED BY JUDGE HAROLD WILLOCKS	
215	01-23-2013 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 01/23/2013, MARIA BENTLEY, PRO SE, JOEL HOLT, ESQ., LEE J. ROHN, ESQ.	
214	01-14-2013 12:03 AM	Response - Objection Received	Official		NOTICE OF NO OBJECTION TO DEFENDANT CHRISMOS CANE BAY TO ATTEND THE, JANUARY 29, 2013 STATUS CONFERENCE VIA TELEPHONE VIA TELEPHONE, SUBMITTED BY LEE J. ROHN, ESQ.	
213	01-11-2013 12:03 AM	Motion - Motion Received	Official		MOTION TO ATTEND	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					STATUS CONFERENCE BY TELEPHONE AND ORDER RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
212	01-11-2013 12:03 AM	Hearing - Matter Rescheduled For Hearing	Official		MATTER RESCHEDULED FOR HEARING 01/24/2013 10:00 A.M.	
211	05-29-2012 12:04 AM	Notice - Notice Of Entry	Official		Notice of Entry of Order	
210	05-29-2012 12:03 AM	Order - Order Signed	Official		ORDER GRANTING MOTION TO BE RELIEVED AS COUNSEL SIGNED BY JUDGE, HAROLD W.L. WILLOCKS	
209	05-08-2012 12:03 AM	Motion - Motion Received	Official		CONSENT MOTION TO WITHDRAW AS COUNSEL, LETTER AND ORDER RECEIVED, SUBMITTED BY MARK GUGLIELMI, ESQ.	
208	05-04-2012 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROCEEDING PRO-SE RECEIVED, SUBMITTED BY MARIA BENTLEY	
207	02-06-2012 12:03 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 01/29/2013 10:00 A.M.	
206	02-06-2012 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/03/2012, JOEL HOLT, ESQ., ANNA M. WASHBURN, ESQ., MARK E. GUGLIELMI, ESQ.	
205	02-03-2012 12:03 AM	Order - Order Signed	Official		SCHEDULING ORDER, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
204	02-02-2012 12:03 AM	Motion - Reply Received	Official		REPLY TO OPPOSITION TO MOTION TO QUASH SUBPOENA TO DEPARTMENT OF, FINANCE, SUBMITTED BY LEE J. ROHN, ESQ.	
203	02-02-2012 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF NOTICE OF FILING THE SUPPLEMENTAL RESPONSES, SUBMITTED BY JOEL HOLT, ESQ.	
202	02-01-2012 12:03 AM	Notice - Notice Of Filing Received	Official		NOTICE OF FILING RESPONSE TO INTERROGATORY NO. 11 RECEIVED, SUBMITTED BY	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					JOEL HOLT, ESQ.	
201	01-31-2012 12:03 AM	Notice - Notice To The Court Received	Official		PROPOSED SCHEDULING ORDER AND ORDER, SUBMITTED BY ANNA WASHBURN, ESQ. & JOEL HOLT, ESQ.	
200	01-30-2012 12:03 AM	Motion - Reply Received	Official		REPLY RTO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS, SUBMITTED BY LEE J. ROHN, ESQ.	
199	01-13-2012 12:03 AM	Response - Opposition Received	Official		OPPOSITION TO MOTION TO QUASH SUBPOENA TO DEPARTMENT OF FINANCE, SUBMITTED BY JOEL HOLT, ESQ.	
198	01-13-2012 12:03 AM	Case Initiation - Response/Request For Production Of Documents Rec'd	Official		RESPONSE TO MOTION SEEKING SANCTIONS REC'D, SUBMITTED BY JOEL HOLT, ESQ.	
197	01-12-2012 12:03 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 04/12/2012 09:00 A.M.	
196	01-12-2012 12:03 AM	Hearing - Record Of Proceeding	Official		RECORD OF PROCEEDING COMPLETED BY ANDREA MINGO. A STATUS HEARING, WAS SCHEDULED FOR 4/12/12 AT 9:00 AM	
195	01-12-2012 12:03 AM	Hearing - Hearing	Official		HEARING CONCLUDED	
194	08-17-2011 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE RECEIVED, SUBMITTED BY ANNA WASHBURN, ESQ. FOR LEE J. ROHN, ESQ.	
193	08-05-2011 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF NON SERVICE OF ALAN SIMON OF SIMON AND SIMON RECEIVED, SUBMITTED BY MARY FAITH CARPENTER, ESQ. FOR LEE J. ROHN, ESQ.	
192	08-02-2011 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/29/2011, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARK E. GUGLIELMI, ESQ.	
191	07-29-2011 12:03 AM	Case Initiation - Letter	Official		LETTERS ROGATORY	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Received			PURSUANT TO 5 V.I.C. 4921 RECEIVED, SIGNED BY JUDGE HAROLD W.L. WILLOCKS	
190	07-28-2011 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE SUPPLEMENTAL PRODUCTION IN RESPONSE TO SUBPOENA, DUCES TECUM, SUBMITTED BY MARK ECKARD, ESQ.	
189	07-19-2011 12:03 AM	Service - Subpoena Duces Tecum	Official		SUBPOENA DUCES TECUM ISSUED TO ALAN RICHARD SIMON	
188	07-18-2011 12:03 AM	Notice - Request Received	Official		REQUEST FOR LETTERS ROGATORY PURSUANT TO 5 V.I.C. §4921 RECEIVED, FROM ATTY. LEE ROHN WITH PROPOSED ORDER	
187	07-18-2011 12:03 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION DUCES TECUM RECEIVED FROM ATTY. LEE ROHN	
186	07-18-2011 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF INTENT TO SERVE SUBPOENA RECEIVED FROM ATTY. LEE ROHN	
185	07-11-2011 12:03 AM	Notice - Notice Of Filing Received	Official		NOTICE OF FILING SECOND SUPPLEMENTAL RULE 26 DISCLOSURES RECEIVED, FROM JOEL H. HOLT, ESQ.	
184	06-30-2011 12:03 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 06/28/2011, LEE J. ROHN, ESQ., JOEL HOLT, ESQ., MARIA BENTLEY, ESQ.	
183	06-28-2011 12:03 AM	Order - Order Signed	Official		LETTER ROGATORY PURSUANT TO 5 V.I.C. 4921, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
182	06-27-2011 12:03 AM	Notice - Notice To The Court Received	Official		LETTERS ROGATORY PURSUANT TO 5 V.I.C. 4921, SUBMITTED BY LEE J. ROHN, ESQ.	
181	06-22-2011 12:03 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFFS' 2ND SUPPLEMENTAL VOLUNTARY DISCLOSURE PURSUANT TO RULE 26, SUBMITTED BY ANNA WASHBURN, ESQ.	
180	06-21-2011 12:02 AM	Motion - Motion Received	Official		MOTION TO QUASH	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
179	06-16-2011 12:02 AM	Motion - Reply Received	Official		SUBPOENS TO DEPARTMENT OF FINANCE RECEIVED FROM, ATTY. LEE J. ROHN ALONG WITH PROPOSED ORDER	
178	06-16-2011 12:02 AM	Affidavit - Affidavit Of Process Server Filed	Official		REPLY TO OPPOSITION TO MOTION TO QUASH SUBPOENA RECEIVED FROM ATTY., LEE J. ROHN	
177	06-16-2011 12:02 AM	Notice - Notice To The Court Received	Official		AFFIDAVIT OF PROCESS SERVER, FELIPE TORRES, JR. FILED ALONG WITH, RETURN OF SERVICE OF SUBPOENA DUCES TECUM UPON COMMISSIONER WAYNE, BIGGS, RETURN OF SERVICE OF SUPOENA DUCES TECUM UPON JAMES P., SHEETS, RETURN OF SERVICE OF SUBPOENA DUCES TECUM UPON ALBERT, BRYAN	
176	06-14-2011 12:02 AM	Notice - Notice Of Service	Official		NOTICE OF INTENT TO SERVE SUBPOENA RECEIVED FROM ATTY. JOEL H., HOLT	
175	06-14-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF SERVICE OF PLAINTIFFS JOSEPH GERACE AND VICTORIA VOOYS, DBA CANE BAY BEACH BAR'S SUPPLEMENTAL VOLUNTARY DISCLOSURE PURSUANT, TO RULE 26 RECEIVED FROM ATTY. ANNA M. WASHBURN	
174	06-13-2011 12:02 AM	Notice - Notice To The Court Received	Official		THIRD AMENDED NOTICE OF TAKING DEPOSITION RECEIVED FROM ATTY., JOEL H. HOLT	
173	06-13-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF WITHDRAWAL OF PLAINTIFF'S MOTION TO SHOW CAUSE AS TO, GERALD T. GRONER RECEIVED FROM ATTY. LEE J. ROHN	
172	06-09-2011 12:02 AM	Notice - Notice To The	Official		NOTICE OF PRODUCTION RECEIVED FROM ATTY. LEE J. ROHN	
		Notice - Notice To The	Official		NOTICE OF COMPLIANCE	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Court Received			WITH SUBPOENA DUCES TECUM AND RESPONSE IN, OPPOSITION TO MOTION TO SHOW CAUSE RECEIVED FROM ATTY. MARK W., ECKARD	
171	06-08-2011 12:02 AM	Motion - Motion To Show Cause Received	Official		MOTION TO SHOW CAUSE RECEIVED FROM ATTY. LEE J. ROHN ALONG WITH, PROPOSED ORDER	
170	06-02-2011 12:02 AM	Notice - Notice of Appearance	Official		NOTICE OF APPEARANCE FILED BY MARK E. GUGLIELMI, ESQ.	
169	06-01-2011 12:02 AM	Notice - Stipulation Received	Official		STIPULATION FOR EXTENSION OF TIME AND ORDER, SUBMITTED BY LEE J. ROHN, ESQ. & JOEL HOLT, ESQ.	
168	05-24-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF INTENT TO SERVE SUBPOENA RECEIVED FROM ATTY. JOEL H. HOLT	
167	05-19-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION DUCES TECUM RECEIVED, SUBMITTED BY LEE J. ROHN, ESQ.	
166	05-19-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		SECOND AMENDED NOTICE OF DEPOSITION TAKING DEPOSITION RECEIVED, FROM ATTY. JOEL H. HOLT	
165	05-19-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF INTENT TO SERVE SUPBOENA RECEIVED FROM ATTY. LEE J. ROHN, AND NOTICE OF DEPOSITION DUCES TECUM	
164	05-18-2011 12:02 AM	Response - Opposition Received	Official		OPPOSITION TO MOTION TO QUASH SUBPOENA RECEIVED FROM ATTY. JOEL H., HOLT	
163	05-17-2011 12:02 AM	Notice - Notice Of Service	Official		NOTICE OF PROOF OF SERVICE RECEIVED FROM ATTY. LEE J. ROHN	
162	05-17-2011 12:02 AM	Notice - Notice Of Service	Official		NOTICE OF PROOF OF SERVICE RECEIVED FROM ATTY. LEE J. ROHN	
161	05-16-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		AMENDED NOTICE OF TAKING DEPOSITION RECEIVED FROM ATTY. JOEL H. HOLT	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
160	05-12-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION DUCES TECUM RECEIVED FROM ATTY. LEE J. ROHN, ALONG WITH NOTICE OF INTENT TO SERVE SUBPOENA	
159	05-12-2011 12:02 AM	Service - Subpoena Duces Tecum	Official		SUBPOENA DUCES TECUM ISSUED TO GERALD T. GRONER, ESQ.	
158	05-10-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION DUCES TECUM RECEIVED FROM ATTY. LEE J. ROHN, ALONG WITH NOTICE OF INTENT TO SERVE SUBPOENA	
157	05-10-2011 12:02 AM	Service - Subpoena Duces Tecum	Official		SUBPOENA DUCES TECUM ISSUED TO NICHOLS, NEWMAN, LOGAN & GREY, P.C., TO BE SERVED BY THE LAW OFFICES OF ATTY LEE ROHN	
156	05-04-2011 12:02 AM	Service - Subpoena Duces Tecum	Official		SUBPOENA DUCES TECUM ISSUED TO AMY DEWILDE	
155	05-04-2011 12:02 AM	Motion - Motion To Quash Received	Official		MOTION TO QUASH SUBPOENA RECEIVED FROM ATTY. LEE J. ROHN ALONG WITH, PROPOSED ORDER	
154	05-03-2011 12:02 AM	Notice - Mediation Report	Official		MEDIATION REPORT RCVD/REACHED AN IMPASSE FROM ATTY. FELICE M., QUIGLEY, MEDIATOR	
153	05-02-2011 12:02 AM	Service - Subpoena Duces Tecum	Official		SUBPOENA DUCES TECUM ISSUED TO NICHOLAS, NEWMAN, LOGAN & GREY, P.C	
152	05-02-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF PRODUCTION RECEIVED FROM ATTY. LEE J. ROHN	
151	04-19-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF TAKING DEPOSITION RECEIVED JOEL H. HOLT	
150	04-05-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		AMENDED NOTICE OF DEPOSITION OF CHRISMOS CANE BAY, LLC., SUBMITTED BY ANNA M. WASHBURN, ESQ.	
149	04-05-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		AMENDED NOTICE OF DEPOSITION OF CHRIS	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
148	04-05-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		HANLEY, SUBMITTED BY ANNA M. WASHBURN, ESQ. AMENDED NOTICE OF DEPOSITION OF WARREN MOSLER, SUBMITTED BY ANNA M. WASHBURN, ESQ.	
147	03-30-2011 12:02 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUBPOENA ISSUED SUZANNE ROSBACH, SERVED TO HUSBAND HAL ROSBACH AT CANE BAY DIVE SHOP ON MAR. 27	
146	03-30-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE OF A SUBPOENA AND DEPOSITION, SUBMITTED BY MARY FAITH CARPENTER, ESQ.	
145	03-30-2011 12:02 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUBPOENA ISSUED TO HAL ROSBACH, SERVED PERSONALLY AT CANE BAY DIVE SHOP ON MAR. 27	
144	03-30-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE OF A SUBPOENA AND DEPOSITION, SUBMITTED BY MARY FAITH CARPENTER, ESQ.	
143	03-30-2011 12:02 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUBPOENA ISSUED TO HUNT LOGAN, SERVED PERSONALLY AT LAW OFFICES OF NICHOLAS NEWAR ON MAR. 28	
142	03-30-2011 12:02 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE OF A SUBPOENA AND DEPOSITION, SUBMITTED BY MARY FAITH CARPENTER, ESQ.	
141	03-30-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION RECEIVED OF SUZANNE ROSBACH, SUBMITTED BY ANNA M. WASHBURN, ESQ.	
140	03-30-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION OF HAL ROSBACH RECEIVED, SUBMITTED BY ANNA M. WASHBURN, ESQ.	
139	03-30-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION RECEIVED OF HUNT LOGAN,	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
138	03-24-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		SUBMITTED BY ANNA M. WASHBURN, ESQ. NOTICE OF DEPOSITION OF SUZANNE ROSBACH RECEIVED, SUBMITTED BY ANNA M. WASHBURN, ESQ.	
137	03-24-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION OF HAL ROSBACH RECEIVED, SUBMITTED BY ANNA M. WASHBURN, ESQ.	
136	03-24-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION OF HUNT LOGAN RECEIVED, SUBMITTED BY ANNA M. WASHBURN, ESQ.	
135	03-24-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION OF WARREN MOSLER RECEIVED FROM ATTY. ANNA M., WASHBURN	
134	03-24-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF 30(B)(6) DEPOSITION OF CHRISMOS CANE BAY, LLC RECEIVED, FROM ATTY. ANNA M. WASHBURN	
133	03-24-2011 12:02 AM	Notice - Notice Of Deposition Received	Official		NOTICE OF DEPOSITION OF CHRIS HANLEY RECEIVED FROM ATTY. ANNA M., WASHBURN	
132	03-08-2011 12:02 AM	Hearing - Hearing	Official		STATUS HEARING SCHEDULED 01/12/2012 09:00 A.M.	
131	03-08-2011 12:02 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 03/07/2011, JOEL HOLT, ESQ., H.A. CURTO OTTO, ESQ.	
130	03-08-2011 12:02 AM	Order - Order Fixing Hearing Date	Official		ORDER FIXING HEARING DATE 01/12/2012 09:00 A.M.	
129	03-07-2011 12:02 AM	Order - Order Signed	Official		SCHEDULING ORDER, SIGNED BY JUDGE HAROLD W.L.WILLOCKS	
128	11-03-2010 12:02 AM	Action - File Forwarded To Judge's Chambers	Official		FILE FORWARDED TO JUDGE'S CHAMBER	
127	10-21-2010 12:02 AM	Motion - Reply Received	Official		REPLY TO RESPONSE TO DEFENDANT'S MOTION TO EXTEND THE DISCOVERY, DEADLINES, SUBMITTED BY ANNA WASHBURN, ESQ.	
126	10-15-2010 12:02 AM	Case Initiation -	Official		RESPONSE TO MOTION TO	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Response/Request For Production Of Documents Rec'd			EXTEND THE DISCOVERY DEADLINES AND ORDER REC'D, SUBMITTED BY JOEL HOLT, ESQ.	
125	10-15-2010 12:02 AM	Motion - Motion For Extension Of Time Received	Official		MOTION TO EXTEND THE DISCOVERY DEADLINES AND ORDER RECEIVED, SUBMITTED BY ANNA WASHBURN, ESQ.	
124	09-14-2010 12:02 AM	Motion - Motion Received	Official		MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH THE COURT'S ORDER, DATED JULY 9, 2010 AND ORDER, SUBMITTED BY LEE J. ROHN, ESQ.	
123	07-20-2010 12:02 AM	Action - Direct Judge Reassignment	Official		DIRECT JUDGE REASSIGNMENT FROM: DDD TO: HWLW	
122	07-10-2010 12:02 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/09/2010, LEE J. ROHN, ESQ., H.A. CURT OTTO, ESQ., JOEL H. HOLT, ESQ., CLERK OF THE COURT	
121	07-09-2010 12:02 AM	Order - Order To Comply (Days)	Official		20-DAY ORDER TO COMPLY SIGNED	
120	05-26-2010 12:01 AM	Action - File Forwarded To Judge's Chambers	Official		FILE FORWARDED TO MAGISTRATE GALLIVAN'S CHAMBER	
119	05-25-2010 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF TWO (2) ORDERS, 05/24/2010, LEE J. ROHN, ESQ., H.A. CURT OTTO, ESQ., JOEL H. HOLT, ESQ., CLERK OF THE COURT	
118	05-24-2010 12:01 AM	Order - Order Denying	Official		ORDER DENYING MOTION SIGNED BY MAGISTRATE GALLIVAN	
117	05-24-2010 12:01 AM	Order - Order Signed	Official		ORDER SIGNED DENYING PLAINTIFF'S MOTION TO, COMPEL	
116	05-20-2010 12:01 AM	Notice - Stipulation Received	Official		JOINT STIPULATION TO EXTEND THE DISCOVERY DEADLINES, FILED BY ATTY ANNA WASHBURN AND ATTY JOEL HOLT	
115	05-10-2010 12:01 AM	Action - File Forwarded To Judge's Chambers	Official		FILE FORWARDED TO MAGISTRATE GALLIVAN'S CHAMBER	
114	05-07-2010 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
113	05-06-2010 12:01 AM	Notice - Notice Of Entry	Official		ORDER, 05/05/2010, LEE J. ROHN, ESQ., H.A. CURT OTTO, ESQ., JOEL H. HOLT, ESQ. NOTICE OF ENTRY OF ORDER, 05/05/2010, H.A. CURT OTTO, ESQ., LEE J. ROHN, ESQ., JOEL H. HOLT, ESQ.	
112	05-05-2010 12:01 AM	Case Initiation - Miscellaneous	Official		FORM D: REQUEST FOR DESIGNATION OF MAGISTRATE, SIGNED BY JUDGE D. DONOHUE; MATTER DESIGNATED TO, MAGISTRATE JESSICA GALLIVAN BY CLERK OF THE COURT, ON 5/7/10	
111	05-05-2010 12:01 AM	Order - Order Signed	Official		ORDER SIGNED GRANTING MOTION TO DISMISS WITH REGARD TO DAVID BENTLEY	
110	04-29-2010 12:01 AM	Response - Opposition Received	Official		PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FILED BY, ATTY LEE J ROHN	
109	04-06-2010 12:01 AM	Motion - Motion Received	Official		MOTION TO DISMISS WITH REGARD TO DAVID BENTLEY, FILED BY ATTY H.A. CURT OTTO	
108	03-26-2010 12:01 AM	Hearing - Hearing	Official		STATUS HEARING/CONFERENCE SCHEDULED 04/04/2011 10:00 A.M.	
107	03-26-2010 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 03/24/2010, JOEL HOLT, ESQ., H. A. CURT OTTO, ESQ., ANNA M. WASHBURN, ESQ.	
106	03-24-2010 12:01 AM	Order - Order Signed	Official		ORDER SIGNED - STATUS CONFERENCE FOR APRIL 4, 2011 AT 10:00 A.M., TRIAL WILL BE SET DURING APRIL 8, TO MAY 13, 2011 TRIAL PERIOD.	
105	03-22-2010 12:01 AM	Motion - Reply Received	Official		REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO COMPEL DEFENDANT CHRIS, HANLEY TO SUPPLEMENT HIS	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
104	03-22-2010 12:01 AM	Motion - Reply Received	Official		RESPONSES TO DISCOVERY, SUBMITTED BY LEE J. ROHN, ESQ. REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO COMPEL DEFENDANT, CHRISMOS CANE BAY, LLC., TO SUPPLEMENT ITS RESPONSES TO DISCOVERY TO, DISCOVERY, SUBMITTED BY LEE J. ROHN, ESQ.	
103	03-17-2010 12:01 AM	Case Initiation - Opposition To Motion Received	Official		HANLEY'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FILED BY, JOEL HOLT, ESQ.	
102	03-17-2010 12:01 AM	Case Initiation - Response To Linking Document Received	Official		RESPONSE TO MOTION TO COMPEL CHRISMOS CANE BAY, LLC TO SUPPLEMENT, IT'S RESPONSES TO DISCOVERY FILED BY JOEL HOLT, ESQ.	
101	03-09-2010 12:01 AM	Motion - Motion to Compel	Official		MOTION TO COMPEL CHRISMOS INC TO SUPPLEMENT ITS RESPONSES TO, DISCOVERY AND ORDER, SUBMITTED BY LEE J. ROHN, ESQ.	
100	03-09-2010 12:01 AM	Action - File Forwarded To Judge's Chambers	Official		FILE FORWARDED TO JUDGE'S CHAMBER	
99	03-08-2010 12:01 AM	Motion - Motion to Compel	Official		MOTION TO COMPEL DEFENDANT CHRIS HANLEY TO SUPPLEMENT HIS RESPONSES, TO DISCOVERY AND ORDER, SUBMITTED BY LEE J. ROHN, ESQ.	
98	12-23-2009 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 12/18/2009, ANNA WASHBURN, ESQ., H.A. CURT OTTO, ESQ., JOEL HOLT, ESQ., MARIA BENTLY	
97	12-23-2009 12:01 AM	Hearing - Matter Rescheduled For Hearing	Official		MATTER RESCHEDULED FOR HEARING 10/18/2010 10:00 A.M.	
96	12-18-2009 12:01 AM	Order - Order Signed	Official		SCHEDULING ORDER SIGNED, SIGNED BY JUDGE DARRYL DEAN DONOHUE	
95	12-01-2009 12:01 AM	Notice - Stipulation	Official		STIPULATION TO EXTEND	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Received			THE DISCOVERY DEADLINES, FILED BY ATTY ANNA WASHBURN AND ATTY H.A. CURT OTTO	
94	11-05-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF DEATH RECEIVED, SUBMITTED BY H. A. CURT OTTO, ESQ.	
93	10-28-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF PRODUCTION-AUTHORIZATIONS, SUBMITTED BY ANNA WASHBURN ESQ.	
92	09-28-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF VICTORIA VOOYS'S RESPONSE TO, CHRISTMOS CANE BAY'S DEMAND FOR PRODUCTION OF DOCUMENTS, SUBMITTED BY ANNA WASHBURN, ESQ.	
91	09-28-2009 12:01 AM	Notice - Notice To The Court Received	Official		CORRECTED NOTICE OF PRODUCTION, SUBMITTED BY ANNA WASHBURN ESQ.	
90	09-28-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE'S RESPONSE TO CHRISTMOS, CANE BAY'S DEMAND FOR PRODUCTION OF DOCUMENTS, SUBMITTED BY ANNA WASHBURN, ESQ.	
89	09-11-2009 12:01 AM	Case Initiation - Miscellaneous	Official		NOTICE OF SERVICE OF PLAINTIFFS' RESPONSE TO CHRISTMOS CANE BAY'S, 3RD SET OF INTERROGATORIES RECEIVED FROM ANNA M. WASHBURN, ESQ.	
88	09-08-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF PRODUCTION RECEIVED FROM ATTY. ANNA M. WASHBURN	
87	09-04-2009 12:01 AM	Notice - Notice To The Court Received	Official		INTERROGATORY REQUEST TO PLAINTIFFS: THIRD SET RECEIVED FROM ATTY., JOEL HOLT	
86	09-02-2009 12:01 AM	Notice - Notice Of Service Of Discovery Received	Official		NOTICE OF SERVICE OF PLAINTIFF'S RESPONSE TO CHRISTMOS CANE BAY'S, INTERROGATORIES RECEIVED FROM ANNA M.	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					WASHBURN, ESQ.	
85	08-31-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF REQUEST FOR DISCOVERY RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
84	08-20-2009 12:01 AM	Motion - Motlon For Discovery Or To Disclose Received	Official		DEFENDANT'S, AQUATIC MANAGEMENT, LLC, D/B/A V.I. SEA TRANS,, SUPPLEMENTAL SELFF-EXECUTING DISCLOSURES TO PLAINTIFF	
83	08-20-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF VICTORIA VOOY'S RESPONSE TO CHRISMOS, BAY'S INTERROGATORIES	
82	08-20-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE'S RESPONSE TO CHRISMOS, BAY'S INTERROGATORIES, SUBMITTED BY ANNA WASHBURN, ESQ.	
81	08-11-2009 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 08/06/2009, ANNA WASHBURN, ESQ., H.A. CURT OTTO, ESQ., JOEL HOLT, ESQ.	
80	08-11-2009 12:01 AM	Hearing - Matter Rescheduled For Hearing	Official		MATTER RESCHEDULED FOR HEARING 06/14/2010 10:00 A.M.	
79	08-06-2009 12:01 AM	Order - Order Signed	Official		Scheduling Order Signed by Presiding Judge Darryl Dean Donohue, Sr.	
78	08-03-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF MOTION TO COMPEL; MOTION TO COMPEL MARIA BENTLY TO, RESPOND TO WRITTEN DISCOVERY AND ORDER, SUBMITTED BY LEE J. ROHN, ESQ.	
77	07-21-2009 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 07/20/2009, ANNA M. WASHBURN, ESQ., H.A. CURT OTTO, ESQ., JOEL H. HOLT, ESQ.	
76	07-20-2009 12:01 AM	Order - Order Signed	Official		ORDER SIGNED GRANTING PARTIES STIPULATION	
75	07-15-2009 12:01 AM	Notice - Stplulation Received	Official		STIPULATION TO EXTEND THE DISCOVERY DEADLINES,	

Superior Court of the Virgin Islands

Docket Sheet

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					SIGNED BY ATTY. ANNA WASHBURN AND ATTY. H.A., CURT OTTO	
74	07-14-2009 12:01 AM	Action - File Forwarded To Official Judge's Chambers			FILE FORWARDED TO JUDGE'S CHAMBER	
73	07-09-2009 12:01 AM	Notice - Stipulation Received	Official		STIPULATED CONFIDENTIALITY AGREEMENT AND AGREED PROTECTIVE ORDER, SUBMITTED BY ANNA WASHBURN ESQ., H.A. CURT OTTO, ESQ &; JOEL HOLT, ESQ.	
72	04-16-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF REQUEST FOR DISCOVERY RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
71	04-16-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF DEFENDANTS' RESPONSES TO REQUEST FOR DISCOVERY, SUBMITTED BY JOEL HOLT, ESQ.	
70	03-23-2009 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 03/18/2009, LEE J. ROHN, ESQ., H.A. CURT OTTO, ESQ., JOEL HOLT, ESQ., MARIA BENTLY	
69	03-23-2009 12:01 AM	Order - Order Scheduling Hearing	Official		ORDER SCHEDULING DOCKET/CALENDAR CALL 02/08/2010 10:00 A.M.	
68	03-18-2009 12:01 AM	Order - Order Signed	Official		Scheduling Order Signed by Presiding Judge Darryl Dean Donohue, Sr.	
67	03-16-2009 12:01 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF DAVID BENTLEY'S RESPONSES TO JOSEPH GERACE, AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR'S FIRST SET OF, INTEROGATORIES TO DEFENDANT DAVID BENTLEY AND JOSEPH GERACE AND, VICTORIA VOOYS d/b/a CANE BAY BEACH BAR'S DEMAND FOR THE, PRODUCTION OF DOCUMENTS TO DEFENDANT DAVID	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
66	03-12-2009 12:01 AM	Notice - Notice To The Court Received	Official		BENTLEY, FILED BY H.A. CURT OTTO, ESQ. NOTICE OF SERVICE OF DEFENDANT, DAVID BENTLEY'S, VOLUNTARY, DISCLOSURE PURSUANT TO RULE 26, SUBMITTED BY H.A. CURT OTTO, ESQ.	
65	03-11-2009 12:01 AM	Notice - Stipulation Received	Official		STIPULATED SCHEDULING ORDER RECEIVED, SIGNED, BY ATTY. JOEL HOLT, ATTY. LEE ROHN AND ATTY., CURT OTTO	
64	02-25-2009 12:01 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/24/2009, LEE J. ROHN, ESQ., H.A. CURT OTTO, ESQ., JOEL HOLT, ESQ., MARIA BENTLY	
63	02-24-2009 12:01 AM	Order - Order Denying	Official		ORDER DENYING DEFENDANTS' MOTION TO DISMISS FOR LACK OF PROSECUTION,, OR ALTERNATIVELY, FOR STAY PENDING DEPOSIT OF FUNDS IS HEREBY, DENIED; IT IS FURTHER ORDERED THAT THE PARTIES SHALL FILE A JOINT, SCHEDULING ORDER WITH A MEDIATION DEADLINE WITHIN THIRTY (30)DAYS, OF THIS ORDER: AND IT IS FUTHER ORDERED THAT FAILURE OF THE PARTIES, TO PROCEED AS ORDERED WILL RESULT IN COURT IMPOSING THE APPROPRIATE, SANCTIONS, SIGNED BY JUDGE DARRYL DEAN DONOHUE	
62	12-22-2008 12:01 AM	Notice - Notice Of Service Of Discovery Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE,, VICTORIA VOOYS D/B/A CANE BAY BEACH'S VOLUNTARY, DISCLOSURE PURSUANT TO RULE 26 FILED BY ATTY., LEE ROHN	
61	12-02-2008 12:01 AM	Motion - Reply Received	Official		REPLY TO OPPOSITION TO MOTION TO DISMISS FOR LACK OF PROSECUTION,	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
60	11-24-2008 12:00 AM	Motion - Motion For Extension Of Time Received	Official		SUBMITTED BY JOEL HOLT, ESQ. MOTION FOR EXTENSION OF TIME NUNC PRO TUNC RECEIVED WITH ORDER, SUBMITTED BY K. GLENDA CAMERON, ESQ.	
59	11-24-2008 12:00 AM	Response - Opposition Received	Official		OPPOSITION TO MOTION TO DISMISS FOR LACK OF PROSECUTION RECEIVED, WITH ORDER, SUBMITTED BY K. GLENDA CAMERON, ESQ.	
58	11-21-2008 12:00 AM	Notice - Notice Of Filing Received	Official		NOTICE OF FILING RECEIVED, SUBMITTED BY JOEL HOLT, ESQ.	
57	11-17-2008 12:00 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 11/12/2008, LEE J. ROHN, ESQ., H.A. CURT OTTO, ESQ., JOEL HOLT, ESQ.	
56	11-12-2008 12:00 AM	Order - Order Granting	Official		ORDER GRANTING PLAINTIFFS' MOTION FOR EXTENSION OF TIME SIGNED, ORDERED THAT THE PLAINTIFFS SHALL HAVE AN EXTENSION OF TIME NUNC, PRO TUNC OF UNTIL NOVEMBER 5, 2008 TO RESPOND TO DEFENADNT'S, MOTION TO DISMISS, SIGNED BY JUDGE DARRYL DEAN DONOHUE	
55	11-06-2008 12:00 AM	Motion - Reply Received	Official		RESPONSE TO PLAINTIFF'S REQUEST FOR EXTENSION, FILED BY ATTY. JOEL HOLT	
54	10-31-2008 12:00 AM	Motion - Motion For Extension Of Time Received	Official		MOTION FOR EXTENSION OF TIME NUNC PRO TUNC, FILED BY ATTY. LEE ROHN	
53	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S DEMAND FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, CHRIS HANLEY, SUBMITTED BY	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
52	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		ANNA WASHBURN, ESQ. NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S FIRST SET OF INTERROGATORIES TO DEFENDANT, CHRISMOS CANE BAY, LLC., SUBMITTED BY ANNA WASHBURN, ESQ.	
51	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S FIRST SET OF INTERROGATORIES TO DEFENDANT, DAVID BENTLY, SUBMITTED BY ANNA WASHBURN, ESQ.	
50	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S DEMAND FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, WARREN MOSLER, SUBMITTED BY ANNA WASHBURN, ESQ.	
49	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S DEMAND FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, CHRISMOS CANE BAY, LLC, SUBMITTED BY ANNA WASHBURN, ESQ.	
48	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S DEMAND FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, DAVID BENTLY, SUBMITTED BY ANNA WASHBURN, ESQ.	
47	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE,	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
46	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S DEMAND FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, MARIA BENTLY, SUBMITTED BY ANNA WASHBURN, ESQ.	
45	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S FIRST SET OF INTERROGATORIES TO DEFENDANT, MARIA BENTLY, SUBMITTED BY ANNA WASHBURN, ESQ.	
44	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S FIRST SET OF INTERROGATORIES TO DEFENDANT, CHRIS HANLEY, SUBMITTED BY ANNA WASHBURN, ESQ.	
43	10-22-2008 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF SERVICE OF PLAINTIFF JOSEPH GERACE, VICTORIA VOOYS D/B/A, CANE BAY BEACH BAR'S FIRST SET OF INTERROGATORIES TO DEFENDANT, WARREN MOSLER, SUBMITTED BY ANNA WASHBURN, ESQ.	
42	10-07-2008 12:00 AM	Action - Direct Judge Reassignment	Official		DIRECT JUDGE REASSIGNMENT FROM: JAB TO: DDD	
41	10-06-2008 12:00 AM	Notice - Notice Of Reassignment	Official		Notice Of Recusal Signed	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
40	10-06-2008 12:00 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 10/06/2008, LEE J. ROHN, ESQ., JOEL HOLT, ESQ.	
39	09-29-2008 12:00 AM	Motion - Memorandum Of Law Received	Official		MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PROSECUTION,, OR ALTERNATIVELY, FOR A STAY PENDING DEPOSIT OF FUNDS, SUBMITTED BY JOEL HOLT, ESQ.	
38	09-29-2008 12:00 AM	Motion - Motion Received	Official		MOTION TO DISMISS FOR LACK OF PROSECUTION, OR ALTERNATIVELY, FOR, A STAY PENDING DEPOSIT OF FUNDS WITH ORDER, SUBMITTED BY JOEL HOLT, ESQ.	
37	06-08-2006 12:00 AM	Action - Direct Judge Reassignment	Official		DIRECT JUDGE REASSIGNMENT FROM: EDR TO: JAB	
36	04-18-2006 12:00 AM	Response - Opposition Received	Official		OPPOSITION TO MOTION TO SET ASIDE ENTRY OF DEFAULT, FILED BY ATTY LEE J. ROHN	
35	04-18-2006 12:00 AM	Order - Proposed Order	Official		PROPOSED ORDER RECEIVED	
34	04-18-2006 12:00 AM	Motion - Motion To Strike Pleading Received	Official	Granted	MOTION TO STRIKE COUNTERCLAIM AND ANSWER OF BENTLEY AND CB3, FILED BY ATTY LEE J. ROHN	
33	01-24-2006 12:24 PM	Motion - Motion Received	Official	Granted	Motion to Vacate Entry of Default filed by Maria Bentley pro se.	
32	01-24-2006 12:00 AM	Answer - Answer	Official		ANSWER AND AFFIRMATIVE DEFENSES RECEIVED, FILED BY MARIA BENTLY, PRO SE	
31	01-03-2006 12:00 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, LEE J. ROHN, ESQUIRE, H.A. CURT OTTO, ESQUIRE, JOEL H. HOLT, ESQUIRE	
30	12-30-2005 12:00 AM	Order - Order Signed	Official		ORDER ISSUED BY JUDGE E. ROSS GRANTING MOTION FOR, DEFAULT	
29	12-19-2005 12:00 AM	Motion - Motion Received	Official		MOTION FOR ENTRY OF	

Superior Court of the Virgin Islands

Docket Sheet

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
28	12-19-2005 12:00 AM	Order - Proposed Order	Official		DEFAULT AGAINST DEFENDANTS MARIA BENTLEY, AND CB3, INC. RECEIVED FROM ATTY. ROHN	
27	10-21-2005 12:00 AM	Order - Order Signed	Official		PROPOSED ORDER RECEIVED WITH MOTION FOR ENTRY OF DEFAULT ORDER ENTERED	
26	10-21-2005 12:00 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, JOEL H. HOLT, ESQ., H.A. CURT OTTO, ESQ., LEE J. ROHN, ESQ.	
25	09-29-2005 12:00 AM	Motion - Motion Received	Official		MOTION FOR EXTENSION OF TIME TO SERVE DEFENDANT MARIA, BENTLEY FILED BY ATTORNEY LEE J. ROHN	
24	09-29-2005 12:00 AM	Service - Subpoena Issued	Official		SUBPOENA ISSUED TO MARIA BENTHLEY, 7402 FOREST GLEN CT. GIG HARBOR, WA 98335-5133	
23	09-29-2005 12:00 AM	Service - Subpoena Issued	Official		SUBPOENA ISSUED TO MARIA BENTHLY, DEFENDANT @ 774 LORETTE STREET,, TOWANDA, NY 14150	
22	09-29-2005 12:00 AM	Service - Subpoena Issued	Official		SUBPOENA ISSUED TO MARIA BENTHLY FOR DEFENDANT CB3, INC.,, @ 7402 LORETTA STREET, TONAWANDA, NY 14150	
21	09-29-2005 12:00 AM	Service - Subpoena Issued	Official		SUBPOENA ISSUED TO MARIA BENTHLY FOR DEFENDANT CB3, INC, @ 7402 FOREST GLEN CT. CIG HARBOR, WA 98335-5133	
20	09-08-2005 12:00 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUMMONS, CHRIS HANLEY SERVED PERSONALLY ON, 8/15/05	
19	09-08-2005 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE OF SUMMONS, AND COMPLAINT FILED BY ATTY. L. ROHN	
18	08-22-2005 12:00 AM	Answer - Answer	Official		ANSWER RECEIVED FOR CHRIS HANLEY, SUBMITTED BY JOEL H. HOLT, ESQ.	

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

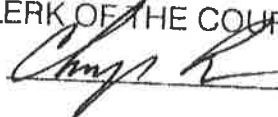
Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
17	08-01-2005 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE FILED BY, ATTY. L. ROHN	
16	08-01-2005 12:00 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUMMONS, ANNE E. OTEKEN SERVED ON 6/27/05 FOR, CARIBBEAN TRUST SERVICES	
15	08-01-2005 12:00 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUMMONS, DAVID BENTLEY SERVED PERSONALLY ON, 6/30/05	
14	07-15-2005 12:00 AM	Answer - Answer	Official		ANSWER TO COUNTERCLAIM OF CHRISMO CANE BAY,, LLC FILED BY ATTY. L. ROHN	
13	07-15-2005 12:00 AM	Answer - Answer	Official		ANSWER TO COUNTERCLAIM OF WARREN MOSLER, FILED BY ATTY. L. ROHN	
12	07-13-2005 12:00 AM	Service - Summons Issued	Official		SUMMONS ISSUED TO WARREN MOSLER (SERVED 7/7/05)	
11	07-13-2005 12:00 AM	Notice - Notice To The Court Received	Official		NOTICE OF PROOF OF SERVICE FILED BY ATTORNEY LEE J. ROHN, (WARREN MOSLER)	
10	07-13-2005 12:00 AM	Affidavit - Affidavit Received	Official		AFFIDAVIT RECEIVED FROM HECTOR MALDONADO, (SERVICE ON WARREN MOSLER ON 7/7/05)	
9	07-13-2005 12:00 AM	Answer - Answer	Official		ANSWER AND AFFIRMATIVE DEFENSES RECEIVED FROM ATTY. H.A. CURT OTTO, FOR DAVID BENTLEY	
8	07-12-2005 12:00 AM	Answer - Answer	Official		ANSWER RECEIVED FROM ATTY. JOEL HOLT FOR CHRISMOS CANE BAY, LLC, AND WARREN MOSLER	
7	07-12-2005 12:00 AM	Initiating Document - Counterclaim Received	Official		COUNTERCLAIM RECEIVED FROM ATTY. HOLT FOR WARREN MOSLER	
6	07-12-2005 12:00 AM	Initiating Document - Counterclaim Received	Official		COUNTERCLAIM RECEIVED FROM ATTY. HOLT FOR CHRISMOS CANE BAY, LLC	
5	06-09-2005 12:00 AM	Initiating Document - Civil Complaint	Official		Converted Claims	

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

Case #	SX-2005-CV-00368	Judge	Hon. Harold W.L. Willocks
Case Title	Joseph Gerace, et al. v. Maria Bentley, et al.	Case Type	Civil - Contract - Damages

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
4	06-09-2005 12:00 AM	Action - Direct Judge Assignment	Official		DIRECT JUDGE ASSIGNMENT Hon. Edgar D. Ross EDR	
3	06-09-2005 12:00 AM	Financial - Fee Received	Official		FEE RECEIVED, RECEIPT # - 00005829	
2	06-09-2005 12:00 AM	Financial - Filing Fee Assess	Official		FILING FEE ASSESSED	
1	06-09-2005 12:00 AM	Initiating Document - Complaint	Official		Verified Complaint Received	

CERTIFIED TO BE A TRUE COPY
 This 21st day of Oct 2022
 TAMARA CHARLES
 CLERK OF THE COURT
 By  Court Clerk TT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE AND VICTORIA VOOYS
D/B/A CANE BAY BEACH BAR

PLAINTIFFS,

v.

WARREN MOSLER, CHRIS HANLEY AND
CHRISMOS CANE BAY, LLC.,

DEFENDANTS.

SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

JURY VERDICT FORM

We, the jury impaneled and sworn to determine the issue in this case, do render the following verdict:

QUESTION #1:

Do you find that Chrismos had an agreement with the Plaintiffs and do you find that Chrismos breached that agreement by not giving them a lease?

Yes

No

If you answered "Yes", to **Question #1**, go to **Question #2**. If you answered "No" to Question #1, still go to **Question #2**.

QUESTION #2:

Do you find that one or more of the Defendants made intentional misrepresentations to the Plaintiffs?

Yes

No

If you answered "Yes", to Question #2, go to **Question #3**. If you answered "No" to Question #2, go to **Question #4**.

QUESTION #3:

Which of the following do you find made intentional misrepresentations to the Plaintiffs? (Check all that apply)

Chrismos Cane Bay, LLC

Warren Mosler

Chris Hanley

Go to Question #4.

QUESTION #4:

Do you find that one or more of the Defendants breached their duties of good faith and fair dealing to the Plaintiffs?

Yes

No

If you answered "Yes", to Question #4, go to **Question #5**. If you answered "No" to Question #4, but "Yes" to Questions #1, or #2, go to **Question #6**. If you answered "No" to Questions #1, and #2, and #4, go to **Question #7**.

QUESTION #5:

Which of the following do you find breached their duty of good faith and fair dealing to the Plaintiffs? (Check all that apply)

Chrismos Cane Bay, LLC

Warren Mosler

Chris Hanley

If you checked one or more boxes and answered "Yes" to Questions #1, or #2, or #4 go to **Question #6**. If not, go to **Question #7**.

QUESTION #6:

What amount of money do you award to Plaintiffs as a result of breach of contract, or intentional misrepresentation, breach of good faith and fair dealings?

\$ 100,000:00

Go to Question #7.

QUESTION #7:

Do you find that one or more of the Defendants defamed Plaintiff Joseph Gerace?

Yes

No

If you answered "Yes", to Question #7, go to **Question #8**. If you answered "No" to Question #7, go to **Question #10**.

QUESTION #8:

Which of the following do you find defamed the Plaintiff, Joseph Gerace? (Check all that apply)

Chrismos Cane Bay, LLC

Warren Mosler

Chris Hanley

If you checked one or more boxes go to **Question #9**.

QUESTION #9:

What is the amount of damages to Plaintiff Joseph Gerace caused by the defamation, as to each person you found defamed him?

\$ _____ Chrismos Cane Bay, LLC

\$ 30,000:00 Warren Mosler

\$ 30,000:00 Chris Hanley

Go to Question #10.

QUESTION #10:

Do you find that one or more of the Defendants defamed Plaintiff Victoria Vooy's?

Yes

No

If you answered "Yes", to Question #10, go to **Question #11**. If you answered "No" to Question #10, but "Yes" to Questions #2, or #7, go to **Question #13**.

QUESTION #11:

Which of the following do you find defamed the Plaintiff, Victoria Vooy's? (Check all that apply)

Chrismos Cane Bay, LLC

Warren Mosler

Chris Hanley

If you checked one or more boxes go to **Question #12**. If not, go to **Question #13**.

QUESTION #12:

What is the amount of damages to Plaintiff Victoria Vooy's caused by the defamation as to each Defendant?

\$ _____ Chrismos Cane Bay, LLC

\$ 30,000.00 Warren Mosler

\$ 30,000.00 Chris Hanley

Do not answer the following Questions #13, #14, and #15, unless you have answered "Yes" to Questions #2, or #7, or #11.

QUESTION #13:

Do you find that one or more Defendants acted with reckless disregard for the rights of the Plaintiffs so as to entitle them to an award of punitive damages?

Yes

No

If you answered "Yes", to Question #13, go to **Question #14**. If you answered "No" go to **Question #16**.

QUESTION #14:

Check as to each Defendant you find acted with reckless disregard for the rights of the Plaintiffs such as to entitle them to an award of punitive damages? (Check all that apply)

Chrismos Cane Bay, LLC

Warren Mosler

Chris Hanley

Go to Question #15.

QUESTION #15

What is the amount of damages to Plaintiff Victoria Vooy's caused by the reckless disregard as to each Defendant?

\$ _____ Chrismos Cane Bay, LLC

\$ 50,000.00 Warren Mosler

\$ 50,000.00 Chris Hanley

Go to Question #16.

QUESTION #16

Do you find that the Plaintiffs owe rent to Chrismos LLC.? (Check one)

Yes

No

Go to Question #17.

QUESTION #17

If you answered Yes to question #17, what amount of rent do you find that the Plaintiffs owe Chrismos LLC?

\$ _____

(Sign the jury verdict form by at least 5 jurors and return to the courtroom.)

Melanie Jerome

OSWALD Douglas

Ann George

Madelaine Vigilant

Amelie Sub

Lydia Crump

Dated: March 3rd, 2022

FILED

September 12, 2022 03:49 PM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOSEPH GERACE, VICTORIA VOOYS, D/B/A
CANE BAY BEACH BAR,**

PLAINTIFFS,

v.

**MARIA BENTLEY; DAVID BENTLEY; CB3,
INC.; WARREN MOSLER; CHRIS HANLEY;
AND CHRISMOS CANE BAY, LLC,**

DEFENDANTS.

Case No. SX-2005-CV-00368

Action for Damages

Jury Trial Demanded

JUDGMENT

AND NOW, for the reasons stated in the accompanying Memorandum Opinion, it is hereby **ORDERED, ADJUDGED, AND DECREED** that Count I, Count II, and Count III are **DISMISSED** as to Defendants David Bentley, Maria Bentley, and CB3, Inc. and judgment is further entered in favor of Defendants David Bentley, Maria Bentley, and CB3, Inc. on all three counts. It is further

ORDERED, ADJUDGED, AND DECREED the Count V is **DISMISSED** as to Defendant Chrismos Cane Bay, LLC and judgment is further entered in favor of Defendant Chrismos Cane Bay, LLC on Count V. It is further

ORDERED, ADJUDGED, AND DECREED that Count VI, Count VII, Count IX, and Count X are **DISMISSED** as to Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC and judgment is further entered in favor of Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC on all four counts. It is further

ORDERED, ADJUDGED, AND DECREED that Count IV and Count XI are **CONSTRUED** as a demand for punitive damages. It is further

ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Plaintiffs Joseph Gerace and Victoria Vooyoys doing business as Cane Bay Beach Bar in the amount of **one-hundred thousand (\$100,000.00) dollars** against Defendants Warren Mosler, Chris Hanley, and Chrisomos Cane Bay, LLC, jointly and severally, on Count VIII, including post-judgment interest at 4% per annum per the statutory rate set by Title 5, Section 426(a) of the Virgin Islands Code. As no motion for attorneys' fees was filed, the Court will defer further consideration until after the time to appeal has passed or appellate proceedings have resolved. It is further


ORDERED, ADJUDGED, and DECREED that the counterclaim of Defendant Chrisomos Cane Bay, LLC is **DISMISSED** and judgment is further entered in favor of Plaintiffs Joseph Gerace and Victoria Vooyoys doing business as Cane Bay Beach Bar on the counterclaim.

DONE and so ORDERED this 12th day of September, 2022.



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

ATTEST:
Tamara Charles
Clerk of the Court

By: 

Court Clerk
Dated: 9/12/2022

FILED

September 13, 2022 03:55 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
District of St. Croix

JOSEPH GERACE, et al,
Plaintiffs,

Case Number: **SX-2005-CV-00368**
Action: **Damages**

v.

MARIA BENTLEY, et al.,
Defendants.

NOTICE of ENTRY
of
Judgment/Memorandum Opinion and Order

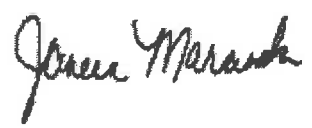
To: Lee J. Rohn, Esq.	Joel H. Holt, Esq.
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Please take notice that on **September 13, 2022**
a(n) **Judgment/ Memorandum Opinion and Order**
dated **September 12, 2022** was/were entered
by the Clerk in the above-titled matter.

Dated: September 13, 2022

Tamara Charles
Clerk of the Court

By:



Janeen Maranda
Court Clerk II

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOSEPH GERACE, VICTORIA VOOYS, D/B/A
CANE BAY BEACH BAR,**

PLAINTIFFS,

v.

**MARIA BENTLEY; DAVID BENTLEY; CB3,
INC.; WARREN MOSLER; CHRIS HANLEY;
AND CHRISMOS CANE BAY, LLC,**

DEFENDANTS.

Case No. SX-2005-CV-00368

Action for Damages

Jury Trial Demanded

Cite as: 2022 VI Super 78

Appearances:

LEE J. ROHN, ESQ.

Lee J. Rohn & Associates, LLC

Christiansted, VI 00820

For Plaintiffs

JOEL H. HOLT, ESQ.

Law Offices of Joel Holt

Christiansted, VI 00820

For Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC

MEMORANDUM OPINION

WILLOCKS, Administrative Judge.

¶1 **BEFORE THE COURT** are the post-trial motions of Warren Mosler (hereinafter “Mosler”), Chris Hanley (hereinafter “Hanley”), and Chrismos Cane Bay, LLC (hereinafter “Chrismos”) (collectively “Defendants” or “Chrismos Defendants”) to vacate the jury’s entire verdict or, in the alternative, for a new trial based on statements of opposing counsel during closing arguments. Joseph Gerace (hereinafter “Gerace”) and Victoria Vooy (hereinafter “Vooy”), formerly doing business as Cane Bay Beach Bar (hereinafter “Beach Bar”) (collectively “Plaintiffs”), oppose the Defendants’ motions. For the reasons

stated below, the Court will grant the motion for post-trial relief in part and set aside the jury's verdict on the breach of contract, breach of the duty of good faith and fair dealing, and defamation claims but otherwise affirm the verdict on the intentional misrepresentation claim. Additionally, because the jury awarded a single amount in compensatory damages on all the business torts, the Court must affirm the entire award since the Court cannot reallocate damages and remittitur is not available in the Virgin Islands. The Court will also vacate the award of punitive damages because the evidence was insufficient for a rational trier of fact to have found that Mosler and Hanley acted with reckless disregard. Lastly, finding no prejudice to the Defendants from Plaintiffs' counsel's remarks, the Court will deny their alternate request for a new trial.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶2 Gerace and Vooyoys met in culinary school in Arizona. They decided to go into business together and "came across Cane Bay Beach Bar on St. Croix, on the internet." (Trial Tr. 168:24-25.¹) Gerace traveled to St. Croix in June of 2003 to check out the restaurant. He "looked at it and fell in love with the island[,]" he told the jury. *Id.* at 438:24-25. "It was everything a 25-year-old kid can dream for." *Id.* at 439:16-17. The first time Vooyoys saw the restaurant—and the first time she stepped foot on St. Croix—was after she and Gerace had driven their belongings "down to Florida, got on a plane, [and] landed." *Id.* at 169:20-22. They found out in Florida, just before leaving for St. Croix, that the previous owner of the Beach Bar did not have a lease for the restaurant. *See id.* at 172:14-17. Gerace and Vooyoys were engaged to be married. So, they continued on because they that "had gotten that far. We had sold a condo, packed up all our stuff. . . . So when we found out there was no lease, we thought we'd take a leap of faith and

¹ Unless otherwise noted, all citations to a transcript are from the transcripts of the trial. Additionally, the Court has omitted giving the day of the trial because the court reporter paginated the trial transcripts consecutively, even though each day of trial is contained in separate volumes.

continue.” *Id.* at 172:19-24. Not long after they arrived on St. Croix, Gerace and Vooyo also learned “that the landlord was going to . . . sell the property.” *Id.* at 173:2-3.

¶3 Gerace closed on the sale of the restaurant on August 7, 2003, and started running it the same day. “A few weeks after that, Hanley and Mosler came to introduce themselves as the new landlords.” *Id.* at 173:15-16. Mosler & Hanley had formed Chrismos, a limited liability company, on September 7, 2003, to purchase the property, on which the Beach Bar was situated, for \$1,050,000. A dive shop, the Cane Bay Dive Shop (hereinafter “Dive Shop”), owned and operated by Hal and Susan Rosbach, was located to the back of the same building. The Beach Bar and the Dive Shop shared a cistern and electricity. One, contiguous roof also covered the entire structure.

¶4 During their initial discussions with Mosler and Hanley, Gerace and Vooyo asked for a seven-year lease. “We were just taught in school, seven years. Five and five is okay, but seven years is the best lease for a restaurant. . . [b]ecause the first three years you’re not even making a profit yet, so if there’s anything shorter than seven, you need time to stay there long enough to recoup your investment[,]” she told the jury. *Id.* at 174:3-10.² The prior Beach Bar owner, Maria Bentley, had been paying the prior landlord \$1,500 a month, which included a residential cottage on the property. Gerace and Vooyo continued paying the same amount but were not given a cottage to live in. When they first discussed a seven-year lease, Mosler and Hanley “said that that seemed . . . reasonable. We would work on that and we’d get one, you know. We’d talk more about it.” *Id.* at 175:10-12.

¶5 Mosler and Hanley had conditions for getting a seven-year lease, however. Gerace and Vooyo had to “make some improvements, general cleanup, some repairs, paint the place,” *id.* at 175:23-24, repairs they “thought were the landlord’s responsibility” *Id.* at 175:25-176:1. Vooyo explained that they

² “Five and five” refers to a five-year lease with an option to renew for a second five-year term. (*Cf.* Trial Tr. 235:18-20.)

“went ahead and . . . replaced screens and plywood and the outside of the kitchen[,]” “resurfaced the bar[,]” “power washed and did general cleanup and . . . painted.” *Id.* at 176:9-11. They replaced ice coolers. They also hired more bartenders. *See id.* at 155:7-13. “We had to replace the sinks in the bathroom[,]” Vooyoys explained, even though “things that are fixture[s] should normally be the landlord’s responsibility.” *Id.* at 176:11-14. The Beach Bar also had to split water and electricity costs with the Dive Shop and Vooyoys said she asked Mosler and Hanley about getting separate meters installed. Rosbach had informed Gerace and Vooyoys after they purchased the Beach Bar that the Bar pays 2/3 of the bill and the Dive Shop pays 1/3. Vooyoys thought that might not be fair. Gerace and Vooyoys could not install separate meters because they did not own the building.

¶6 John Reed (hereinafter “Reed”) worked for the Beach Bar as a bartender through multiple owners. He helped Gerace and Vooyoys with the repairs Mosler required for getting a lease: cleaning, power washing the deck, painting. “It went on for a while. Two to three weeks, at least, for the initial part. We kept doing more after we opened[,]” Reed recalled. *Id.* at 510:22-24. Gerace’s younger brother, Edward, also moved to St. Croix in August 2003 at the age of 21, to help him and Vooyoys run the Beach Bar. He “was to be a barback . . . [or] a bartender helper.” *Id.* at 417:6-7. He also worked as a line clerk for Sunday brunches and helped with the full moon parties. He was there when Gerace and Vooyoys closed on the restaurant and described the state as “need[ing] some work. There was painting. There was maintenance issues. There was nails coming out of the floor boards.” *Id.* at 418:6-8. Michael Belcheff (hereinafter “Belcheff”) corroborated their testimony. He met Vooyoys and Gerace “when they took over the restaurant” *Id.* at 400:24-25. He recalled that they went “crazy making all kinds of improvements, making the place better, just . . . working their butts off.” *Id.* at 401:3-5. Belcheff even helped with some of the repairs like “carpentry, some electrical work, . . . helping them with the lighting” *Id.* at 402:6-8.

¶7 Vooyoys testified that Mosley and Hanley wanted them to prioritize the repairs to the restaurant over

rent and were “pretty casual” about whether rent was paid on time. *See id.* at 193:13-14. At first, Hanley “was going to come by and pick up the rent when he would stop by.” *Id.* at 175:5-6. Later, Mosler and Hanley told Gerace and Vooyoys to drop the rent off at Hanley’s real estate office, Farchette & Hanley, “whenever [they] went to run errands in town” *Id.* at 193:7-11, 194:1. Hanley agreed that he had said Chrismos would be flexible on the rent. However, his deposition testimony, which was read to him, established both that rent was due on the 1st of the month, and late if not paid by the 2nd of the month, but also that if “they were current by the end of the month on the rent, we were completely fine with that. And that went for the dive shop as well.” *Id.* at 651:5-7.

¶8 Sometime in the beginning of March 2004, Mosler and Hanley gave Gerace and Vooyoys a proposed lease. *Id.* at 184:19-21. Vooyoys testified that the lease was “terrible.”

We’d asked for seven years, because you need – you won’t make profit for at least three years. This lease was two or two and a half years. We couldn’t assign it; so in the future if we did want to turn the bar over to someone else, we would have to have them get a new lease. There was a late fee, penalty[,] and attorney fees. . . . [W]e had to decline our right to a trial by jury if there was a conflict. And they were not obligated to do any repairs, like the repairs we’[d] been talking about, on the building. . . . [And rent] was going to go from [\$]1,500 to [\$]2,000. *Id.* at 186:22-187:9.

Later that month Vooyoys shared their concerns with Hanley who agreed, according to her, that “it was a terrible lease” *Id.* at 187:11-12. Hanley told them “they’d work on a better one.” *Id.* at 187:13.

¶9 In August 2004, a fire broke out in the kitchen. The hood over the stove was too small for the size of the space. Vooyoys and Gerace “had to order and ship and install another hood, a larger hood, exhaust fan, new fire suppression Ansul system, electrical, backsplash for the kitchen.” *Id.* at 190:24-191:1. The Beach Bar had to close for two months while they made the repairs and waited for parts to be shipped on-island. They approached Mosler & Hanley for assistance with the repairs or forgiveness on the rent but were only allowed to pay the rent late. Full rent had to be paid, Vooyoys told the jury, and she and Gerace had to do all the repairs and buy all the equipment themselves. Because of the fire, Vooyoys and Gerace

asked Mosler, “before we do all these repairs, are we going to get a seven-year lease before we put a bunch of money into this place?” *Id.* at 187:20-22. According to Vooyo, Mosler said “[t]hey wanted to wait until they fixed everything and got up and running and then we’d talk about it again.” *Id.* at 191:16-17; *see also id.* at 192:1 (identifying Mosler as the person who made the assurances).. Vooyo estimated the repairs from the fire cost them between \$15,000 and \$20,000.

¶10 Mosler and Hanley offered Vooyo and Gerace another lease in November 2004, but with few differences from the previous one in March. The name of tenant was changed from Joseph Gerace to Barabus, Inc., the corporation Vooyo and Gerace had formed on August 12, 2003, and the rent was put back at \$1,500, but would also increase sometime later to \$2,500. The lease also was not for seven years as they had asked. So Vooyo and Gerace reached out to Gerald T. Groner, Esq., the attorney they had used to form Barabus, for advice about the second lease. Neither could recall if Attorney Groner reached out to Mosler and Hanley’s attorney, and they never followed up with Attorney Groner. *See id.* at 467:22-468:13.

¶11 Sometime in February 2005, Rosbach, the Dive Shop owner, introduced Reed to James Jordan (hereinafter “Jordan”). Jordan asked Reed to meet him at Off the Wall, another bar and restaurant on St. Croix’s north shore not far from the Beach Bar. They met after Reed finished work. Jordan told Reed that “[h]e was going to be taking over the lease and Warren Mosler was his boss . . .” *Id.* at 514:10-11. Jordan asked Reed if he “was interested in going to work for them.” *Id.* at 514:12. Reed said yes because he needed the job. Jordan asked Reed “to keep everything low, don’t tell anybody, which [Reed] didn’t feel too good about, but [he] went with it.” *Id.* at 514:13-15.

¶12 Beginning in March 2005, Mosler began to accuse Gerace and Vooyo of being behind on their rent. He also visited the restaurant around the same time and told them that

he did not like the direction [they] . . . were taking the bar and restaurant. He had issues with the full moon parties and the crowds and element that the parties brought. He wanted to turn it in a white, middle-class restaurant and he had somebody in place to take over

from . . . [them] and [they] . . . needed to make this transaction within a month. (201-23-202:4.)

Vooyoys disagreed, saying she was “pretty adamant about . . . cleanliness, especially in a bathroom.” *Id.* at 178:21-22. “If you’re in a restaurant, if people see a dirty bathroom, they think your kitchen is dirty. So I was adamant about cleaning[,]” she said. *Id.* at 176:22-24. “My employees knew the bathrooms had to be spick and span.” *Id.* at 176:25. Donna Christensen (hereinafter “Christiansen”), family physician and former delegate to Congress, corroborated Vooyoys’s testimony, saying she had no problem with the cleanliness of the restaurant or the bathroom but had only patronized the Beach Bar a few times. John H. Woodson, III (hereinafter “Woodson”) agreed. He owns a home in LaVallee on St. Croix, where he lived until 2011, when he moved to St. Thomas. He frequented the Beach Bar and attended most of the full moon parties when Gerace and Vooyoys owned it. He said he found the cleanliness of the bathrooms and the restaurant “normal Otherwise, [he] would not eat there.” *Id.* at 390:19-24.

¶13 Gerace and Vooyoys called Hanley to ask what was going on because they had “just got back on [their] feet and . . . [by] the beginning of 2005 . . . were doing great.” *Id.* at 202:15-17. Hanley told them that Mosler “had a guy in place . . . and . . . [he] wanted that guy to take over.” *Id.* at 202:20-22. They told Hanley they did not want to sell and the four had a meeting about a week later. According to Vooyoys, “Mosler told us we were not getting a lease. . . . [H]e did not like the way we were running the restaurant. He thought it was dirty.” *Id.* at 204:1-3. “He reiterated he didn’t like the direction we were going and the clientele we were bringing in and he wanted to be able to bring his clients to have meetings, more like a white, middle-class restaurant, and we needed to come up with an exit strategy.” *Id.* at 204:14-18. Mosler also complained that “[t]here were too many dogs around[,]” *id.* at 205:3, and said that they “just weren’t making a go of it, that [they] didn’t know what [they] were doing.” *Id.* at 205:6-7. Vooyoys walked away and went to the back of the restaurant and “wailed”. *Id.* at 205:18. Gerace came back to check on her and

console her and when they returned Mosler & Hanley had left. Belcheff corroborated their testimony. He said he saw Mosler and Hanley meeting with Gerace and Vooyoys, so he left, and returned about 30 minutes later. When he returned, he “saw Vic crying . . . [and] Joe with like a stunned look on his face” *Id.* at 405:9-10.

¶14 Hanley came back a few days later to discuss “facilitating th[e] transfer from [them] to the[] guy they wanted to come in and take over” *Id.* at 207:10-12. Hanley offered to give Gerace and Vooyoys a lease but only so they could sell it to Jordan. Jordan insisted on having a lease before he would take over the Beach Bar. Chrisomos then served a letter on Vooyoys and Gerace, dated April 12, 2005, saying that it was their understanding that Gerace and Vooyoys had agreed to vacate the premises by the end of the month and if not, their property would be confiscated. The letter concluded by asking Vooyoys and Gerace to confirm whether Mosler and Hanley’s recollection of their discussion was accurate. Vooyoys and Gerace reached out to Lee J. Rohn, Esq. who sent a letter on April 20, 2005 on their behalf, stating that they had no intention of leaving the Beach Bar.

¶15 According to Vooyoys, Mosler then “started like a smear campaign on why he was getting rid of [them] on the radio and TV.” *Id.* at 208:10-11. No one could recall exactly when, but Vooyoys recalled that it was after they received the April 12, 2005 letter. The talk show was hosted by Roger Morgan (hereinafter “Morgan”). Morgan read the April 12, 2005 letter on the radio and Mosler told listeners that he was “getting rid of [Gerace and Vooyoys] because [they] didn’t know what [they] were doing . . . were always late on rent . . . were behind on rent, [and] . . . didn’t know how to run a restaurant.” *Id.* at 210:1-4. Vooyoys also said she heard Mosler claim that he had reduced their rent, which she denied. Reed heard Mosler on the radio talking negatively about the Beach Bar and Gerace and Vooyoys, “saying that they didn’t pay rent, that they – supposedly loud parties were there. I think they even mentioned something about drugs or something in that area on the radio[,]” he said. “[I]t was always negative.” *Id.* at 520:21-25. Christensen

too heard about Mosler being on Roger Morgan's show talking about the Beach Bar but had not heard the show herself. Woodson went on the radio show to complain about Gerace and Vooyoys being put out of the Beach Bar. He told listeners the reason was not "noise . . . [but] the music and type of clientele that that music probably brought." *Id.* at 392:18-20. Hanley too went on the radio show, and so did Vooyoys but only because Morgan called her for a rebuttal. Hanley said he went on the radio to "defend[his] . . . character . . . [his] position, and . . . made statements that were basically countering the lies and inaccuracies that they were claiming on the radio." *Id.* at 624:2-5. Hanley said Vooyoys and Gerace were telling everyone that "they were always current on their rent and that they were current at that time, and [he] stated that that's not true. They had been late a lot and that they were not current at that time, when [he] was on the radio." *Id.* at 624:8-11. Later that afternoon, after Hanley spoke on the Roger Morgan show, Vooyoys and Gerace arrived at Farchette and Hanley "with April's rent check." *Id.* at 624:18.

¶16 Business started to decline after Mosler went on the radio. Reed recalled that "for the last couple months . . . Joe and Vic were there, this whole radio thing was going on and . . . everybody that came in or I saw elsewhere was talking about it, not in a good way." *Id.* at 535:16-19. Vooyoys and Gerace signed an asset purchase agreement with Jordan, dated June 17, 2005, for \$30,000. Jordan initially offered \$50,000. "By the time we signed and left, we just felt like total failures[.]" Vooyoys testified. *Id.* at 222:6-7. "It's like we lost everything[.]" she explained. "And it's not just money, it's energy. You know, we were there like ten, 12 hours a day every day. You know, you put a lot of passion into it. We loved that place and the people that – that became our patrons and it just stunk." *Id.* at 205:21-25. Anthony recalled Vooyoys and Gerace "were majorly bummed," *id.* at 162:3, when they learned they had to leave. He also said the Beach Bar declined after they Gerace and Vooyoys left. "Less locals." *Id.* at 163:3. Anthony continued to attend and reggae music is still played at the bar though "not as often . . ." *Id.* at 164:5. He stopped going as frequently because "[t]he food wasn't as good. We weren't having as much fun. Less and less of people

that we used to hang out who were also locals were going there.” *Id.* at 165:12-14.

¶17 Vooyo testified that when they left at the end of June, they did not owe WAPA and did not owe anything to the Dive Shop. She estimated that they had spent \$40,000 on repairs, \$20,000 on equipment, and \$50,000 in good will such as advertising and promotions. Vooyo and Gerace left island for a time after leaving the Beach Bar but returned to start a new business, Club 54, in August or September of 2005. Vooyo testified that she had not returned to the north shore until days before trial and never returned to the Beach Bar. “It was too emotional. Too emotional, too painful. Too embarrassed.” *Id.* at 230:17-18.

¶18 In the interim, on June 8, 2005, Gerace and Vooyo, doing business as Cane Bay Beach Bar, sued the former owners, Maria Bentley, David Bentley, and their company CB3, Inc. (collectively the “Bentleys”), as well as Mosler, Hanley, and Chrismos. From the Bentleys, Vooyo and Gerace sought damages, including punitive damages, for breach of contract (Count I), fraud (Count II), and misrepresentation (Count III) for not having a lease and not owning the “Cane Bay Beach Bar” tradename. From Chrismos, Vooyo and Gerace sought damages, including punitive damages, for breach of an agreement to enter into a lease (Count V). From Chrismos, Mosler, and Hanley, Vooyo and Gerace sought damages, including punitive damages, for defamation, slander, libel, and defamation *per se* (Count VI), fraud (Count VII), misrepresentation (Count VIII), intentional or negligent infliction of emotional distress (Count IX), and breach of the duty of good faith and fair dealing (Count X). The demands for punitive damages were erroneously labeled as Counts IV and XI, respectively, as to the Bentleys and the Chrismos Defendants.

¶19 Chrismos and Mosler appeared on July 12, 2005, and jointly answered the complaint but counterclaimed separately. Mosler asserted a counterclaim for defamation [check that] and Chrismos asserted a debt counterclaim for unpaid rent. Chrismos also asserted the affirmative defenses of failure to state a claim for relief, statute of frauds, laches, estoppel, waiver, unclean hands, and failure of

consideration. Mosler did not assert any affirmative defense. David Bentley appeared on July 13, 2005, and answered the complaint. Hanley appeared on August 22, 2005, answered the complaint, and asserted the same affirmative defenses as Chrismos. He did not assert a counterclaim. The Court (Ross, J.) entered default against Maria Bentley and CB3, Inc. on December 29, 2005, and entered on January 2, 2006. Maria Bentley appeared *pro se* on January 23, 2006, answered the complaint, and asserted a counterclaim on her own behalf and on behalf of CB3, Inc. for the unpaid balance on the sale of the Beach Bar. On January 24, 2006, Bentley moved to vacate her default, which the Plaintiffs opposed. The case then went dormant for several years until the Chrismos Defendants moved to dismiss for failure to prosecute or for a stay pending the posting of a bond. The Court (Donohue, P.J.) later denied the motion to dismiss but also directed the parties to submit a propose scheduling order to get the case back on track.³

¶20 After several extensions of discovery deadlines, David Bentley was dismissed, over Plaintiffs' objection, because Plaintiffs failed to file a motion within 90 days to substitute a personal representative for Mr. Bentley after he died in a plane crash. Discovery, and motions pertaining to discovery, continued for several years. Eventually the case was reassigned to this Court who, on April 14, 2016, dismissed the complaint after the Plaintiffs, who subsequently had moved off-island, failed to post a bond in accordance with Title 5, Section 547 of the Virgin Islands Code. *See Gerace v. Bentley*, 62 V.I. 254 (Super. Ct. 2015), *rev'd* 65 V.I. 289 (2016). On appeal, the Supreme Court of the Virgin Islands reversed and remanded, holding the statute unconstitutional. *See Gerace v. Bentley*, 65 V.I. 289 (2016), *writ dismissed sub nom. Vooy's v. Bentley*, 69 V.I. 975 (3d Cir. 2018) (*en banc*). On remand, and after delays due in part to the COVID-19 pandemic, jury selection and trial commenced on February 24, 2022. Plaintiffs, Maria Bentley, and the Chrismos Defendants previously had submitted a proposed joint final pretrial order, which the

³ The case had been reassigned to the Honorable Julio A. Brady after the retirement of the Honorable Edgar D. Ross. It was reassigned to the Honorable Darryl Dean Donohue, Sr. after Judge Brady recused himself.

Court approved on August 12, 2021, in which Mosler dropped his counterclaim for defamation. Plaintiffs, Maria Bentley, and CB3, Inc. also voluntarily dismissed their claims and counterclaims against each other before trial, leaving only the claims by and against Chrismos Defendants to be decided by the jury.

¶21 In addition to the testimony summarized above, the jury was also presented with documentary evidence. Plaintiffs' Exhibit 47 is a group of cancelled checks. The first two checks, numbered 355 and 357, were written by Vooyo on her Bank of America account to the Farchette & Hanley Escrow Account, for \$1,500.00 (for October 2003) and \$3,000.00 (for November and December 2003). The remaining checks were issued by Cane Bay Beach Bar on a FirstBank VI account, also to the Farchette & Hanley Escrow Account. Collectively, the checks show rent the Plaintiffs paid from October 2003 to June 2005, but on an irregular basis. At least one rent check bounced but it was eventually covered. Vooyo and Gerace also paid rent for June 2005 before vacating the premises at the end of that month. All checks were made out to Farchette & Hanley, not to Chrismos or to Hanley or Mosler directly.

¶22 Copies of some of the rent checks, specifically checks numbered 544 for \$921.00 and 772 for \$2,000.00, differed between the parties. On Defendants' copy of check number 544, the memo line reads: "Rent March – Plumber Bills", while on Plaintiffs' copy March is crossed out, "April" is written above March, and parentheses are added around the words "Plumber Bills." On Defendants' copy of check number 722, the memo line was blank, while on Plaintiffs' copy, the memo line reads: "July / August - 1000 for Roof)". Vooyo did not have copies of receipts for the repairs done by Raycon Mechanical to the roof after the fire, or for repairs done by a plumber for the bathroom. She reiterated that both repairs were approved by Hanley and denied adding the notations on the memo lines to make it look like rent was current. Vooyo explained on cross examination that she only added to, or revised, the checks' memo lines for record-keeping purposes, explaining that she "wouldn't just write a weird number . . . rent check for a weird number." (Trial Tr. 361:25-362:1.) Vooyo conceded on redirect examination that she was not good

about keeping receipts and that Gerace was “[e]ven worse.” *Id.* at 370:15.

¶23 On direct and cross-examination, Hanley disputed that Chrismos would have agreed to pay for plumbing repairs but agreed that Chrismos would have paid for repairs to the Beach Bar’s grease trap. He assumed that the \$921.00 rent check (#544) was for the grease trap repairs. But when pressed why he did not object when the check for less than the full amount came without a receipt, he explained that he would have treated the check as a partial payment toward the rent. Chrismos never gave Plaintiffs receipts for rent or a statement showing a balance due. Hanley also admitted on cross-examination that he was mistaken when he testified that Vooy and Gerace paid rent late in October, November, and December of 2003, and January and February of 2004. Mosler also confirmed that he and Hanley “always acted in the capacity as members of Chrismos.” *Id.* at 714:18-19.

¶24 After Plaintiffs rested, Defendants moved for judgment as a matter of law on all counts. As to Count V (breach of an agreement to enter into a lease), Defendants claimed that Vooy and Gerace failed to present any evidence that they incurred financial losses, as opposed to the company, Barabus, who owned and operated the Beach Bar. The Court denied the motion, finding a dispute of fact. Regarding Counts VII (fraud), VIII (misrepresentation), and X (intentional or negligent infliction of emotional distress), Defendants argued that all three claims were barred by the gist of the action doctrine, as adopted by *Pollara v. Chateau St. Croix, LLC*, Case No. SX-06-CV-423, 2016 V.I. LEXIS 49 / 2016 WL 2865874 (V.I. Super. Ct. May 3, 2016), which held that tort claims merge with contract claims when the dispute between the parties arises from a contract. Defendants also asserted a lack of evidence of fraud or intentional misrepresentation. Plaintiffs opposed, claiming Defendants waived gist of the action as an affirmative defense by not asserting it in their answers. The Court took the motion under advisement as to the tort claims. Mosler moved to dismiss Count VI (the defamation claims), contending that Plaintiffs thrust themselves into the limelight by being the first ones to go on the radio. The Court also took the

motion under advisement as to Count VI. As to Count IX (intentional or negligent infliction of emotional distress), Plaintiffs, after hearing Defendants' arguments, agreed that they did not carry their burden of proof and agreed to withdraw the claim. Lastly, Mosler and Hanley argued that all counts against them failed because they were shielded from individual liability by the Virgin Islands' limited liability company laws, specifically Title 13, Section 1303(a) of the Virgin Islands Code. Plaintiffs again objected, claiming Mosler and Hanley failed to allege the individual immunity of the members of a limited liability company as an affirmative defense. The Court took Defendants' statutory immunity argument under advisement as well.

¶25 Defendants renewed their motion after they presented their defense and rested, and Plaintiffs called one witness in rebuttal. Defendants' arguments after the close of all evidence largely mirrored their earlier arguments. However, Defendants also moved to dismiss Plaintiffs' allegations of mental anguish and emotional distress within their breach of an agreement to enter into a lease claim (Count V), arguing that damages of this sort were unavailable in a contract action. The Court also *sua sponte* removed Plaintiffs' libel claim, finding no evidence of libel. Defendants renewed their gist of the action claim but further argued that the fraud and misrepresentation counts were duplicative. Mosler and Hanley also renewed their statutory immunity claim as members of Chrismos, a limited liability company. In addition to renewing their argument that the evidence Plaintiffs presented was insufficient as to all their claims, Defendants also argued that Plaintiffs failed to present any evidence to support punitive damages, noting that "punitive damages aren't allowed for the contract[claims]." (Trial Tr. 793:22-23.) Plaintiffs also moved for judgment as a matter of law on Chrismos's debt counterclaim for unpaid rent. The Court reserved ruling on both motions. After discussing the jury instructions and the verdict form, Plaintiffs informed the Court that they could only be awarded damages once whether for breach of contract, intentional misrepresentation, or breach of the duty of good faith and fair dealing.

¶26 After deliberating, the jury returned a verdict in Plaintiffs' favor, finding that Chrismos had an agreement with Plaintiffs and breached that agreement by not giving them a lease, finding that all three Defendants made intentional misrepresentations to Plaintiffs, and that all three Defendants also breached their duty of good faith and fair dealing to Plaintiffs. The jury awarded \$100,000 to Plaintiffs in damages. The jury also found that Mosler and Hanley had defamed Gerace and Vooyoys and separately awarded Gerace and Vooyoys \$30,000 apiece from each defendant. Lastly, the jury found that Mosler and Hanley's actions warranted punitive damages and awarded Vooyoys \$50,000 apiece from Mosler and Hanley. Defendants renewed their motion for judgment as a matter of law and also moved for a new trial based on statements made by Plaintiffs' counsel during closing arguments, which Defendants contend were prejudicial.

II. MOTION FOR JUDGMENT AS A MATTER OF LAW

A. Legal Standard

¶27 "A party is entitled to judgment as a matter of law when, in considering all of the evidence, accepting the nonmoving party's evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party." *Antilles Sch., Inc. v. Lembach*, 64 V.I. 400, 409 (2016). "In performing this narrow inquiry, trial courts and appellate courts must refrain from weighing the evidence, determining the credibility of witnesses, or substituting their own version of the facts for that of the jury." *Id.* (brackets omitted) (quoting *Chestnut v. Goodman*, 59 V.I. 467, 475 (2013)). "Although judgment as a matter of law should be granted sparingly, a scintilla of evidence is not enough to sustain a verdict of liability." *Chestnut*, 59 V.I. at 475 (quoting *Corriette v. Morales*, 50 V.I. 202, 205 (2008) (*per curiam*)). Instead, "[a] motion for judgment as a matter of law should be granted only when viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference,

there is insufficient evidence from which a jury reasonably could find liability.” *Id.* (brackets omitted) (quoting *Corriette*, 50 V.I. at 205).

B. Discussion

¶28 Before turning to the parties’ arguments, the Court first must note some preliminary points. In addition to the claims against the Bentley Defendants, Plaintiffs also asserted one count against Chrismos, which counsel continuously referred to as a breach of contract claim, even though the complaint stated the claim as being for breach of an agreement to enter into a lease. The remaining counts—defamation, fraud, misrepresentation, intentional or negligent infliction of emotional distress, and breach of the duty of good faith and fair dealing—were asserted against all three Chrismos Defendants. After Plaintiffs rested and Defendants moved for judgment as a matter of law, Plaintiffs withdrew Count IX, intentional or negligent infliction of emotional distress. Thus, the Court must enter judgment in favor of Chrismos, Mosler, and Hanley as to Count IX.

¶29 Additionally, after both sides had rested and Defendants renewed their motion for judgment as a matter of law, Defendants raised a new argument, that Plaintiffs’ fraud and misrepresentation claims were duplicative. (*See* Trial Tr. 778:2-5 (“And we respectfully submit those are the same counts and there’s no separate count under Virgin Islands [law] for fraud and for misrepresentation. It’s the same count.”).) Plaintiffs initially disagreed. However, after reviewing the proposed jury instructions and hearing the arguments of Defendants’ counsel, Plaintiffs’ counsel agreed that the damages were the same. *See generally id.* 824:16-826:7; *see also id.* at 837:1-7 (“MS. ROHN: Your Honor, if you’ll recall earlier, I said you can take out ‘fraud’ and put in ‘intentional misrepresentation.’ So we don’t intend to have a jury instruction on fraud because we are doing intentional misrepresentation because I agree with Attorney Holt that they’re both -- that the damages are the same.”). As Plaintiffs consented either to the dismissal of their fraud count, or its merger with their misrepresentation count, and because the jury was not

instructed on the fraud count, the Court also must enter judgment in favor of Defendants as to Count VII.

i. Gist of the Action Doctrine and Immunity of Individual LLC Members

¶30 In their motion for judgment as a matter of law, Defendants incorporate their prior arguments regarding the gist of the action doctrine, which they first raised after the Plaintiffs had rested and then renewed at the close of all evidence. They also incorporate their prior arguments regarding the immunity of Mosler and Hanley under Title 13, Section 1303 of the Virgin Islands Code, as members of Chrismos, a limited liability company (hereinafter “LLC”). Plaintiffs’ response to both arguments is the same – the gist of the action doctrine and the immunity of individual LLC members are affirmative defenses that are waived. (*See generally* Trial Tr. 795:4-9 (“Even if not waived, the general rule of officers, directors and shareholder liability is that an officer or director of a corporation who takes part in the commission of a tort by the corporation is personally liable for resulting injuries.”); *id.* at 796:3-5 (“As to the gist of the action argument . . . that defense has been waived.”).) As both arguments raise unsettled questions of law, and do not necessarily concern the evidence admitted at trial, the Court will address these questions first.

¶31 Contrary to Plaintiffs’ assertions, not every defense is affirmative. “A defense which demonstrates that plaintiff has not met its burden of proof as to an element plaintiff is required to prove is not an affirmative defense.” *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) (citing *In re: Rawson Food Serv., Inc.*, 846 F.2d 1343, 1349 (11th Cir. 1988)). Defenses that attack the plaintiff’s complaint are called negative defenses. (*Cf.* Trial Tr. 783:16 (“[W]e would call them negative defenses”).) “A negative defense is an attack on the plaintiff’s prima facie case, for example, a defense of no causation to a negligence claim. As one court put it, a negative defense is the equivalent of a defendant saying, I did not do it.” Hon. Amy St. Eve & Michael A. Zuckerman, *The Forgotten Pleading*, 7 Fed. Cts. L. Rev. 152, 160 (2013) (internal quotation marks, footnotes, and footnoted citations omitted). “Indeed, it is well settled that ‘a defense which points out a defect in the prima facie case is not an

affirmative defense.’ These defenses are sometimes referred to as ‘negative’ defenses because they are simply an attack on a party’s prima facie case.” *Gomez v. Bird Auto., LLC*, 411 F. Supp. 3d 1332, 1339 (S.D. Fla. 2019) (brackets, ellipsis, and citations omitted).

¶32 “Unlike a negative defense, an ‘affirmative defense is one that admits the allegations in the complaint, but seeks to avoid liability, in whole or in part, by new allegations of excuse, justification, or other negating matter.’” *St. Eve, et al., The Forgotten Pleading*, 7 Fed. Cts. L. Rev. at 160 (footnoted citation omitted). “As one court explained, a ‘true affirmative defense raises matters outside the scope of plaintiff’s prima facie case and such matter is not raised by a negative defense.’” *Id.* at 161 (footnoted citation omitted). “The modern concept of the affirmative defense is ‘derived from the common law plea of ‘confession and avoidance.’”” *Id.* (footnoted citation omitted). Thus, an “affirmative defense . . . ‘admits that the plaintiff has a claim (the “confession”) but asserts some legal reason why the plaintiff cannot have any recovery on that claim (the “avoidance”).” *Baraby v. Swords*, 851 N.E.2d 559, 571 (Ohio Ct. App. 2006) (quoting *Eulrich v. Weaver Bros.*, 846 N.E.2d 542, 546 (Ohio Ct. App. 2005)). The statute of limitations is a quintessential example of an affirmative defense because the defendant who asserts it admits, or confesses, to the truth of the plaintiff’s claim, but seeks to avoid liability because the plaintiff delayed too long in bringing that claim to court. So too with other affirmative defenses such as *res judicata* or worker’s compensation. All affirmative defenses concede the truth of the plaintiff’s allegations but avoid liability for that claim based on facts not stated in the complaint. *See In re: Top Flight Stairs & Rails, Ltd.*, 398 B.R. 321, 325 (Bankr. N.D. Ill. 2008) (“An affirmative defense ‘requires a responding party to *admit* a complaint’s allegations but then assert that for some legal reason the responding party is nonetheless excused from liability.’” (brackets and ellipsis omitted) (quoting *Reis Robotics USA, Inc. v. Concept Indus.*, 462 F. Supp. 2d 897, 906 (N.D. Ill. 2006))).

¶33 “Identifying whether a defense is negative or affirmative is often easy.” *St. Eve, et al., The*

Forgotten Pleading, 7 Fed. Cts. L. Rev. at 161. Negative defenses do not have to be pled in an answer. *See id.* at 164 (“In contrast to affirmative defenses, negative defenses need not be affirmatively pleaded in the answer. Courts do not read the word ‘defenses’ in Rule 8(b)(1) as extending to negative defenses. Because a negative defense is an attack on the prima facie case—and not a separate defense to prove at trial—the plaintiff presumably already has sufficient notice of the basis for the negative defense, and the reasons underlying the requirement of pleading fall away.” (footnotes omitted)). Failure to state a claim for relief is an example of a negative defense that does not have to be pled in an answer. *See, e.g., Unigestion Holding, S.A. v. UPM Tech., Inc.*, 305 F. Supp. 3d 1134, 1143-44 (D. Or. 2018) (“‘Failure to state a claim’ is a negative defense that merely argues that plaintiff has not met its burden in establishing one or more elements of a claim, whatever that burden may be at a given stage of litigation.”). Affirmative defenses must be alleged in an answer because they raise matters not alleged in the complaint.

¶34 “Although sometimes difficult to discern, the distinction between the two categories of defenses is crucial since affirmative defenses are generally waived if not plead.” *Ford Motor Co. v. Transp. Indem. Co.*, 795 F.2d 538, 546 (6th Cir. 1986); *accord Coastal Air Transp. v. Royer*, 64 V.I. 645, 658 (2016) (“[A]ffirmative defenses are waived if not raised at the first opportunity in the Superior Court[.]”) (citation omitted). Courts ask first whether the defense admits or denies the allegations in the complaint. Defenses that deny the complaint’s allegations are negative or general defenses. Defenses that seek to avoid liability for reasons not stated in the complaint are affirmative defenses. “In determining whether a defense is an affirmative one, the starting point should be the list of affirmative defenses in Rule 8(c). A defense analogous to or a derivative of one of the listed defenses should generally be deemed an affirmative defense.” *Ford Motor Co.*, 795 F.2d at 546; *accord Whyte v. Bockino*, 69 V.I. 749, 754-55 (2018) (courts look first to the plain language of Rule 8(c)(1) of the Virgin Islands Rules of Civil Procedure in reviewing affirmative defenses).

¶35 Neither the gist of the action doctrine nor Title 13, Section 1303 of the Virgin Islands Code are among the enumerated defenses listed in Rule 8(c) of the Virgin Islands Rules of Civil Procedure. That does not end the Court's inquiry, however. Instead, the Court must consider whether each defense admits to the allegations in the complaint or raises matters outside the complaint. If the defense merely denies the allegations in the complaint, it would be a negative defense and need not be listed in Rule 8(c). Plaintiffs would be mistaken in asserting that Defendants waived the defense in that instance. However, if the defense requires proof of facts not alleged in the complaint, it would be affirmative, and the next question would be whether the defense is analogous or derivative of another affirmative defense.

¶36 Turning first to Mosler and Hanley's claim of their statutory immunity of individual LLC members, Section 1303 of Title 13 of the Virgin Islands Code does provide that "[a] member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager." 13 V.I.C. § 1303(a). Additionally, "[t]he failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company." *Id.* § 1303(b). LLC members may be liable in their capacity as members if provided in the articles of organization and the member consents in writing. *See generally id.* § 1303(c).

¶37 Clearly, the statutory immunity of an LLC member is an affirmative defense. The members of an LLC, and whether they consented to individual liability, will generally require proof of facts outside the complaint. As a form of immunity provided by statute it is analogous to the worker's compensation affirmative defense. Additionally, several courts in other jurisdictions have also held that the statutory immunity of individual LLC members is an affirmative defense. *See, e.g., Philp v. SE. Enterps., LLC*, No. M2016-02046-COA-R3-CV, 2018 WL 801663, *15 (Tenn. Ct. App. Feb. 9, 2018) ("[Tennessee statutes]

provide limited liability to members, managers and agents of a limited liability company. As such, the statutes are affirmative defenses that must be pled in accordance with Tennessee Rule of Civil Procedure 8.03.”); *Baraby*, 851 N.E.2d at (“We find the protection against individual liability afforded to members and managers of a limited liability company is an affirmative defense.”); *Klaus v. United Equity, Inc.*, 2010-Ohio-3549, ¶ 27 (“The plain language of R.C. 1705.48 assumes the existence of a valid claim (the ‘confession’) by using the terms ‘debts,’ ‘obligations,’ and ‘liabilities,’ as well as ‘judgment,’ ‘decree,’ or ‘order of a court.’ The statute, then, provides ‘the avoidance’ by specifically exempting members and managers of limited liability companies from personal liability on these assumed, valid claims against the limited liability company. As such, the statute provides an affirmative defense, by definition, as we found in *Baraby*.”); accord *Downing v. Goldman Phipps PLLC*, No. 4:13-CV-206 CDP, 2017 U.S. Dist. LEXIS 39408, *18-19 (E.D. Mo. Mar. 20, 2017) (referring to immunity of individual member of former professional limited liability company as an affirmative defense); *Lieberman v. Mossbrook*, 208 P.3d 1296, 1312-13 (Wy. 2009) (referring to assertion that individual members were not proper parties as an affirmative defense and reversing imposition of individual liability and remand for correction of judgment to name LLC as defendant); see also *Keller Williams Consultants Realty v. Trio Custom Homes, Ltd.*, No. 12 CVH-09-11908, 2013 Ohio Misc. LEXIS 10959, *32 (Ohio Ct. Com. Pl. Dec. 23, 2013) (finding defendant adequately raised lack of personal liability by moving to amend answer to allege he was acting as member of LLC at all times). Cf. *Joe Hand Promotions v. Davis*, No. C 11-6166 CW, 2012 U.S. Dist. LEXIS 145402, *9-10, *18-20 (N.D. Cal. Oct. 9, 2012) (referring to individual LLC member immunity affirmative defense as failure to join an indispensable party or failure to state a claim);

¶38 “A limited liability company (LLC) is a hybrid of two basic business entities. It ‘combines the organizational flexibility and pass-through tax treatment of a partnership with the limited liability protection of a corporation.’” *Shelter Mortg. Corp. v. Castle Mortg. Co., L.C.*, 117 F. App’x 6, 13 (10th

Cir. 2004) (quoting 1A William Meade Fletcher, et al., *Fletcher Cyclopedic of the Law of Private Corporations* § 70.50 (perm. ed. 2002)). Mosler and Hanley were entitled to claim the limited liability protection of Chrismos as its members. They did not. First, in the answer that Mosler and Chrismos filed on July 12, 2005, did not assert the statutory LLC immunity of Mosler as an affirmative defense. In fact, Mosler did not assert any affirmative defenses since their answer clearly provided that “Chrismos Cane Bay, LLC hereby asserts the following affirmative defenses” (Ans. 5, filed July 12, 2005.) The Answer does not define both Mosler and Chrismos as “Chrismos” and the language just quoted is written in the singular tense: Chrismos “asserts”, not Chrismos and Mosler “assert.” Since Mosler did not assert any affirmative defenses, he clearly waived the LLC member immunity defense. So did Hanley. His answer, filed separately from the answer filed jointly by Mosler and Chrismos, asserted the same affirmative defenses as Chrismos. Section 1303 immunity belongs to the members, not the LLC. Hanley did not assert it either. Thus, Plaintiffs are correct that Mosler and Hanley waived the affirmative defense of the statutory immunity afforded LLC members by waiting until the close of the Plaintiffs’ case in chief to raise it. *See Coastal Air Transp.*, 64 V.I. at 658.

¶39 As for the gist of the action doctrine, it is clear that Plaintiffs are mistaken, the gist of the action doctrine is a negative defense. “The gist of the action doctrine is a theory under common law ‘designed to maintain the conceptual distinction between breach of contract claims and tort claims.’ The doctrine is policy-based, arising out of the concern that tort recovery should not be permitted for contractual breaches.” *Addie v. Kjaer*, 60 V.I. 881, 897-98 (3d Cir. 2013) (citation omitted). The gist of the action doctrine is a negative defense because it does not require proof of any fact not already alleged in the plaintiff’s complaint. Instead, the defendant asserting the gist of the action doctrine contends that the complaint alleges a contractual relationship between the plaintiff and the defendant and tort claims are not permitted. Instead, the plaintiff is limited to whatever rights the parties agreed to in their contract. However,

contrary to what Defendants represented during oral argument, the Supreme Court of the Virgin Islands has not recognized the gist of the action doctrine yet.^{4,5} Thus, a *Banks* analysis would be necessary. *Cf. Pollara*, 2016 V.I. LEXIS 49 at *11 (“Because this common law gist of the action doctrine is not the subject of any binding precedent, we perform an analysis pursuant to *Banks v. Intl Rental & Leasing Corp.*, 55 V.I. 967 (2011) to determine whether the doctrine applies in the Virgin Islands.”).

¶40 In this instance, however, the Court declines to conduct a *Banks* analysis. Gerace and Vooy's doing business as the Cane Bay Beach Bar were commercial tenants and Chrisomos was their landlord. As other courts have explained, “[t]he existence of a landlord-tenant relation is contractual in nature and may be express or implied. Such a relationship can arise from the conduct of the parties and may be implied even

⁴ Defendants' counsel represented multiple times that the Supreme Court of the Virgin Islands had recognized the gist of the action doctrine in *Pollara*. (See Trial Tr. 572:14-22 (“Your Honor, under the Supreme Court holding in *Pollara versus Chateau St. Croix* . . . this jurisdiction recognizes the gist of the action [d]octrine which states that if there is a contract claim, it can't be turned into a tort claim. And in particular, our Supreme Court adopted the gist of the doctrine as the law in the Virgin Islands after doing a *Banks* analysis.”).) *Pollara* is not binding. It was decided by a Superior Court judge. There is a *Pollara* decision issued by the Virgin Islands Supreme Court, *Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455 (2013), but that decision was issued three years prior to the gist of the action *Pollara* decision. There is also a *Pollara* decision by the United States Court of Appeals for the Third Circuit, see *Frank C. Pollara Grp., LLC v. Ocean View Inv. Holding, LLC*, 62 V.I. 758 (3d Cir. 2015), which does contend that the Virgin Islands Supreme Court has adopted the gist of the action doctrine. See *id.* at 769 n.11. However, as discussed in the following footnote, that contention was mistaken.

⁵ In *Frank C. Pollara Group, LLC v. Ocean View Investment Holding, LLC*, 62 V.I. 759, 769 n.11 (3d Cir. 2015), the United States Court of Appeals for the Third Circuit rejected a request by the appellants “to hold that the gist-of-the-action doctrine does not apply under the law of the Virgin Islands.” The Third Circuit rejected that request for two reasons. First, the court had previously held in *Addie*, 60 V.I. at 899, “that the doctrine is applicable in the Virgin Islands.” Only the full appellate court sitting en banc could have overruled *Addie*. But the second, and more troubling, reason the Third Circuit gave for not revisiting *Addie* is because “the Supreme Court of the Virgin Islands has recently held that the gist-of-the-action (or barred-by-contract) doctrine does apply in the Virgin Islands.” *Frank C. Pollara Grp., LLC*, 62 V.I. at 769 n.11 (citing *Cacciamani & Rover Corp. v. Banco Popular de P.R.*, S. Ct. Civ. No. 2013-0063, 2014 WL 4262098, *3 (V.I. Aug. 29, 2014)). *Cacciamani and Rover Corporation* did recognize the barred-by-contract doctrine. See *Cacciamani & Rover Corp. v. Banco Popular de P.R.*, 61 V.I. 247, 253 (2014). Some of the reasoning behind *Cacciamani and Rover Corporation* could also be persuasive when analyzing the gist of the action doctrine. *Cf. id.* (“It is clearly the sounder rule to hold the parties to a contract to the terms of their agreement and the legal remedies provided for a breach of those terms . . .”). But the question in *Cacciamani and Rover Corporation* was not whether tort claims should be barred when the relationships between the parties is based on a contract. Instead, the question was whether parties could seek relief unjust enrichment rather than the contract they entered into. See *id.* (“Parties entering into a contract assume certain risks with the expectation of a beneficial return; however, when such expectations are not realized, they may not turn to a quasi-contract theory for recovery.” (quoting *Balier, Capitel & Schwartz v. Tapanes*, 517 N.E.2d 1216, 1219 (Ill. 1987), parenthetically)). This Court has not found any decision other than *Frank C. Pollara Group, LLC* that equates the barred by contract doctrine with the gist of the-action doctrine. The Third Circuit was mistaken; the Supreme Court of the Virgin Islands has not held that the gist of the action doctrine applies in the Virgin Islands.

in the absence of a written agreement under certain circumstances.” *WG Assocs. v. Estate of Roman*, 753 A.2d 1236, 1238 (N.J. Super. Ct. App. Div. 2000) (citations omitted); *Schuman v. Kobets*, 716 N.E.2d 355, 356 (Ind. 1999) (“Since a lease is a contract, the essence of the landlord-tenant relationship is contractual in nature.”). See also, e.g., *Shwachman v. Davis Radio Corp.*, No. 93-01912, 1994 Mass. Super. LEXIS 710, *7 (Mass. Super. Ct. July 1, 1994) (“Originally at common law, a lease agreement created a property relationship between the landlord and tenant. Today, however, the landlord-tenant relationship is viewed as contractual in nature wherein the landlord promises to deliver and maintain the premises in a habitable condition and the tenant promises to pay rent for the use thereof. While a warranty of habitability is implied in residential leases, “no such warranty may be implied in the rental of commercial property.” (citations and footnote omitted)). Accord 28 V.I.C. § 242 (referring to contracts for lease of land). But cf. *Nicholas v. Howard*, 459 A.2d 1039, 1040 (D.C. 1983) (“A landlord-tenant relationship does not arise by mere occupancy of the premises; absent an express or implied contractual agreement, with both privity of estate and privity of contract, the occupier is in adverse possession as a ‘squatter.’”).

¶41 Chrismos inherited the Dive Shop and the Beach Bar tenants when it purchased the property from the former owner. Although Virgin Islands law is unclear on the effect of the sale of real property, residential or commercial, where tenants are in possession at the time of the conveyance, but cf. 28 V.I.C. § 752, other jurisdictions have held that a conveyance of a commercial property terminates the tenancy of the tenants. See, e.g., *Farris v. Hershfield*, 89 N.E.2d 636, 637 (Mass. 1950) (explaining that “tenancy at will . . . terminated with the conveyance of the land” “[s]ince the premises were not occupied for dwelling purposes”); *Irving Oil Corp. v. Me. Aviation Corp.*, 704 A.2d 872, 874 (Me. 1998) (“A tenancy at will . . . cannot be conveyed or assigned; it does not pass with the alienation of the underlying estate. When title to property occupied by a tenant at will is passed by deed or lease, the tenancy is terminated,

and the tenant becomes a tenant at sufferance.” (citations omitted)). The evidence clearly showed that the Beach Bar did not have a lease. The Bentley Defendants did not have a lease to sell to Gerace and Vooyoys and Gerace and Vooyoys, or Barabus, the company they formed to buy the Beach Bar business. And Vooyoys and Gerace repeatedly requested a lease from Mosler and Hanley. The fact that they did not have a lease is, after all, what this case is about. Vooyoys and Gerace were still tenants of Chrismos, in a month-to-month tenancy. Even if the Court were to conclude that the soundest rule for the Virgin Islands is to recognize the gist of the action doctrine, it would not matter here because Plaintiffs and the Chrismos Defendants were not parties to any contract at issue. The gist of the action doctrine might have barred the fraud (Count II) and misrepresentation (Count III) counts Plaintiffs asserted against the Bentley Defendants because Plaintiffs and the Bentley Defendants did sign a contract, the July 1, 2003 asset purchase agreement that Plaintiffs attached to their complaint. If the Bentley Defendants had moved to dismiss for failure to state a claim for relief based on the gist of the action doctrine it might have been sound to “hold the parties . . . to the terms of their agreement and the legal remedies provided for a breach of those terms, and to reserve . . . [tort claims] for those instances where there is no contract and other legal remedies are unavailable.” *Cacciamani & Rover Corp.*, 61 V.I. at 253.

¶42 Here, Gerace and Vooyoys were tenants of Chrismos, but the claims they asserted in this action did not arise out of that tenancy. In other words, the gist of the action Vooyoys and Gerace brought against the Chrismos Defendants has nothing to do with the rent they paid each month or the duties the law imposes on commercial landlords. There was a contractual relationship between Chrismos and Gerace and Vooyoys, the landlord-tenant relationship. But that relationship was not the gravamen of this action and Defendants repeatedly denied having entered into any agreement with Plaintiffs other than a month-to-month tenancy. Instead, it was the request to enter into a new and long-term landlord-tenant relationship that is the gist of this action. “In some instances, ‘it is possible that a breach of contract also gives rise to an actionable tort.

To be construed as in tort, however, the wrong ascribed to the defendant must be the gist of the action, the contract being collateral.” *Howe v. LC Philly, LLC*, No. 10-5495, 2011 U.S. Dist. LEXIS 41534, *10 (E.D. Pa. Apr. 15, 2011) (quoting *Etoll, Inc. v. Elias/Savion Adver., Inc.*, 811 A.2d 10, 14 (Pa. Super. Ct. 2002)). Here, the month-to-month tenancy, a contract implied in fact through the actions of the parties, is collateral to the wrongs Plaintiffs complained of, namely the time, money, energy, and passion they invested into the Beach Bar under the expectation that they would be given a lease. The contract that existed between the parties, the month-to-month tenancy, is collateral to that claim and, for this reason, the Court finds it unnecessary to determine whether Virgin Islands common law should recognize the gist of the action doctrine. Even if the negative defense were recognized in the Virgin Islands, it would not apply here.

ii. The “Contract” Claims

¶43 Defendants move for judgment as a matter of law on three of Plaintiffs’ claims, which they refer to collectively as the “contract” claims. (*See* Defs.’ Post-Trial R. 50(b) & R. 59(a) Mot. 2, filed Mar. 22, 2022 (“The jury verdict form included three similar counts—one for breach of contract, one for intentional misrepresentation and one for breach of the duty of good faith and fair dealing (hereinafter collectively referred to as the “contract” claims).” (bold font omitted)).) Having reviewed all three claims, the Court agrees that it must set aside the jury’s verdict as to the breach of contract claim and the breach of the duty of good faith and fair dealing. Both claims presume the existence of an agreement between the parties which the evidence did not show. The Court will uphold the jury’s verdict as to intentional misrepresentation, however.

¶44 Count V of the Complaint alleged that Chrismos breached an agreement with Plaintiffs to enter into a lease. “There is a marked distinction in both the rights and liabilities of the parties between a lease and a mere agreement for a lease. The question whether an agreement is a lease or an agreement for a

lease depends upon the intent of the parties” *Kilbride v. Wilson*, 8 V.I. 129, 133 (Mun. Ct. 1970) (citation omitted). “If parties intend that an agreement be one of leasing, it so operates notwithstanding a written formal lease is to be later executed. On the other hand, if they intend that an agreement should be as finally evidenced by a written lease, there is only an agreement for a lease.” *Engle v. Heier*, 173 N.W.2d 454, 456 (S.D. 1970) (citation omitted). As the court in *Engle* explained:

To be binding, an agreement for a lease must be certain as to the terms of the future lease. If it appears that any of the terms of the future lease are left open to be settled by future negotiation between the lessor and lessee “there is no complete agreement; the minds of the parties have not fully met” *Id.* (quoting *Cypert v. Holmes*, 299 P.2d 650, 651 (Ariz. 1956)).

¶45 Count X of the Complaint alleged that the Chrismos Defendants breached their duty of good faith and fair dealing. “Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement.” *Basic Servs., Inc. v. Gov’t of the V.I.*, 71 V.I. 652, 660 (2019) (citation omitted). In fact, “the implied duty of good faith and fair dealing arises by implication through the existence of a contract itself.” *Chapman v. Cornwall*, 58 V.I. 431, 441 (2013). Although the Virgin Islands Supreme Court has not held that the existence of a contract—or a factual dispute for the jury to resolve as to whether a contract existed—is a prerequisite to asserting this claim, courts in the Virgin Islands and elsewhere agree: “there can be no claim for breach of good faith and fair dealing when there is no contract to which such obligation attaches.” *Geesey v. CitiMortgage, Inc.*, 135 F. Supp. 3d 332, 347 (W.D. Pa. 2015) (applying Pennsylvania law); *see also Estate of Burnett v. Kazi Foods of the V.I.*, 69 V.I. 50, 61 (Super. Ct. 2016) (“[T]he covenant of good faith and fair dealing is imposed upon parties by virtue of the existence of a contract.”); *Webster v. CBI Acquisitions, LLC*, No. ST-11-CV-558, 2012 V.I. LEXIS 9, *9 (V.I. Super. Ct. Mar. 5, 2012) (“Plaintiff may not allege a claim for breach of the duty of good faith and fair dealing absent a contractual relationship.”); *accord Macklin v. CitiMortgage, Inc.*, 2015-Ohio-97, ¶ 14 (Ct. App.) (“The covenant of good faith and fair dealing is part of a contract claim and does not stand

alone as a separate claim from breach of contract.” (citing *Lakota Local Sch. Dist. Bd. of Educ. v. Brickner*, 671 N.E.2d 578, 583-84 (Ohio Ct. App. 1996)); *Young v. Allstate Ins. Co.*, 198 P.3d 666, 691 (Haw. 2008) (“Absent a contract . . . [the] claim for breach of the assumed duty of good faith and fair dealing must fail.”); *Beukas v. Bd. of Trs. of Fairleigh Dickinson Univ.*, 605 A.2d 776, 783 n.4 (N.J. Super. Ct. 1991) (“It is widely acknowledged that absent a contract, there can be no breach of the implied covenant of good faith and fair dealing.” (citing *Noye v. Hoffmann-La Roche*, 570 A.2d 12 (N.J. App. Div. 1990))).

¶46 The evidence clearly shows that there was no agreement. Without an agreement, there is no contract and without a contract there can be no breach. *Cf. Coastal Air Transp. v. Lockhart*, 73 V.I. 672, 677 n.5 (2020) (“To establish a breach of contract claim, the Plaintiff must show ‘(1) an agreement; (2) a duty created by that agreement; (3) a breach of that duty; and (4) damages.’” (quoting *Phillip v. Marsh-Monsanto*, 66 V.I. 612, 621 (2017))). Vooyo testified that when she and Gerace first discussed a seven-year lease with Mosler and Hanley, either Mosler or Hanley “said that that seemed . . . reasonable. We would work on that and we’d get one, you know. *We’d talk more about it.*” (Trial Tr. 175:10-12 (emphasis added).) Vooyo’s own testimony shows that the four agreed to talk more about the terms of the lease. “Ordinarily, where the parties contemplate the further negotiation and execution of a formal instrument, a preliminary agreement does not create a binding contract” *Citadel Broad. Co. v. Renaissance 632 Broadway, LLC*, 2010 NY Slip Op 31482(U), ¶ 9 (Sup. Ct.)).

¶47 Either Mosler or Hanley, on behalf of Chrisomos, eventually did give Vooyo and Gerace a lease, but it was a two-year lease, not a seven-year lease. Vooyo testified that it was a “horrible” lease, and she voiced her disagreement with to Hanley. He agreed, according to her, and said they would work on it. Then the kitchen fire occurred and Vooyo and Gerace expressed their reservations to Mosler and Hanley about investing further in the business without the security of a long-term lease. Mosler, according to Vooyo, wanted them to get back on their feet first before discussing the terms of the lease. A second lease

was offered, but Vooyo said it did not differ much from the first. Vooyo and Gerace went to Attorney Groner, but they never followed up with him.

¶48 This evidence shows on-going negotiations between the parties but also that Chrismos, through Mosler and Hanley, did, in fact, offer Plaintiffs a lease, just not the lease they wanted. Even if there had been a preliminary agreement, which Vooyo's own testimony contradicts, the parties' negotiations clearly show no agreement. When viewing all the evidence in the light most favorable to Plaintiffs, as the nonmoving parties, the Court cannot find sufficient evidence of an agreement. A "scintilla" is not enough. *See Chestnut*, 59 V.I. at 475. There was no certainty over the terms of the lease, apart from the parties' dispute as to the length. Vooyo testified that the initial proposed lease was in Gerace's name, while the later lease was in the name of Barabus. The initial lease had Gerace waiving his right to a jury trial and indemnifying Chrismos. The amount of rent to be paid each month was not settled, with the initial lease increasing rent to \$2,000 a month and the revised version leaving rent at \$1,500 a month but eventually increasing it to \$2,500. Clearly there was no meeting of the minds as to any of the terms of a lease for the Beach Bar. As a result, the Court must grant Defendants' motion to set aside the jury's verdict as to Counts V (breach of contract / agreement to enter into a lease), and Count X (breach of the duty of good faith and fair dealing). Both counts fail because there was no agreement.

¶49 The evidence was sufficient, however, for a reasonable jury to find the Chrismos Defendants liable on Count VIII (misrepresentation). As noted, Plaintiffs essentially agreed to the dismissal of their fraud claim as duplicative of their intentional misrepresentation claim. In instructing the jury, the Court relied on the decision of the Supreme Court of the Virgin Islands in *Love Peace v. Banco Popular de Puerto Rico*, 75 V.I. 284 (2021). In *Love Peace*, the Virgin Islands Supreme Court explained that misrepresentation claims can sound both in contract and in tort. "[W]here a claimant seeks only to rescind an underlying contract based on an alleged misrepresentation, entitlement to that relief is determined

according to the law of contracts . . .” *Id.* at 289. “[W]here the claimant seeks damages arising from the misrepresentation, such a claim sounds in torts, rather than contracts.” *Id.* The Court has already determined that there was no agreement between Plaintiffs and the Chrisomos Defendants. Thus, Plaintiffs’ misrepresentation claim sounds in tort. The elements of an intentional misrepresentation claim are:⁶ (1) that a material fact, opinion, intention, or law was misrepresented; (2) that the person making the misrepresentation knew or had reason to believe it was false; (3) that the misrepresentation was made for the purpose of inducing another to act or refrain from acting; (4) that the other person justifiably relied on the misrepresentation; and (5) that the other person suffered a pecuniary loss. *See id.* at 291.

¶50 Mosler and Hanley told Vooyo and Gerace they would talk more about a lease and then gave them a list of improvements they wanted done to the restaurant. Gerace’s brother, Edward, corroborated the testimony that Mosler and Hanley had conditions for getting lease and so did Reed, the longtime bartender of the Beach Bar. (*See* Trial Tr. 512:4-9 (“It lasted – well, it lasted until they were gone. I mean they – they never got a lease. And – and – and each time they were promised one, they had certain more things they had to do; and when they were getting these things done, they still hadn’t gotten a lease.”).) Conditioning improvements to the property to get a lease continued after the fire. According to Vooyo, Mosler said “[t]hey wanted to wait until we fixed everything and got up and running and then we’d talk

⁶ Although Plaintiffs characterized their misrepresentation claim as being for intentional misrepresentation, courts in other jurisdictions have recognized that fraudulent misrepresentation and intentional misrepresentation are the same. *See, e.g., Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 751 (6th Cir. 2014) (“[T]he Tennessee Supreme Court explained that the terms ‘intentional misrepresentation,’ ‘fraudulent misrepresentation,’ and ‘fraud’ all refer to the same tort, and expressed its preference for the term ‘intentional misrepresentation.’” (citation omitted)); *Phila. Indem. Ins. Co. v. Ohana Control Sys.*, 289 F. Supp. 3d 1141, 1151 n.1 (D. Haw. 2018) (“The Hawaii Supreme Court has referred to intentional misrepresentation as interchangeable with fraudulent misrepresentation.” (citing *Ass’n of Apartment Owners of Newtown Meadows ex rel. its Bd. of Dir. v. Venture 15, Inc.*, 167 P.3d 225, 256 (Haw. 2007)); *Kramer v. Petisi*, 940 A.2d 800, 806 n.9 (Conn. 2008) (“[A]t common law, fraudulent misrepresentation and intentional misrepresentation are the same tort.”); *Doe 67C v. Archdiocese of Milwaukee*, 700 N.W.2d 180, 193 n.10 (Wis. 2005) (“[W]e use ‘intentional misrepresentation,’ and ‘fraudulent misrepresentation,’ and ‘fraud’ interchangeably.” (citation omitted)). Since Plaintiffs withdrew their fraud claim, and since the Court instructed the jury based on the elements of fraudulent misrepresentation as provided in *Love Peace*, the Court assumes the Virgin Islands also views intentional misrepresentation and fraudulent misrepresentation as synonymous.

about . . . [a lease] again.” *Id.* at 191:16-17. In his deposition, which was read to him during cross-examination, Mosler acknowledged that leases did not matter much to him. *See id.* at 739:7-11 (“I don’t think it mattered much. Get the rent every month or you don’t. If someone violates the lease, you can’t go after anybody down here anyway so it didn’t seem to be a big deal to me one way or the other.”). He also testified that the short-term lease that he did offer

would have been an improvement over what they already had. They were there on a month-to-month basis and they were there on a month-to-month basis before I got there where they could be asked any time to leave with 30 day’s notice and lose their entire \$80,000 purchase price. By having a two-year lease, they would at least have two more years. So it was an improvement over what they already had. And it was a draft lease, it was a proposal, to further negotiations. *Id.* at 723:19-724:3.

¶51 Having viewed the evidence in the light most favorable to the nonmoving party, the Court concludes that Plaintiffs clearly and convincingly established that Mosler and Hanley, and Chrismos through them, are liable for the tort of intentional misrepresentation. There is no dispute in the testimony that Vooyoys and Gerace wanted a long-term lease, seven-years according to them. What is disputed is whether Mosler and Hanley promised to give them a seven-year lease. The Court concluded above that the evidence does not support finding of a promise between the parties. But the evidence is undisputed that Vooyoys and Gerace asked for a long-term lease, that a Mosler and Hanley represented that it was a reasonable request, and they would talk more about it, but Vooyoys and Gerace had to make repairs to the Beach Bar first.

¶52 Viewing Vooyoys’s testimony in the light most favorable to Plaintiffs, Mosler and Hanley, on behalf Chrismos, represented that they would give, or at least consider giving, Vooyoys and Gerace a long-term lease, knowing they had no intention to honor that representation. They made the representation to induce Vooyoys and Gerace into make repairs to the building Chrismos owned. Vooyoys and Gerace may have purchased the Beach Bar business, but the building in which that business operated was owned by

Chrismos. Mosler and Hanley did offer a lease, but they had to know that Vooy's and Gerace would not have accepted that lease. By the time the first lease was offered in March 2004, Vooy's and Gerace had been running the Beach Bar for approximately six months and made significant improvements to the building, including to the bathrooms and other parts of the structure. The March 2004 proposed lease would have required that Vooy's and Gerace make all future repairs, pay the property taxes, obtain insurance and indemnify Chrismos, and pay the utilities. No mention was made of the Dive Shop or its responsibility for half of the utilities or for sharing in the payment of property taxes. The March 2004 proposed lease also did not give Vooy's and Gerace a right to renew, but did give Chrismos the right to show the property three months before the term ended and put "For Rent" signs up. (*See generally* Pls.' Ex. 7.)

¶53 A copy of the November 2004 proposed lease was not admitted into evidence, but the testimony established that it did not differ much from the March 2004 proposal and further, that Mosler and Hanley waited to offer another lease until after Gerace and Vooy's had already invested a substantial amount of money to repair the building after the fire. If Gerace and Vooy's had decided to rent another location for the Beach Bar after the fire or to give up the restaurant, Chrismos would have had to cover the cost of the repairs to the structure itself because the parties did not have a lease that specified responsibility for repairs and there was no security deposit in place; the proposed lease would have added that requirement. (*Cf.* Trial Tr. 657:10-11.) Further, even though Mosler said he did not care about leases, he and Hanley did not have an objection to a long-term lease because Chrismos gave Jordan a seven-year lease with an option to extend for another three years. Clearly, Vooy's and Gerace suffered pecuniary loss when they repeatedly made repairs to a building owned by Chrismos and were then deprived of the benefits and use of those improvements. *Cf.* 28 V.I.C. § 436. For these reasons, the Court finds that Plaintiffs submitted sufficient evidence to support the jury's verdict as to Count VIII. Defendants' motion for judgment as a matter of

law will be denied and the award of \$100,000 to Plaintiffs affirmed.^{7,8}

iii. Defamation

¶54 Mosler and Hanley move to set aside the jury's verdict finding them liable for defamation. As they point out in their motion, Vooyo was the primary witness who testified as to any defamatory statements. No audio or video recording from the Roger Morgan show was presented at trial. Further, Christensen testified only that she had heard about Mosler going on the radio and talking about the Beach Bar. She did not testify as to what Mosler said and did not mention Hanley having been on the radio. Gerace was not asked whether he heard Mosler or Hanley on the radio.

¶55 In *Joseph v. Daily News Publishing Company*, 57 V.I. 566 (2012), the Supreme Court of the Virgin Islands established the elements of a defamation claim under Virgin Islands law:

The first element is a false and defamatory statement concerning another. The truth

⁷ The verdict form asked the jury to award damages but only if they found liability as to breach of an agreement to enter into a lease, intentional misrepresentation, or breach of the duty of good faith and fair dealing. In other words, one amount was to be awarded for any of the three counts. Although the Court will grant the motion for judgment as a matter of law as to the two contract claims, the Court must presume that the jury followed the instructions on the verdict form and concludes, therefore, that the \$100,000 was awarded for the tort claim. Further, since the Court concludes that Plaintiffs asserted misrepresentation as a tort and not a contract claim, the damages the jury awarded were reasonable and the Court rejects Defendants' contrary arguments that the amount of Plaintiffs' loss had to be accounted for with mathematical precision.

⁸ Defendants also argue, in essence, that any losses that might have been incurred were incurred by Barabus, Inc., the corporation Gerace formed. Plaintiffs' Exhibit 1 is an asset purchase agreement, effective July 1, 2003, between Gerace and CB3, Inc. Vooyo testified that they closed on the sale of the Beach Bar on August 7, 2003, which is reflected on the signature page of the asset purchase agreement. Vooyo's name does not appear in that agreement. Defense Exhibit 2 is a promissory note dated August 7, 2003, given by Gerace to Maria Bentley as holder. Vooyo's name does not appear on the note. The articles of organization for Barabus, Inc., which is Defense Exhibit 5, is dated August 12, 2003. The incorporators were Gerace, June Davis, and Eileen des Jardin. Gerace was listed as president, Edward Gerace was vice-president, and Vooyo was secretary and treasurer. None of documents pertaining to Barabus, which Defendants admitted at trial, show a transfer from Gerace to Barabus of his purchase of the Beach Bar from CB3, Inc., or an assignment or transfer of the promissory note to Barabus. The Barabus documents also do not show Vooyo's financial interest in the business. She did not sign the promissory note or the asset purchase agreement and was listed simply as an officer of Barabus. But Vooyo did testify that she provided some of the financing for the asset purchase. (See generally Trial Tr. 248:13-251:13.) And Vooyo and Gerace are listed as the sellers on Plaintiffs' Exhibits 17 and 21, with Jordan listed as purchaser. Barabus, Inc. did not buy the Beach Bar from CB3, Inc., nor did Barabus, Inc. sell the Beach Bar to Jordan. When, or if, Vooyo acquired a legal interest in the Beach Bar or Barabus, and what role Barabus played with respect to the claims Plaintiffs asserted should have been raised prior to trial. Furthermore, apart from challenging the evidence of the expenses Plaintiffs incurred, Defendants do not cite to any authority regarding the effect of claims brought by officers of a corporation instead of the corporation itself. Furthermore, persuasive authority recognizes that dismissal for misjoinder or is disfavored and proper parties can be substituted at any stage. See generally *Lieberman*, 208 P.3d 1312-13, 1315 (affirming but finding error with trial court's disregard of corporate form and remanding for entry of amended judgment against company). Having considered Defendants arguments and objections, the Court finds no merit in them.

or falsity of a statement is generally a question of fact for the jury, and [a] statement or communication is only defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

The second element is an unprivileged publication to a third party. Publication means the communication intentionally or by negligent act to one other than the person defamed. There are two methods of publication: libel and slander. Libel is the [] publication of defamatory matter by written or printed words. Slander is the publication of defamatory matter by spoken words. The term unprivileged refers to the alleged defamer's inability to demonstrate that he was in some way privileged to make the defamatory communication. The types of privilege defenses available fall into two categories, absolute privileges, and conditional privileges. Privilege, however, can be abused in such a way as to subject to privileged defamer to liability despite his privilege.

The third element can generally be described as fault. The level of fault varies with the parties to the defamation action, but . . . the minimum standard . . . is [] fault amounting to at least negligence on the part of the publisher. It is the element of fault that is given a higher threshold when the defendant in a defamation action is a public official or public figure and the defamatory statements reference matters of public concern. In the case of a defendant who is not a public figure or official, the minimum standard applies, and the defendant need prove only that the publisher acted at least negligently in failing to ascertain whether the statements concerning the defendant were true or false.

The fourth element is either the actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. . . . [S]pecial harm [i]s the loss of something having economic or pecuniary value which must result from the conduct of a person other than the defamer or the one defamed and must be legally caused by the defamation. In essence, this element refers to two general categories of liability-producing statements. First, there are those that the Plaintiff is able to demonstrate caused him special harm. Second, there are those for which Plaintiff need not prove the existence of special harm because they are actionable on their face. This second category clearly begs the question, what makes a defamatory statement actionable on its face, or actionable *per se*? The answer to this question depends in part on whether the statement is either a libel or a slander. Specifically, oral defamation[,] i.e. slander[,] is tortious if the words spoken fall within a limited class of cases in which the words are actionable *per se*, or if they cause special damages. Written defamation[,] i.e. libel[,] is actionable *per se*. Thus, special damages need only be proven when the statement is slanderous and it does not fall into one of the limited classes of speech which is actionable *per se*. The classes of speech that are actionable *per se* are outlined in Restatement (Second) of Torts, §§ 570-574. *Id.* at 585-88 (quotation marks, brackets, ellipses, citations, and footnote omitted)

¶56 Contrary to Defendants' arguments, Vooy was not the only witness who testified to having heard Mosler on the radio. Reed testified that he heard Mosler on the radio "saying that they [Vooy and Gerace]

didn't pay rent, that they – supposedly loud parties were there. I think they even mentioned something about drugs or something in that area on the radio. But it was always negative.” (Trial Tr. 520:21-25.) Reed partially corroborated Vooyo's testimony earlier in trial when she said she heard Mosler say on the radio “[t]hat he was getting rid of us because we didn't know what we were doing, we were always late on rent, we were behind on rent, we didn't know how to run a restaurant.” *Id.* at 210:1-4. Counsel for Plaintiffs then testified, asking about the “accusation about the dogs in the restaurant, did you have dogs in your restaurant?” *Id.* at 210:7-8. Defendants did not object and Vooyo acknowledged that there were dogs on the beach at Cane Bay but denied that there were dogs in the restaurant. The problem here is that only mention of dogs occurred shortly before when Vooyo was testifying about the March 2005 conversation with Mosler where he expressed his disagreement with how they were running their business. *See id.* at 204:13-205:19. In other words, the jury never heard that Mosler said on the radio that the Beach Bar owners allowed dogs to be in the restaurant. Woodson denied seeing dogs in the restaurant, and no one asked him if he had heard it said on the radio that dogs were in the restaurant. Hanley testified that he saw dogs in the restaurant, but no one said they heard him, or Mosler, publish that statement on the radio.

¶57 Furthermore, no one testified to any defamatory statements allegedly made by Hanley. Counsel for Plaintiffs testified, saying “So when Mosler and Hanley started going on the radio and TV and essentially declaring you deadbeats, what happened to your clientele?” *Id.* at 227:12-14. And, to be sure, Hanley did admit to going on the radio to defend his reputation and character. *See id.* at 624:2-5. But only Hanley testified to any particular statement he, himself, made on the radio and those statements were made to counter Vooyo's statements that they were current on the rent. Based on Hanley's testimony only, it was not possible for the jury to find that he defamed Gerace or Vooyo.

¶58 As for Mosler, other than the comment about dogs in the restaurant, all of what Mosler supposedly said was either true or his opinion. “Whether an allegedly defamatory statement is one of opinion or fact

is . . . a question of law . . .” *Simpson v. Andrew L. Capdeville, P.C.*, 64 V.I. 477, 486 (2016). Considering that Vooy and Gerace were running a business and that the allegedly defamatory statements concerned their fitness to run that business, the statements could be *per se* actionable, and damages would be presumed if they were, in fact, defamatory. See *Joseph*, 57 V.I. at 588 (citing *Restatement (Second) of Torts* §§ 570-74 (1977)).

¶59 Section 573 of the Restatement (Second) of Torts explains that “[o]ne who publishes a slander that ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business . . . is subject to liability without proof of special harm.” However, because damages are presumed in defamation *per se* cases—and in some jurisdictions, punitive damages can be awarded without an award of any other damages, see, e.g., *Lawnwood Med. Ctr. Inc. v. Sadow*, 43 So. 3d 710, 727 (Fla. Dist. Ct. App. 2010) (“[P]unitive damages may be the primary relief in a cause of action for defamation *per se*.” (citing *Jones v. Greeley*, 6 So. 448, 450 (Fla. 1889)); *Nat’l Recruiters, Inc. v. Cashman*, 323 N.W.2d 736, 741 (Minn. 1982) (“In Minnesota, ‘when words are defamatory *per se* punitive damages are recoverable without proof of actual damages.’” (ellipsis omitted) (quoting *Anderson v. Kammeier*, 262 N.W.2d 366, 372 (Minn. 1977))); *Collier v. Bryant*, 719 S.E.2d 70, 82 (N.C. Ct. App. 2011) (“To justify an award of punitive damages, nominal damages must be recoverable, but there is no requirement that nominal damages actually be recovered.” (citing *Hawkins v. Hawkins*, 417 S.E.2d 447, 449 (N.C. 1992))—courts must independently determine whether allegedly defamatory statements are actionable. See *Simpson*, 64 V.I. at 486. “Hyperbole and expressions of opinion not provable as false’ fail to meet this actionability element of a defamation claim” *Id.* at 487 (quoting *Kendall v. Daily News Publ’g Co.*, 55 V.I. 781, 788 (2011)). For example, “[a] standalone statement that someone is ‘dangerous’ is a subjective opinion, not a provable fact, as instances of name-calling generally are. And ‘a statement that is merely “rhetorical hyperbole,” moreover, is considered nonactionable.’” *Alexander v.*

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(citations omitted). As the Restatements explain,

[d]isparagement of a general character, equally discreditable to all persons, is not enough unless the particular quality disparaged is of such a character that it is peculiarly valuable in the plaintiff's business or profession. . . . Thus, a statement that a physician consorts with harlots is not actionable *per se*, although a charge that he makes improper advances to his patients is actionable; the one statement does not affect his reputation as a physician whereas the other does so affect it. *Restatement (Second) of Torts* § 573 cmt. e (1977).

Other examples include a statement that a merchant is either insane or insolvent, both of which would be actionable *per se*, as would saying that a lawyer is ignorant and unqualified to practice law. *See generally id.* cmt. c, illus. 4-6. However, saying that a bricklayer is a hypocrite or that a university professor is a drunk would not be defamatory *per se* because being forthright or sober, respectively, are not inherently part of being a bricklayer or a professor.

¶60 Similarly, saying that someone does not know how to run a business is an opinion that could never be defamatory because “only statements that are provable as false are actionable.” *Simpson*, 64 V.I. at 487 (quoting *Kendall*, 55 V.I. at 788). *See also, e.g., Miller v. Richman*, 592 N.Y.S.2d 201, 203 (App. Div. 4th Dept. 1992) (“The individual defendants’ unfavorable assessments of plaintiff’s work are ‘incapable of being objectively characterized as true or false[.]’” (citations omitted)); *see also id.* (collecting cases under state law where opinion was subject of defamation suit). Thus, the statements that Plaintiffs “didn’t know what [they] were doing . . . [and] didn’t know how to run a restaurant[.]” (Trial Tr. 210:1-4), were expressions of opinion and not defamatory because they could be provable as false.

¶61 In addition, the statements on the radio that Plaintiffs “were always late on rent . . . [and] were behind on rent[.]” *id.* at 210:2-3, were mostly true. Plaintiffs admitted that they had been late with rent, and cancelled checks admitted into evidence showed bounced checks, late payments, and checks that covered more than one month’s rent. Plaintiffs’ Exhibit 47 contains copies of cancelled checks from

October 2003 through June 2005. Rent for October 2003 was paid on October 7, 2003. However, rent for November and December 2003 was not paid until December 19, 2003. Rent for January 2004 was paid on January 4, 2004; rent for February 2004 was paid on February 1, 2004; but rent for March 2004 was not paid until March 12, 2004. Rent for April 2004 was paid on March 22, 2004, minus the cost of plumbing repairs. Rent for May and June 2004 was paid on June 7, 2004. Rent for July and August 2004 was paid on August 2, 2004, with roof repairs deducted. Rent for September and October 2004 was not paid until January 23, 2005. The check for rent for November and December 2004 and January 2005 was written on February 7, 2005, but it bounced and did not clear until March 2, 2005. Rent for February and March 2005 was paid on March 15, 2005. Rent for April 2005 was paid on April 14, 2005. Rent for May 2005 was paid on May 3, 2005. Finally rent for June 2005 was paid on June 9, 2005. Out of the twenty-one months Plaintiffs rented from Chrismos, they were clearly late nine times: November 2003, May 2004, July 2004, September 2004, October 2004, November 2004, December 2004, January 2005, and February 2005. Given the uncertainty about when rent had to be paid, the Court excluded from its count rent that was paid by the middle or the end of the same month in which it was due. 9 out of 21 is 42.86%, close to half. It may have been an exaggeration for Mosler to say Plaintiffs were always late but not by much.

¶62 The Court does acknowledge Plaintiffs' frustration with a landlord who, on the one hand, tells them it is okay if they cannot pay rent on time and then, on the other hand, goes around broadcasting to everyone when they do not pay on time. The Court also understands Plaintiffs' disappointment with a landlord sharing with the general public concerns that it has over how its tenant operates its own business. Vooyoys and Gerace did not go into business with Mosler and Hanley to operate the Beach Bar. Chrismos leased a building to Vooyoys and Gerace on its property. How that business was run—what the atmosphere was like, what clientele frequented the restaurant, what music was played, or what food was served—was

none of the landlord's concern so long as it did not subject the landlord to liability or violate the law. Mosler acknowledged that the Beach Bar was on a month-to-month tenancy. Chrisomos could have evicted them at any time with thirty days' notice. Thus, it does beg the question why Mosler took to the radio to share grievances about his tenants and air their "dirty laundry" if all he wanted was for them to leave.

¶63 However, Plaintiffs did not assert a business disparagement claim. They asserted a defamation claim. *Cf. McDonald Oilfield Operations, LLC v. 3B Insp., LLC*, 582 S.W.3d 732, 749 (Tex. Ct. App. 2019) ("Business disparagement and defamation are similar in that both involve harm from the publication of false information." (quoting *In re: Lipsky*, 460 S.W.3d 579, 591 (Tex. 2015)); *see also id.* at 750 ("To prevail on a business disparagement claim, a plaintiff must establish that (1) the defendant published false and disparaging information about it, (2) with malice, (3) without privilege, (4) that resulted in special damages to the plaintiff." (quoting *Lipsky*, 460 S.W.3d at 592)). Even when viewing the evidence in the light most favorable to Plaintiffs as the nonmoving parties, the Court cannot conclude that they proved defamation. No one testified as to what Hanley said except Hanley himself and no specific statements were attributed to him. The statements attributed to Mosler were either true or his opinion. Reed did mention that he heard Mosler say "something about drugs or something in that area . . ." (Trial Tr. 520:24-25.) But he did not connect Mosler's statement directly to the Beach Bar or Vooy's and Hanley. No documentary evidence was introduced at trial. What's more, Plaintiffs did not question Gerace as to what he heard or Mosler as to what he allegedly said. Vooy's testimony, even when corroborated by Woodson and Reed, simply does not establish statements that rise to the level of slander. Accordingly, the Court must grant Mosler and Hanley's motion for judgment as a matter of law and set aside the jury's verdict as to Count VI.

iv. Punitive Damages

¶64 Defendants also move for judgment as a matter of law on the award of punitive damages,

challenging both the sufficiency of the evidence and the law. “Punitive damages are ‘damages awarded in cases of serious or malicious wrongdoing to punish or deter the wrongdoer or deter others from behaving similarly — called also exemplary damages, smart money.’” *Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 824 (2017) (citation omitted). “Punitive damages must be based upon conduct that is not just negligent but shows, at a minimum, reckless indifference to the person injured — conduct that is outrageous and warrants special deterrence.” *Id.*

¶65 Defendants had argued after Plaintiffs rested that by law punitive damages are unavailable for contract claims. They renewed that challenge after both sides rested and again, after the jury returned its verdict. However, at no point did either side inform the Court that the law in the Virgin Islands was not settled on the question. *See id.* at 824-25 (emphasizing that “it is reversible error for the trial court to fail to conduct a ‘*Banks Analysis*’ in the first instance” and noting that “the trial court and the parties entirely failed to consider whether the courts of the Virgin Islands have ever adopted a definition of punitive damages, failed to consider the majority rule among the jurisdictions of the United States, and failed to consider what rule is most appropriate for the Virgin Islands[.]” (citations omitted)). Defendants are correct that persuasive authority does hold that “‘punitive damages are not recoverable for a breach of contract unless the conduct constituting the breach is also a tort for which punitive damages are recoverable.’” *Ishimatsu v. Royal Crown Ins. Corp.*, 8 N. Mar. I. 424, 439 (2010) (quoting *Restatement (Second) of Contracts* § 355 (1981)). “Punitive damages will not lie for breach of contract, even if it is proven that the breach is willful, wanton, or malicious. . . . [A] recovery of punitive damages can only be had where the alleged breach of contract ‘merges with, and assumes the character of, a willful tort.’” *Bedell v. Inver Hous., Inc.*, 506 A.2d 202, 206 (D.C. 1986) (citations omitted). However, Defendants failed to inform the Court that Virgin Islands law is unsettled and thus, the Court could deem it waived. *Cf. Cornelius*, 67 V.I. at 825 (citing *Ubiles v. People*, 66 V.I. 572, 589 (2017)). However, because the Court

has already determined that the verdict on the contract claims must be vacated, further discussion as to whether Virgin Islands should permit punitive damages for contract claims would be academic at best.⁹

¶66 Nonetheless, after considering the arguments and the record, the Court concludes that the punitive damages award must be vacated. However, before addressing the sufficiency of the evidence, the Court must point out two errors with the jury verdict form that weigh in favor of setting aside the punitive damages award. First, even though both Vooy's and Gerace demanded punitive damages, and even though the jury verdict form asked the jury to determine whether Defendants acted with reckless disregard for the rights of the Plaintiffs to entitle them to punitive damages, the verdict form only gave the jury the option of awarding punitive damages to Vooy's. In other words, the verdict form, inadvertently, did not ask the jury how much they might have awarded Gerace, if they found that he was entitled to punitive damages. Plaintiffs did not object so any error would be waived but it underscores a potential source of confusion to the jury. Second, the verdict form also asked the jury to consider whether Plaintiffs were entitled to punitive damages separate and apart from any particular claim. There is no way for the Court to determine which or claims the jury determined warranted punishing Mosler and Hanley for. Virgin Islands law is clear that punitive damages is not a separate or stand-alone claim but simply a form of damages. *See Der Weer v. Hess Oil Virgin Island Corp.*, 61 V.I. 87, 102 (Super. Ct. 2014) (citing *Anthony v. FirstBank V.I.*, 58 V.I. 224, 227 n.4 (2012)); *Maxwell v. Amerada Hess Corp.*, Case No. SX-05-CV-846, 2010 V.I. LEXIS 128, *31 (V.I. Super. Ct. June 30, 2010) (“[P]unitive damages cannot be a stand alone claim”); *Hodge v. Daily News Publ'g Co., Inc.*, 52 V.I. 186, 200 (Super. Ct. 2009) (“[I]s not proper so plead punitive damages as a separate cause of action.” (citing *Urgent v. Havana*, Civ. No. 103/2006, 2008 U.S. Dist. LEXIS 77455, *31 (D.V.I. Oct. 2, 2008))). The verdict form did instruct the jury that they were not

⁹ Additionally, the jury verdict form limited punitive damages to the defamation and intentional misrepresentation claims, which also renders Defendants' argument academic.

to consider punitive damages unless they found one or more Defendants liable for intentional misrepresentation, defamation as to Gerace, or defamation as to Vooyo. The jury found all three Defendants liable for intentional misrepresentation but only Mosler and Hanley liable for defamation and only imposed awarded punitive damages on Mosler and Hanley. Imposing punitive damages only on Mosler and Hanley but not Chrismos would correlate with the jury's defamation determination. Since the Court concluded that the verdict on defamation must be set aside, the award of punitive damages would also have to be set aside for the same reasons.

¶67 Yet, even if the Court were to assume that the jury imposed punitive damages on Mosler and Hanley, but not Chrismos, for the intentional misrepresentation, the Court still cannot find that Plaintiffs proved punitive damages by clear and convincing evidence. *Cf. Atlantic Human Resource Advisors, LLC, v. Espersen*, 2022 VI 11, ¶ 70 (citing 5 V.I.C. § 740(5)). To be sure, punitive damages is an appropriate sanction for fraudulent or intentional misrepresentation. *Cf. DeNofio v. Soto*, No. 00-5866, 2003 U.S. Dist. LEXIS 12225, *4 (E.D. Pa. June 24, 2003) (“Punitive damages may be imposed where there is ‘sufficiently aggravated conduct contrary to the plaintiff’s interests, involving bad motive or reckless indifference’ Fraudulent misrepresentation certainly meets this standard.” (citation and ellipsis omitted)); *accord Naranjo v. Paull*, 803 P.2d 254, 261 (N.M. Ct. App. 1990) (“Punitive damages is an appropriate sanction for common-law fraud.”). But it is not mandatory that punitive damages be awarded because punitive damages punishes wrongdoers and makes an example out of them to others. *See Cornelius*, 67 V.I. at 824. In fact, “the focus of punitive damages is not the individual plaintiff.” *Duhon v. Conoco*, 937 F. Supp. 1216, 1220 (W.D. La. 1996) (“Punitive damages thus have more to do with the tortfeasor than with the victim.” (quoting *Billiot v. B.P. Oil Co.*, 645 So. 2d 604, 612 (La. 1994)). Instead “a punitive damages award is about the defendant’s actions. ‘The purpose of punitive damages is not to compensate a plaintiff but to punish the guilty, deter future misconduct, and to demonstrate society’s

disapproval.” *Dardinger v. Anthem Blue Cross & Blue Shield*, 781 N.E.2d 121, 145 (Ohio 2002).

¶68 First, “rather than assessing the reprehensibility of all defendants collectively, it is important to consider the role each defendant played in that conduct.” *Espersen*, 2022 VI 11 at ¶ 82. Plaintiffs failed to distinguish between the conduct of Hanley and that of Mosler, with respect to the intentional misrepresentation claim. In fact, the evidence tended to show that Hanley was more willing to work with Plaintiffs than Mosler and, arguably, seemed to be more concerned for them overall, meeting with them to show them how to determine the value of the business, for example. The testimony also tended to show that Hanley was more involved than Mosler. But even when viewing all the evidence in the light most favorable to Plaintiffs, the Court cannot conclude that it shows, clearly and convincingly, that either Mosler or Hanley acted with “reckless indifference” or engaged in “conduct that is outrageous and warrants special deterrence.” *Cornelius*, 67 V.I. at 824. At best, the evidence shows that a 25-year-old “kid,” (Trial Tr. 439:16-17), and his fiancée, both new to the restaurant industry, were taken advantage of by two older and more sophisticated businessmen. Mosler, an “economist” and “special[ist] in monetary operations[,]” *id.* at 710:15, 23, and Hanley, a seasoned relator, established a limited liability company to purchase several parcels of land on which a restaurant, residential cottages, and a dive shop were situated. They inherited—not only the tenants of the prior landowners—but problems with those buildings. They encouraged Vooyoys and Gerace to make repairs to the restaurant while leading them to believe that they would give them a lease in return. As the Court noted earlier, Plaintiffs and the Chrisomos Defendants were in a contractual relationship as tenants and landlord but were also negotiating a new relationship, a long-term landlord-tenant relationship. There was no duty to bargain or negotiate in good faith at that point. Vooyoys and Gerace took Mosler and Hanley at their word, ultimately to their detriment, because Mosler eventually began to look for a new tenant to replace them. He succeeded. That does not rise to the level of outrageous conduct that warrants special deterrence, however.

¶69 Admittedly, land is scarce on an island and commercial space is at a premium. The Beach Bar could not easily relocate to a different location and retain its unique characteristics. But rather than insist, as Jordan did for example, on having a lease before making further improvements, Vooyo and Gerace trusted Mosler and Hanley. Whether that was unwise is not clear under Virgin Islands law. *But cf. Parke-Hayden, Inc. v. Loews Theatre Mgmt. Corp.*, 91 Civ. 0215 (RWS), 1993 U.S. Dist. LEXIS 10318, *8-9 (S.D.N.Y. July 24, 1993) (“New York law still adheres to the common law doctrine of *caveat emptor* in real estate negotiations. The lack of a duty to bargain in good faith has been considered part of the definition of freedom of contract” (citations omitted)). The jury determined that the Chrisomos Defendants intentionally misrepresented that they intended to give Vooyo and Gerace a long-term lease. That misrepresentation, on its own, cannot rise to the level of warranting punitive damages, otherwise, punitive damages would always be awarded any time someone was found liable for fraudulent or intentional misrepresentation. There must be something more and it is the something more that was lacking here.

¶70 Vooyo and Gerace knew before they moved to St. Croix that there was no lease for the Beach Bar. (See Trial Tr. 172:16-17 (“We actually found out that when we were in Florida, before we flew down.”).) Vooyo explained why they still decided to continue:

[b]ecause we had gotten that far. We had sold a condo, packed up all our stuff. Word sent to Joe, went down end of June, we were daydreaming about it and what to do and what we would do and how great it would be for over a month. So when we found out there was no lease, we thought we'd take a leap of faith and continue. *Id.* at 172:19-24.

They could have delayed the move or even delayed the closing, which did not occur until August 7, 2003. They also learned soon after they arrived that the land under the Beach Bar was being sold. Although they would not have it known at the time, Chrisomos was not formed until September 7, 2003, so the closing on the land purchase had to have occurred sometime afterward. Vooyo testified that they asked Mosler and Hanley about a long-term lease the same day they met them as the new owners, yet did nothing to speed

up that process. She did testify that they “kept asking for a seven-year lease[,]” *id.* at 215:21, but what else they did, if anything, was not explained, nor was what Hanley or Mosler said in response. Thus, the evidence, even viewed in the light most favorable to Plaintiffs, shows only that Mosler and Hanley misled Vooyo and Gerace into thinking they would get a long-term lease. This is not conduct so outrageous that it must be punished by punitive damages. Accordingly, the Court will also set aside the jury’s award of punitive damages against Mosler and Hanley.

III. Motion for New Trial

A. Legal Standard

¶71 “Virgin Islands Rule of Civil Procedure 59(a)(1)(A)(vi) provides in relevant part that: ‘The court may, on motion, grant a new trial on all or some of the issues — and to any party — as follows: for attorney or party misconduct that undermined the trial.’” *R.J. Reynolds Tobacco Co. v. Gerald*, 2022 VI 4, ¶ 24. Courts evaluating motions for new trial based on an attorney’s remarks during closing arguments “must assess whether the closing arguments were both improper and prejudicial, meaning that they impacted the substantial rights of a party.” *Id.* (collecting cases). Thus, for Defendants to prevail they “must show that the conduct complained of was in fact improper and that the improper argument was so highly prejudicial and inflammatory that it denied the opposing party its right to a fair trial.” *Id.* at ¶ 25.

B. Discussion

¶72 Defendants argue, in the alternative, that they should be given a new trial because of comments Plaintiffs’ counsel during closing arguments that undermined the fairness of the trial. During her closing argument, Plaintiffs’ counsel said, “And then had they had a lease, had there been a promise for that maintained, we know from Miss Alex Myers, they could have sold that lease . . . for \$125,000. So the failure to give them that lease that was promised, they lost the ability to sell that lease.” The Court had to call a short recess before Plaintiffs’ counsel had concluded, and Defendants during the break, Defendants

moved for a mistrial based on the reference to Myers's testimony.

¶73 Alex Myers had been called by Plaintiffs as a rebuttal witness to impeach Jordan. Jordan had testified that he sold the Beach Bar (including the seven-year lease) for around \$25,000.00 or \$30,000.00 and denied that the total sales price was \$120,00.00. Myers impeached his testimony when she told the jury she purchased the Beach Bar (including the lease) from Jordan for approximately \$175,000.00. She also told the jury and that she had fallen behind on the rent owed to Chrismos. After Defendants moved for a mistrial, the Court reiterated that Myers's testimony was limited solely to impeachment and then deferred ruling until closing arguments were over. Once counsel finished, the Court ruled that Plaintiffs' counsel's arguments were "not so egregious to declare a mistrial . . . [and] final instruction would show and explain that argument by counsel is not evidence and that the[jury] must rely upon their memory as to the facts of this case." (Trial Tr. 1108:6-10.) However, the Court did emphasize that "[i]f there is another instance *like that*, I will review the record and if I find it is cumulative, the Court will find it's egregious and I will declare a mistrial." *Id.* at 1108:13-16 (emphasis added). After Defendants' counsel made his closing arguments and Plaintiffs' counsel gave her rebuttal, Defendants then renewed their motion for a mistrial based on misstatements of Plaintiffs' counsel. The Court took the matter under advisement. In their post-trial motion, Defendants renewed their request for a new trial.

¶74 The first statements Defendants point to concern check number 722 for \$2,000.00. Plaintiffs' version, admitted as part of a group as Plaintiffs' Exhibit 47, had "July / August -1000 for Roof" written on the memo line, whereas the memo line on Defendants' copy of the same check was blank. Defendants' counsel argued in his closing that Vooy's wrote the notation on the memo line to falsify the evidence. Plaintiffs' counsel in rebuttal claimed it was not falsification. Instead, according to her, Gerace had signed the check but simply forgot to add the notation on the memo line. However, Plaintiffs' counsel confused two different checks. Gerace had signed check number 544 for \$921.00 with the notation "Rent March -

Plumber Bills” which Vooyoys later corrected by crossing out “March” and writing “April.” Vooyoys signed check number 772 for \$2,000.00 and wrote “July / August -1000 for Roof” on it after it was returned. She explained that she may have added the notation afterward to explain why the payment did not match the rent due. Plaintiffs’ counsel did conflate two different pieces of evidence and thus, her argument was improper, but the Court does not find any prejudice here because the jury was instructed that their recollection of the facts controls.

¶75 The second statements Defendants’ point to are Plaintiffs’ counsel’s summary of facts that—to put it plainly—were not in evidence. “The cardinal rule of closing argument is that counsel must confine comments to evidence in the record and to reasonable inferences from that evidence.” *R.J. Reynolds Tobacco Co.*, 2022 VI 14 at ¶ 40 (brackets omitted) (quoting *James v. People*, 59 V.I. 866, 888 (2013), parenthetically)). Plaintiffs’ counsel violated this rule when she spoke about Vooyoys and Gerace wanting to leave St. Croix and cut their losses but Mosler and Hanley convinced them to stay, promising to make a deal. (See Trial Tr. 1114:24-1115:5 (“[B]ut at some point they said, we don’t get – if we don’t get a lease, this isn’t going to work, we should take our losses and go. And that’s when Mosler and Hanley say, no, don’t do that, we’ll make a deal for you to stay. And so they did. And they invested. And they made improvements.”).) There was no testimony about Vooyoys and Gerace wanting to sell the Beach Bar, cut their losses, and leave island. “The purpose of closing argument is to mold the facts given during trial in the light most favorable to one’s client[,]” *James*, 56 V.I. at 888, not to make up facts to enhance that light.

¶76 The third statements Defendants point to concern whether the Beach Bar was open in June 2005. Reed, the bartender, had recalled that the Beach Bar was closed “sometime towards end of May, maybe somewhere in that area” (Trial Tr. 516:16-17.) When asked if he was guessing, he said he was. See *id.* at 516:20-22 (“I’m going to guess within a month period. I’m sorry. I’m going to – that’s all I can

remember on that part.”). On cross-examination, he reiterated that the Beach Bar was “open until the very end[,] *id.* at 532:21, but believed that “the end” was in May. During rebuttal, Plaintiffs’ counsel referenced Reed’s testimony, specifically that he was there till the end, and argued that the restaurant was open in June because Plaintiffs’ paid rent. Defendants claim counsel misrepresented the evidence. However, that evidence was conflicting at best. Vooyo did testify that they vacated the premises at the end of June 2005 and the restaurant was open that month. On cross-examination, she reiterated that the Beach Bar was open in June, but when pressed—and presented with contrary testimony from her deposition—Vooyo backtracked, saying “I believe we were open in June. I don’t know if it was ‘til the end of June.” *Id.* at 286:22-23. When pressed further, Vooyo said “I have gross receipts for June so I made money” *Id.* at 287:1. Vooyo was later recalled so the Beach Bar’s taxes could be admitted into evidence. On redirect, she stated that she believed the Beach Bar was open in June because they paid rent for June. However, after seeing no gross receipts for June, Vooyo conceded that the restaurant must not have been open. Given the conflicting testimony, the Court does not find Plaintiffs’ counsel’s characterization of the evidence prejudicial.

¶77 The fourth statement Defendants point to is Plaintiffs’ counsel’s characterization of the April 12, 2005 letter as an illegal attempt to evict Vooyo and Gerace. During rebuttal, Plaintiffs’ counsel characterized the letter as follows:

So the idea that they – that they didn’t give them a notice to quit, that letter – when you serve someone with a letter and tell them that you’ve got – on April 12th, which you got it April 18th, and they tell you you have to get out or we’re going to take your stuff and throw it away by April 30th, that’s illegal. You can’t do that. *Id.* at 1125:9-15.

Defendants contend that “characterization of this letter and the applicable law is totally wrong, as the letter only sought to confirm they were leaving and asked to be corrected if they were not doing so.” (Defs’ R. 50(b) & R. 59(a) Post-Tr. Mots. 18.) However, Defendants overlook that Plaintiffs’ counsel make similar

remarks during her opening statement, which their attorney attempted to refute. (*Compare* Trial Tr. 125:23-126:13, *with id.* at 143:9-20.) Defendants also overlook testimony comparing the letter to an eviction notice: it was written by an attorney on behalf of a landlord and served by a process server, stating what would happen if the tenants did not leave. Gerace and Vooyoys referred to the letter as an eviction letter, which Hanley denied. “In attempting to convince a jury that a defendant’s conduct was outrageous and should be punished, an advocate must go beyond the kind of arguments necessary to establish ordinary negligence.” *Herman v. Hess Oil V.I. Corp.*, 10 V.I. 521, 538 (D.V.I. 1974) (footnote omitted), *aff’d* 12 V.I. 240 (3d Cir. 1975). The Court finds no prejudice from Plaintiffs’ counsel characterization of the letter, particularly since the Court also instructed the jury as to the definition of a notice to quit or to terminate a tenancy.

¶78 The fifth statement Defendants point to concerns Plaintiffs’ counsel’s reference to Defendants’ burden of proof regarding defamation. Plaintiffs’ counsel argued in rebuttal that Defendants could have called Roger Morgan as a witness. (*See* Trial Tr. 1126:15-23 (“Now, and where’s Roger Morgan? Well, first of all, the judge, I believe, will instruct you that no one is required to bring all the witnesses that there are. But there’s no evidence in this case that anybody has the ability to bring Mr. Morgan here. So -- and if indeed they wanted to prove that they didn’t say those things on Mr. Morgan’s show, it would be they who would bring Mr. Morgan and they did not.”).) Defendants correctly note that it is the plaintiff who has the burden of proof. By arguing, during rebuttal, that Defendants should have produced evidence in their defense, which they did get a chance to respond to, Defendants claim they were prejudiced. The Court disagrees. The jury was instructed on the burden of proof and further, that the court’s instructions, not the arguments of counsel, must guide their deliberations.

¶79 The last statement Defendants point to concerns Plaintiffs’ counsel’s reference to Woodson having heard Mosler and Hanley defame Plaintiffs on the radio. In his closing, Defendants’ counsel pointed out

that Plaintiffs had “called John Woodson. Did John Woodson say that he heard anything negative about them? No.” *Id.* at 1084:24-25. During her rebuttal argument, Plaintiffs’ counsel responded, saying

And the statement that says Mr. Woodson didn't say that he heard bad things on -- being said by Hanley and Mosler. His testimony was, I called up the show to -- let me see if I got it. I called up the show to support it -- to support them. Well, you wouldn't call up the show to support Vicki -- Vic and Joe if people weren't saying bad things about them. So of course he heard people saying bad things about them. That's the reason he called to support them. *Id.* at 1126:24-1127:8.

Defendants argue that Plaintiffs’ counsel misrepresented the evidence, claiming “Woodson only testified that he called in to support Reggae” (Defs’ R. 50(b) & R. 59(a) Post-Tr. Mots. 18.) Here, both sides are mistaken. Woodson had testified that he heard from Vooy and Gerace and on the airwaves that they were being put out of the restaurant. The Court raised and sustained its own objection to Woodson’s statement that he heard it on the airwaves. Counsel then asked if Woodson himself had ever gone on the airwaves to complain about Vooy and Gerace being removed from the restaurant, and he said yes. He claimed, in his opinion, the reason “was not a noise issue at Cane Bay. It had to do with the music and type of clientele that that music probably brought.” (Trial Tr. 392:18-20.) When asked directly if he ever heard Mosler or Hanley on the radio, Woodson said, “Not that I can recall.” *Id.* at 395:20, 22. The word “support” does not appear anywhere in his testimony and Woodson did not tell the jury that he called the radio in support of reggae music. Thus, Defendants are mistaken. Further, even though Woodson did not hear Mosler or Hanley on the radio, he did testify that he had heard from Plaintiff why they were being put out of the restaurant and, when coupled with the other testimony, the jury could reasonably infer that Woodson was of the opinion that the full moon parties and reggae music motivated Mosler and Hanley’s decision. The Court finds no prejudice from Plaintiffs’ counsel’s arguments here.


¶80 Finally, Defendants argue that the cumulative effect of all the misstatements of Plaintiffs’ counsel warrants a new trial. Courts “assume that juries for the most part understand and faithfully follow

instructions.” *Frett v. People*, 66 V.I. 399, 413 (2017). *See also Bland v. Sirmons*, 459 F.3d 999, 1015 (10th Cir. 2006) (even where there has been misleading argument by counsel, juries are presumed to follow court instructions). More importantly, however, Defendants have failed to show how Plaintiffs’ counsel’s misstatements prejudiced them. It is not the duty of the Court to scour the record looking for support for a party’s arguments. Since the Court did in fact instruct the jury that either counsel’s arguments are not to be considered as evidence and considering that courts assume that juries followed instructions, the Court concludes that the conduct of Plaintiffs’ counsel, while certainly far from laudable, did not undermine the fairness of the trial.

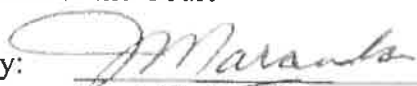
IV. CONCLUSION

¶81 For the reasons stated above, the Court concludes that Plaintiffs failed to carry their burden of proof as to defamation, breach of the duty of good faith and fair dealing, and breach of an agreement to enter into a lease. The Court further concludes that the award of punitive damages is unwarranted here. Accordingly, the Court will grant Defendants’ motion in part and set aside the jury’s verdict as to all three counts and the award of punitive damages. The Court will deny Defendants’ motion as to the verdict for intentional misrepresentation and deny the motion for a new trial. An order accompanying this Opinion, and a judgment, will follow.

DONE this 12th day of September, 2022.


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

ATTEST:
Tamara Charles
Clerk of the Court

By: 
Court Clerk TC

Dated: 9/12/2022

FILED
September 13, 2022 03:53 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOSEPH GERACE, VICTORIA VOOYS, D/B/A
CANE BAY BEACH BAR,**

PLAINTIFFS,

v.

**MARIA BENTLEY; DAVID BENTLEY; CB3,
INC.; WARREN MOSLER; CHRIS HANLEY;
AND CHRISMOS CANE BAY, LLC,**

DEFENDANTS.

Case No. SX-2005-CV-00368

Action for Damages

Jury Trial Demanded

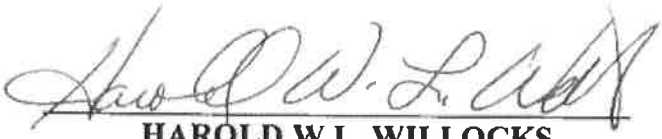
ORDER

AND NOW, for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Post-Trial Rule 50(b) and Rule 59(a) Motion filed by Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC is **GRANTED in part** as to the motion to set aside the verdict as to Count V, Count VI, and Count X, and the award of punitive damages, and **DENIED** as to the motion to set aside Count VIII and **DENIED** as to the motion for a new trial. It is further

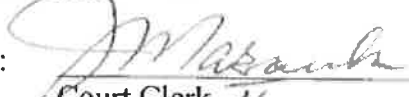
ORDERED that the jury's verdict as to breach of an agreement to enter into a lease, breach of the duty of good faith and fair dealing, and defamation, and the award of punitive damages, are **SET ASIDE**.

DONE and so **ORDERED** this 12th day of September, 2022.



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

ATTEST:
Tamara Charles
Clerk of the Court

By: 
Court Clerk TC

Dated: 9/12/2022

FILED

July 26, 2022 02:40 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOSEPH GERACE, VICTORIA VOOYS D/B/A
CANE BAY BEACH BAR,**

PLAINTIFFS,

v.

**WARREN MOSLER; CHRIS HANLEY; AND
CHRISMOS CANE BAY, LLC,**

DEFENDANTS.

Case No. SX-2005-CV-00368

Action for Damages

Jury Trial Demanded

ORDER

UPON REVIEW of the case, it appears that the following motions, stipulations, and requests (hereinafter "motions") remain pending, having not been ruled on, dismissed, or withdrawn. Accordingly, in order to address all pending motions prior to resolving the parties' post-trial motions, it is hereby

ORDERED that the Motion for Extension of Time *Nunc Pro Tunc* filed by Plaintiffs on November 24, 2008 is **CONSTRUED** as a motion for leave to file out of time and **GRANTED**, and the response filed by Plaintiffs on November 24, 2008 is **DEEMED TIMELY**. It is further

ORDERED that the Joint Stipulation to Extend the Discovery Deadlines filed by Plaintiffs and Defendants Chris Hanley, Warren Mosler, and Chrismos Cane Bay, LLC on May 20, 2010 is **DENIED as moot**. It is further

ORDERED that the Stipulation for Extension of Time filed by Plaintiffs and Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC on June 1, 2011 is **APPROVED**, and the reply filed by Plaintiffs on June 16, 2011 is **DEEMED TIMELY**. It is further

ORDERED that the Motion to Attend Status Conference by Telephone filed by Defendant Chrismos Cane Bay, LLC on January 11, 2013 is **GRANTED** and counsel's appearance by telephone

DEEMED PROPER. It is further

ORDERED that the Motion to Waive or in the Alternative Reduce Demand for Security filed by Plaintiffs on March 1, 2013 is **DISMISSED** in light of the decision of the Supreme Court of the Virgin Islands declaring the statute unconstitutional. It is further

ORDERED that the Motion for Fees filed by Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC on April 29, 2015 is **DENIED** in light of the decision of the Supreme Court of the Virgin Islands reversing this Court's Memorandum Opinion and accompanying Order dated April 7, 2015 and entered April 23, 2015. It is further

ORDERED that the Proposed Scheduling Order filed by Plaintiffs and Defendants on July 22, 2019 is **CONSTRUED** as a motion and **DENIED as moot.** It is further

ORDERED that the Motion to File Sur-Reply filed by Plaintiffs on August 12, 2021 is **DENIED as moot.** It is further

ORDERED that the Motion to Exclude New Factual Allegations or to Reopen Discovery filed by Defendants Warren Mosler, Chris Hanley, and Chrismos Cane Bay, LLC on August 16, 2021 is **DENIED as moot.** It is further

ORDERED that the Objection to Notice of Deposition *Duces Tecum* filed by Defendant Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on January 13, 2022 is **STRICKEN**, as far as it sought relief from the Court without being titled "motion", and otherwise **DENIED as moot.** It is further

ORDERED that the Opposition to "Objection" to Notice of Deposition *Duces Tecum* and Request James Jordan to Ordered [sic] to Comply with the *Subpoena Duces Tecum* filed by Plaintiffs on January 14, 2022 is **DENIED as moot.** It is further

ORDERED that the Request for Date Certain for Scheduled Jury Trial filed by Defendant Maria Bentley on January 27, 2022 is **DENIED as moot.** It is further

ORDERED that the Notice of Filing Amended Joint Final Pretrial Order filed by Plaintiffs on February 10, 2022 is **CONSTRUED** as a motion and **DENIED as moot**. The Court heard argument on request to amend the Joint Final Pretrial Order and took it under advisement. However, Plaintiffs never renewed their request prior to the case being submitted to the jury. It is further

ORDERED that the Motion to Allow Roger Morgan to Testify via Zoom filed by Plaintiffs on February 14, 2022, as amended on February 18, 2022, is **DENIED as moot** as Roger Morgan was not called as a witness. It is further

ORDERED that the Motion for Leave to Bring Limited Electronic Devices into the Superior Court Courtroom for the Trial in this Matter filed by Plaintiffs on February 17, 2022 is **DISMISSED** in light of the Administrative Order issued by the Supreme Court of the Virgin Islands in *In re: Policy on the Possession and Use of Electronic Devices in the Facilities of the Judicial Branch of the Virgin Islands*, S. Ct. Misc. No. 2017-0009 (V.I. June 1, 2017). Counsel no longer have to file a motion for permission to bring electronic devices or for their staff to use the devices that attorneys can bring. It is further

ORDERED that the Motion to Allow Darlene Flobeck to Testify via Zoom filed by Plaintiffs on February 17, 2022 is **DENIED as moot** as Darlene Flobeck was not called as a witness. It is further

ORDERED that the Motion to Allow John Reid to Testify via Zoom filed by Plaintiffs on February 17, 2022 is **GRANTED, nunc pro tunc** to February 25, 2022. It is further

ORDERED that Defendants' Motion to Quash Subpoena to Hunt Logan filed by Defendants Warren Mosler, Chrisomos Cane Bay, LLC, and Chris Hanley on February 18, 2022 is **DENIED as moot**. It is further

ORDERED that Defendants' Motion to Allow Linda Ayer Holt to Testify via Zoom at Trial filed by Defendants Warren Mosler, Chrisomos Cane Bay, LLC, and Chris Hanley on February 19, 2022 is **DENIED as moot** as Linda Ayer Holt was not called as a witness. It is further

ORDERED that Defendants' Motion to Allow Chris Howell to Testify via Zoom at Trial filed by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 21, 2022 is **DENIED as moot** as Chris Howell was not called as a witness. It is further

ORDERED that the Motion to Allow Alexandria Myers to Testify as a Rebuttal Witness via Zoom at Trial filed by Plaintiffs on February 24, 2022 is **GRANTED nunc pro tunc** to February 28, 2022. It is further

ORDERED that the Motion to Enter Judgment filed by Plaintiffs on March 24, 2022, and Renewed Motion to Enter Judgment filed by Plaintiffs on June 9, 2022, are **DENIED** as the Court still has under consideration the Defendants' Post-Trial Rule 50(b) and Rule 59(a) Motion. Entering judgment would implicitly deny the Defendants' motions, might constitute an abuse of discretion, and would likely cause further delay and invite additional costs and expense if Defendants simply refiled their motions after judgment had been entered. Moreover, if the motion for a new trial were granted, it would require vacating the judgment that Plaintiffs' want entered. It is further

ORDERED that the Joint Stipulation re Court Order dated June 6, 2022 is **CONSTRUED** as a notice and not as a stipulation requiring court approval.

DONE and so ORDERED this 25th day of July, 2022.



HAROLD W.L. WILLOCKS
Presiding Judge of the Superior Court

ATTEST:

Tamara Charles
Clerk of the Court

By: Tamara Charles
Court Clerk

Dated: 7/25/2022

FILED

September 03, 2021 09:50 AM

SX-2005-CV-00368

MARINA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,**

PLAINTIFFS,

v.

**MARIA BENTLEY, DAVID BENTLEY,
CB3, WARREN MOSLER, CHRIS
HANLEY, and CHRISMOS CANE BAY,
LLC.,**

DEFENDANTS.

SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

ORDER ON MOTION IN LIMINE

THIS MATTER comes before the Court by the way of a Motion in Limine (hereinafter “Motion”) of Warren Mosler, Chris Hanley and Chrismos Cane Bay, LLC (hereinafter “Defendants”). The Motion was filed on July 26, 2021. Joseph Gerace and Victoria Vooys doing business as Cane Bay Beach Bar (hereinafter “Plaintiffs”) filed their response on August 12, 2021. Defendants filed a reply on August 16, 2021. The Court shall **DENY** Defendants’ motion *in limine* for the stated reasons below.

Background

The Chrismos Defendants of Warren Mosler, Chris Hanley and Chrismos Cane Bay, LLC in this instant motion, move *in limine* to exclude Plaintiffs from making any type of racial statements at trial. *See* Defs.’ Mot. Lim. 1. Plaintiffs’ portion of the Joint Final Pretrial Order (hereinafter “JFPTO”) contains the paragraph:

The following week, Mosler again reiterated his dislike for the direction the bar was going **with the reggae shows and the type of crowd of people that such shows attracted** and that **Chrismos had decided to turn the property into a “white, middle class restaurant.”** (Emphasis added).
Defs.’ Mot. Lim. 1.

The Defendants argue that any mention of racial statements is in violation of V.I. R. EVID. 403.

Standard of Review

Virgin Islands Rule of Evidence 403 states, “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issue, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” See V.I. R. EVID. 403. “A trial court has wide discretion in determining whether to exclude otherwise admissible evidence under Rule 403” *Fahie v. People*, 62 V.I. 625, 641 (V.I. 2015).

If a party files a motion *in limine*, “the moving party has the burden to show that the evidence is irrelevant or should be excluded.” *In re Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 68 V.I. 507, 520 (Super. Ct. 2018) (citing *e.g.*, *Wilson v. Pepsi Bottling Grp., Inc.*, 609 F. Supp. 2d 1350, 1359 (N.D. Ga. 1009). In general, “[a] ruling on a pretrial motion *in limine* is necessarily tentative because subsequent evidentiary developments may change the context.” *In re Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 68 V.I. 507, 532 (Super. Ct. 2018) (quoting *Rufo v. Simpson*, 86 Cal. App. 4th 573, 103 Cal. Rptr. 2d 492, 516 (2001). “Courts recognize that *in limine* rulings are ‘necessarily tentative because the court retains discretion to make a different ruling as the evidence unfolds.’” *In re Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 68 V.I. 507, 532-533 (Super. Ct. 2018) (quoting *People v. Rodrigues*, 8 Cal. 4th 1060, (1994). “The purpose of a motion *in limine* is to prevent prejudicial evidence, argument, or reference from reaching the ears of the jury. However, a trial court’s ruling on a motion is preliminary and may change depending on what actually happens in trial.” *In re Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 68 V.I. 507, 532-533 (Super. Ct. 2018) (quoting *accord St. John v. Peterson*, 837 N.W.2d 394, 398 (S.D. 2013).

Discussion

Defendants ask the Court to exclude Plaintiffs from making any type of racial statements at trial. See Defs.’ Mot. Lim. 1. Defendants argue that the statements are not relevant because the nature of the instant matter is not a racial discrimination case. *Id.* Defendants assert that the

comments should be excluded due to V.I. R. EVID. 403. *Id.* Defendants cite a V.I. Supreme Court case in relevant part:

As elucidated by the advisory committee notes to Rule 403, unfair prejudice within the context of Rule 403 means “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” FED. R. EVID. 403, advisory committee’s note. **In essence, evidence which tends to lure the trier of fact to arrive at a conclusion on an improper, emotional or other basis is unfairly prejudicial.** (Emphasis added) (Citation omitted).

Alexander v. People of the Virgin Islands, 60 V.I. 486, 496 (V.I. 2014).

Defendants argue that the statements will cause the trier of fact to make a conclusion on evidence that is unfairly prejudicial in violation of *Alexander*. See Defs.’ Mot. Lim. 2. Defendants advised the Court that Plaintiffs’ counsel in the instant matter has had to seek similar relief in another court case. *Id.*

Plaintiffs argue that Defendants’ motion should be denied since the evidence is neither “irrelevant” under Rules 401 and 402 nor fairly prejudicial under Rule 403. See Pls.’ Opp’n. 1. Plaintiffs argue that a court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible and that the court is not bound by evidence rules, except those on privilege. *Id.*; see also V.I. R. EVID. 104(a). Plaintiffs then explained that the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist, but the court may admit the proposed evidence on the condition that the proof be introduced later. See Pls.’ Opp’n. 1.; see also V.I. R. EVID. 104(a).

Plaintiffs continue by showing a distinction between a summary judgement motion whose goal is to eliminate a trial in cases where there are not genuine issues of facts and a motion *in limine* that is designed only to narrow the evidentiary issues for trial. See Pls.’ Opp’n. 2.; see also V.I. R. EVID. 104(a); *Bradley*, 913 F.2d 1064, 1069, (3d Cir. 1990); *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984).

Plaintiffs state that they have a claim for fraud and punitive damages in this case. See Pls.’ Opp’n. 3. Plaintiffs point out that Defendants filed their motion *in limine* relying on language contained in a draft of the Joint Final Pretrial order and not the final draft filed on

August 11, 2021, a reason alone that is sufficient grounds to deny the motion. *Id.* Plaintiffs began to have Full Moon Reggae Nights at the bar in about mid-2004 and while there had been music and such parties previously by other bar tenants, they did not attract the same crowds as the reggae music events. *See* Pls.' Opp'n. 3-4. Plaintiffs contend that neighbors who are mostly white began to complain to Defendants Hanley and Mosler for months about the noise, the types of people, and the cars parking in the area. *See* Pls.' Opp'n. 4. Plaintiffs further contend that the Defendants were determined to get rid of Plaintiffs and their "local" crowd and replace it with a white middle class clientele. *Id.*

Plaintiffs argue that Defendants' statements of wanting to attract a whiter clientele and are relevant and material to Plaintiffs' cause of actions since it explains the motive behind Defendants' conduct in this case. *Id.* Evidence of motive is always relevant. *See* FED. R. EVID. 404(b) (evidence of motive is relevant). Plaintiffs cite to a United States District Court Case from the Virgin Islands. *See* Pls.' Opp'n. 4. In that case, the Court found that the use of a slur as evidence was probative with regard to motive and intent and held that a "[A] statement which suggests that [] decision was motivated by a racist stereotype is relevant evidence of intent and motive." *Galloway v. Islands Mech. Contr., Inc.*, No. 2008-071, 2012 U.S. Dist. LEXIS 129024, at *24 (D.V.I. Sept. 11, 2012). Plaintiffs admit that that the evidence is prejudicial. *See* Pls.' Opp'n. 5. However, Plaintiffs point out that the question under Rule 403 is whether the evidence is unfairly prejudicial, and so much to substantially outweigh its probative value. *Id.*; V.I. R. EVID. 403.

Plaintiffs finally explain that permitting them to offer evidence that Defendants' motive behind their conduct that forms the basis of Plaintiffs' various causes of action and then explain why Defendants wanted to attract a whiter clientele is not unfairly prejudicial enough to outweigh the probative value. *See* Pls.' Opp'n. 6.

Defendants reply by admitting that while the portions of the JFPTO referenced in Defendants' initial motion were changed, the new statement is the same basic statement that still contains an overtly racial statement. *See* Defs.' Reply 1. The new statement in relevant part:

The Plaintiffs, as part of their operation of the restaurant, began to have Full Moon Reggae Nights at the bar in about mid-2004. While there had been music and such parties previously by other bar tenants, they did not attract the same crowds as the reggae

complain to Hanley and Mosler, as to the noise, the types of people, and the cars parking in the area. (Emphasis added).

Defs.' Reply 1.

Defendants explain that Plaintiffs' argument that offensive language is admissible to help prove "intent" for their claim for fraud and punitive damages can be shown to be frivolous by an analysis of the complaint. *See* Defs.' Reply 2.

Defendants first address the "mostly white" neighbors statement and argue that the allegation of the "mostly white" neighbors complaining about the loud music at the Full Moon parties does not have any bearing on the issues in the case. *Id.* Defendants point out that Plaintiffs are "white" and operated the restaurant in the same neighborhood that they impute some racial animus to the Defendants. *Id.* Defendants assert that the racial make-up of the nearby neighbors has no relevance to the issues in the instant matter and thus should be barred from the trial. *Id.*

Defendants then addressed the "white, middle class restaurant" statement. Defendants quote from the final version of the JFPTO. *See* Defs.' Reply 3.

The quote in relevant part is:

When Mosler found out from Jordan that Plaintiffs had, on Hanley's recommendation, requested \$185,000 for Jordan to buy the restaurant, he became furious and assumed, without factual basis, that Plaintiffs were making a lot more at the restaurant than they were claiming, and decided he would not give Plaintiffs any lease, and he wanted them out immediately.

After that Mosler's whole attitude towards the Plaintiffs changed. He criticized Plaintiffs, the type of people they were attractive, **that he no longer wanted reggae music and he wanted to turn the restaurant/bar into a white middle-class restaurant.** (Emphasis added).

Defs.' Reply 3.

Defendants highlighted that there is no allegation in the Complaint that any misrepresentations were based on racial animus. *Id.* Defendants point out that the portion of the Complaint that contains the "white, middle class" statement, begins with the allegation "Defendant Chrisomos not liking the direction the restaurant was heading with its reggae music parties, so there was a decision to take it in a different direction before any alleged fraud

parties, so there was a decision to take it in a different direction before any alleged fraud happened.” *Id.* Defendants asserts that the alleged racial statement was not made by Mosler nor was it made before the alleged fraud took place and thus there is no such connection between the alleged fraud and the alleged referenced statement. *See* Defs.’ Reply 3-4. Defendants summarize once more that Plaintiff Gerace did not attribute any racial motive to Defendant Mosler and Defendant Hanley wanting Plaintiff Gerace to vacate the premises. *See* Defs.’ Reply 4.

Defendants finally contend that the racial statements should be excluded by Rule 403 since the discussions centered around the non-payment of rent, and the Complaint predated Plaintiffs’ departure from the premises that was only done on their own terms after retaining counsel and selling their business to a third party. *See* Defs.’ Reply 5-6.

Conclusion

The Court shall **DENY** Defendants’ motion *in limine*. The crux of this case is to explain the actions of Defendants that suddenly did not want to work with Plaintiffs anymore after Plaintiffs already invested in the property and used the property for months. Defendants’ statements of wanting to attract a whiter clientele and are relevant and material to Plaintiffs’ cause of actions since it explains the motive behind Defendants’ conduct in this case. Evidence of motive is always relevant. *See* V.I. R. EVID. 404(b) (evidence of motive is relevant). While Plaintiffs are white themselves, there was an alleged business dispute about the next direction of the restaurant and the future make racial makeup of its clients. This dispute supposedly contributed to the eventual demise of the parties doing business together. It is clear that this case is not a racial discrimination case as Defendants have pointed out in their initial motion however, race seems to have played a role in the actions that led to this lawsuit. The Defendants’ statements that touched upon race will give the finder of fact evidence of Defendants’ motives and will therefore be admitted. Defendants are free to argue against the relevance that race played in their actions with all the arguments developed in their motion and reply during trial. The Court does not find that the alleged statements are so unfairly prejudicial that they substantially outweigh their probative value.

Accordingly, it is hereby:

ORDERED that Defendants’ Motion in Limine is **DENIED**.

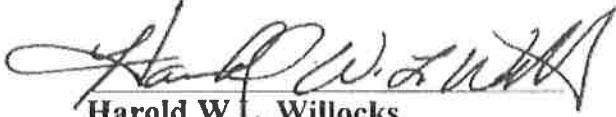
DONE and so **ORDERED** this 3rd day of December, 2021.

ATTEST:

Tamara Charles
Clerk of the Court

By: Janeen Maranda
Court Clerk Supervisor

Dated: 12/05/2021



Harold W.L. Willocks
Presiding Judge of the Superior Court

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS d/b/a)
 CANE BAY BEACH BAR,)
)
 Plaintiffs,)
)
 v.)
)
 MARIA BENTLEY, DAVID BENTLEY, CB3,)
 INC., WARREN MOSLER, CHRIS HANLEY,)
 and CHRISMOS CANE BAY, LLC.,)
)
 Defendants.)

SX-05-CI-368
 ACTION FOR DAMAGES

JURY TRIAL DEMANDED

ORDER

This matter comes before the Court upon the "Motion to Dismiss With Regard to David Bentley." Being advised in the premises, and in accordance with Rule 25 of the Federal Rules of Civil Procedure, it is hereby

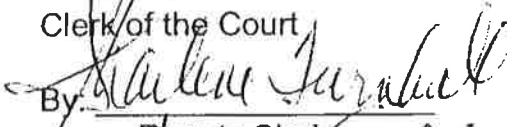
ORDERED that the action against David Bentley shall be and hereby is dismissed with prejudice.

DONE AND SO ORDERED this 5th day of May, 2010.


 JUDGE OF THE SUPERIOR COURT

ATTEST

VENETIA H. VELAZQUEZ
 Clerk of the Court

By: 
 Deputy Clerk
 Court 5/5/10

FILED

July 25, 2022 02:46 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**JOSEPH GERACE, VICTORIA VOOYS D/B/A
CANE BAY BEACH BAR,**

PLAINTIFFS,

v.

**WARREN MOSLER; CHRIS HANLEY; AND
CHRISMOS CANE BAY, LLC,**

DEFENDANTS.

Case No. SX-2005-CV-00368

Action for Damages

Jury Trial Demanded

ORDER


AND NOW, for the reasons stated on the record on February 17, 2022, it is hereby **ORDERED** that the following motions, and all responses and replied thereto, are **STRICKEN**:

- (1) Motion *in Limine* to Prevent Defendants from Eliciting Testimony or Presenting Evidence as to Violence by the Plaintiffs filed by Plaintiffs on February 8, 2022, responded to by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 11, 2022, and replied to by Plaintiffs on February 16, 2022; and
- (2) Motion *in Limine* as to Evidence that the Bentleys Were Originally Sued in this Matter, or that Case Has Settled as to Maria Bentley or CB3 filed by Plaintiffs on February 9, 2022, responded to by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 11, 2022, and replied to by Plaintiffs on February 16, 2022; and
- (3) Defendants' Motion *in Limine*: Hearsay filed by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 9, 2022, responded to by Plaintiffs on February 16, 2022, no reply filed; and
- (4) Defendants' Motion *in Limine*: Plaintiff's Physical Injuries filed by Defendants Warren

Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 9, 2022, responded to Plaintiff Victoria Vooyoys on February 16, 2022, no reply filed; and

- (5) Motion to Amend the Complaint to Conform to the Evidence filed by Plaintiffs on February 10, 2022, responded to by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 11, 2022, and replied to by Plaintiffs on February 16, 2022; and
- (6) Motion in *Limine* re Trial Testimony of Certain of the Plaintiffs' Named Witnesses filed by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 16, 2022, and replied to by Plaintiffs on February 16, 2022; and
- (7) Defendants' Motion to Exclude Witnesses Identified by Plaintiffs filed by Defendants Warren Mosler, Chrismos Cane Bay, LLC, and Chris Hanley on February 16, 2022, responded to by Plaintiffs on February 16, 2022, no reply filed.

DONE and so ORDERED this 25th day of July, 2022, *nunc pro tunc* to February 17, 2022.


HAROLD W.L. WILLOCKS
Presiding Judge of the Superior Court

ATTEST:

Tamara Charles
Clerk of the Court

By: 
Court Clerk

Dated: 7/25/2022

FILED

August 12, 2021 11:47 AM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

MARIA BENTLEY, CB3, WARREN
MOSLER, CHRIS HANLEY, and
CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

JOINT FINAL PRETRIAL ORDER

The following shall constitute the Final Pretrial Order pursuant to Rule 16(e) of the Federal Rules of Civil Procedure and this Final Pretrial Order shall govern the conduct of the trial of this case. Amendments to this order will be allowed only in exceptional circumstances to prevent manifest injustice.

APPEARANCES:

Lee J. Rohn, Esquire

Attorney for Plaintiff

1108 King Street, Suite 3 (mailing)

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Christiansted, St. Croix 00820

Attorney For: Plaintiffs

Joel Holt, Esquire

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Christiansted, St. Croix, VI 00820

Email Address: holtvi@aol.com

Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC.

Maria Bentley, Pro Se
155 Lakewood Pkwy
Buffalo, NY 14226-4074
Email Address: mariatbentley@hotmail.com

1. NATURE OF ACTION AND JURISDICTION OF THE COURT:

The Court has jurisdiction over the parties and the subject matter.

2. FACTUAL CONTENTIONS OF PLAINTIFFS:

Defendant Maria Bentley and CB3 represented to Plaintiffs, Joseph Gerace and Victoria Vooys, that they owned the trade name Cane Bay Beach Bar and had a lease to operate as Cane Bay Beach Bar, among other misrepresentations. In 2003, Plaintiff Joseph Gerace wished to purchase Cane Bay Beach Bar and in reliance on the representations of Mrs. Bentley and CB3 entered into negotiations to purchase it. On August 7, 2003, the Plaintiffs, Ms. Bentley and CB3 entered into an Asset Purchase Agreement. In that Asset Purchase Agreement, Bentley and CB3 represented the following:

- 1) that they owned the furniture, furnishings, equipment, inventory, goodwill, contracts and the Trade name Cane Bay Beach Bar and accounts receivables;
- 2) that they were a Corporation in good standing;
- 3) that they had no threatened actions affecting the property to be transferred, which would question the validity of the Lease;
- 4) that they had a Lease for the premises that was in good standing;
- 5) that they would provide a Bill of Sale at closing conveying the property to the Plaintiffs;
- 6) that they would assign, at closing, all contracts to the Plaintiffs;

- 7) that they would provide an Assignment of the lease to the Plaintiffs approved by the landlord; and
- 8) that they would provide, at closing, an Assignment of the Trade name Cane Bay Beach Bar.

Plaintiffs, in good faith, signed the Asset Purchase Agreement and at closing paid Mrs. Bentley \$45,000.00 and agreed to pay additional funds on a monthly basis.

Prior to the closing, Chrismos had agreed to purchase the property where the bar was located. At the closing, it was determined that Bentley and CB3 did not have a lease to operate Cane Bay Beach Bar. However, Defendants Chrismos Cane Bay, Warren Mosler and Chris Hanley agreed they would give Plaintiffs a reasonable lease as they were going to be the new owners, so the closing took place. After the Plaintiffs began to operate Cane Bay Beach Bar, they learned that most of the furnishings transferred were not owned by Ms. Bentley or CB3. Rather, they were indebted and Ms. Bentley and CB3 had failed to pay monies due. In addition, the Bentleys had written checks for insufficient funds to pay for services or equipment, owed for services and equipment, and had Health Department citations that had not been paid, and the like. Further, Mr. Gerace later learned that Ms. Bentley and CB3 did not own the trade name Cane Bay Beach Bar as represented. Equipment purchased by the Plaintiffs from Bentley and CB3 was repossessed as a result of the Bentleys not having paid for the equipment. CB3 has been defaulted, and its counter-claim stricken for lack of filing a proper answer through counsel.

Plaintiffs entered into negotiations with the new owner of the premises Chrismos Cane Bay, LLC ("Chrismos") for a lease. Defendant Chrismos, through Hanley and Mosler, represented to the Plaintiffs that upon completion of necessary repairs to be paid

for by Plaintiffs they would enter into a long-term lease for the premises for at least seven (7) years. In reliance on those representations made by Chrismos, the Plaintiffs invested about \$30,000 to \$50,000 in making improvements and betterments, building good will, and the like.

The Plaintiffs, as part of their operation of the restaurant, began to have Full Moon Reggae Nights at the bar in about mid-2004. While there had been music and such parties previously by other bar tenants, they did not attract the same crowds as the reggae music events. Neighbors, most of whom were white, began to complain to Hanley and Mosler, as to the noise, the types of people, and the cars parking in the area. This continued over the months.

In March of 2004, Plaintiffs were presented with a lease that was for only two and a half years, had rentals of between \$2,000 and \$1,500, when Plaintiffs were only paying \$1,500 in rent at the time, refused to make any repairs to the building, despite the fact the roof leaked, and the building was in need of serious repairs, charged high late fee amounts, did not allow any assignment or subletting of the lease, required payment by Plaintiffs of the property taxes and other onerous clauses.

Plaintiffs rejected the lease as not what had been agreed to. The parties continued with Plaintiffs as month to month tenants.

Because Plaintiffs were making repairs to the building and sometimes had cash flow problems, both Hanley and Mosler assured Plaintiffs that was not an issue as long as Plaintiffs paid when they could. Defendants accepted delayed or late rentals through

all of 2004 and early 2005. Chrismos continued to get complaints about the types of crowds at the bar and the music.

The Plaintiffs relied on the representations of Chrismos, but, nonetheless, always paid their rent, although not always on the first of the month.

In late 2004 or early 2005, Mosler met James Jordan who had come to St. Croix with his own yacht, at the Marina partially owned by Mosler. Jordan informed Mosler he was interested in making investments in St. Croix and buying a house. Mosler introduced Jordan to Hanley, who became his realtor on the investments.

Jordan learned of the bar owned by Defendants and expressed an interest in taking over the operations in around early 2005. In around March 2005, Hanley came to Plaintiffs and explained to Plaintiffs that they did not have a lease and that Jordan wanted to take over the bar, and he was willing to pay for a lease assignment and inventory and trade name and good will. Hanley told Plaintiffs that to facilitate the smooth transition into Jordan having the restaurant/bar, Chrismos would give Plaintiffs a seven-year lease for the sole purpose of using it to sell and assign the lease to Jordan, and explained how Plaintiffs should value the business as one and a half times the net income and assets, and came up with a figure of around \$185,000 as the amount that the rights to the bar and restaurant should be sold for. At that time, Hanley gave Plaintiffs a roughed-out lease that was for seven years to review. Plaintiffs agreed that Hanley could tell Jordan that they were willing to sell for that price, and Hanley told Plaintiffs he would get them such a final lease to sign and to be able to sell in exchange for allowing Jordan to buy them out. Plaintiffs gave that roughed out lease to Gerry Groner, their attorney, who lost it.

When Mosler found out from Jordan that Plaintiffs had, on Hanley's recommendation, requested \$185,000 for Jordan to buy the restaurant, he became furious and assumed, without factual basis, that Plaintiffs were making a lot more at the restaurant than they were claiming, and decided he would not give Plaintiffs any lease, and he wanted them out immediately.

After that Mosler's whole attitude towards the Plaintiffs changed. He criticized Plaintiffs, the type of people they were attracting, that he no longer wanted reggae music and he wanted to turn the restaurant/bar into a white middle-class restaurant.

On or around March 31, 2005, Chris Hanley and Warren Mosler came to the restaurant for a meeting with Plaintiffs. Mosler accused the Plaintiffs of lying about how much money they were making. Mosler informed Plaintiffs he was not going to give them a lease, that they were month to month tenants. Mosler falsely claimed Plaintiffs were behind on their rent, and he wanted them out of the property in one week, but in no event more than by the end of the month and demanded to know what Plaintiffs' exit strategy was. He reiterated that he intended to give the bar to James Jordan who would attract a more 'middle class clientele', and there was no way he would allow Plaintiffs to stay at the restaurant/bar.

Plaintiffs specifically told Defendants that all rent payments had been given to Hanley, but two had not been cashed, and asked why they were not getting the promised lease. Hanley then admitted that he had discussed the proposed lease with Mosler, and Mosler said Plaintiffs wanted too much money from Jordan, and he would not give Plaintiffs a lease. Hanley said he had also discussed whether Plaintiffs should receive at

least \$50,000 from Jordan to vacate the premises, and Mosler responded that was still too much money. Mosler made it clear Plaintiffs would never get a lease, and he wanted them out of the premises. Plaintiffs were so hurt and angry that they got up and walked out of the meeting. Plaintiffs paid April rent and Defendants cashed the check. The same is true for May rent.

On April 12, 2005, Defendants had Hunt Logan write a letter to Plaintiffs that falsely represented Plaintiffs had agreed to vacate the premises by April 30, 2005, and that anything of Plaintiffs that were left at the premises, after that date, would be treated as abandoned, and would be disposed of by Defendants.

An April 16, 2005, a news story appeared in the St. Croix Avis that the Full Moon Parties were about to end, and that Mosler and Hanley were kicking Plaintiffs out of the restaurant and bar. Mosler falsely stated that the reason Plaintiffs had been told to leave was because they were constantly behind on their rent, that Plaintiffs had agreed to vacate, and that Gerace had stiffed his parents for \$150,000 in loans, and that there had never been an agreement to give Plaintiffs a lease.

There was a public local backlash to Mosler and Hanley's shutting down the Full Moon Parties and they began to receive threats. As a result, Defendants increased their lies that the reason for the shutdown was not the clientele, but rather because Plaintiffs were deadbeats and drug users and sellers.

Thereafter, Defendants Hanley and Mosler individually, and on behalf of Chrismos, falsely and publicly stated on radio shows, newspapers, to the public, and to customers of the Plaintiffs that they had not made their rental payments, and were way behind on

their rent; that they had not paid April 2005 rent, and they did not expect them to be able to do so; that they were not good tenants; and that they had mismanaged the business. Warren Mosler also claimed that Plaintiffs were drug dealers, drug users, and that Gerace's family belonged to an organized crime family. Defendant Mosler placed an automatic response on his e-mail to anyone that inquired that the Plaintiffs were being evicted for nonpayment of rent. Such e-mails went to numerous persons and were false. Defendants Mosler, Hanley and Chrismos Cane Bay, LLC, and their agents and employees then falsely stated to governmental authorities, and the public that the Plaintiffs had threatened to burn down the bar. As a result, the Plaintiffs were questioned and investigated by governmental officials. The reputation of Plaintiffs and the restaurant, and bar was destroyed, profitability decreased, and it became even more clear that Defendants were doing everything they could to ruin Plaintiffs, and the bars reputation until they went into bankruptcy.

Plaintiffs eventually agreed to leave. Mosler only allowed them to claim \$30,000 for their inventory. Defendants then gave Jordan a seven-year lease with fair terms and began making repairs to the building Defendants should have made during Plaintiffs' tenancy.

The actions of the Bentleys and CB3 constitute a breach of contract, misrepresentation and fraud as they knew that they did not own what they represented they did.

Likewise, the actions of Chrismos Cane Bay, LLC constitute a breach of an agreement to enter into a lease. As a result, the Plaintiffs invested time and money into

the facility that they would not have invested had they known they would not be getting a lease. The actions of the Defendants Chrismos Cane Bay, LLC, Hanley and Mosler constitute fraud in that they never intended to keep the representations they made. The actions of Hanley, Mosler and Chrismos Cane Bay, LLC, violated their duty of good faith and fair dealing.

Further, the actions of Defendants Warren Mosler, Chris Hanley and Chrismos Cane Bay, LLC constitute intentional infliction of emotional distress. To the extent it was not intentional then they constitute negligent infliction of emotional distress.

The Plaintiffs relied on the misrepresentations of the Defendants to their detriment and, as a result, they have suffered damages as alleged herein. Further, Defendants Mosler, Hanley and Chrismos Cane Bay, LLC, engaged in defamation, slander, libel, and defamation per se. As a result, the Plaintiffs have suffered loss of reputation, humiliation, loss of business opportunities and other damages as alleged herein.

The actions of all Defendants are so outrageous and done with such a reckless disregard for the rights of the Plaintiffs so as to entitle the Plaintiffs to an award of punitive damages.

3. FACTUAL CONTENTIONS OF DEFENDANT MARIA BENTLEY:

The restaurant and bar at Cane Bay had been owned by CB3, Inc, a company my deceased husband managed. Pursuant to the divorce agreement with my deceased husband, I took over the business, which I listed for sale. The Plaintiffs contacted Linda Holt, the realtor who had the listing. They made an offer, which was accepted, and closed on the transaction with CB3, Inc., by paying \$50,000 down, with \$30,000 still owed. The

Plaintiffs knew there was no written lease. They then began to operate the business, but they failed to pay their debts as they were due, including the failure to pay the amount owed to me. However, to try to work with them, my deceased husband offered several compromise agreements to them, including full offsets for debts they claimed the old business still owed against the unpaid sums still due to me. Unfortunately my ex-husband died before he could finalize those negotiations.

4. FACTUAL CONTENTIONS OF DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC:

An entity named Chrismos LLC was formed by Warren Mosler and Chris Hanley to purchase the property at Cane Bay, where there was a restaurant and bar named the Cane Bay Beach Bar. The closing took place on September 7, 2003. Joe Gerace and Victoria Vooy's represented they were the owners of this business, which they had purchased on August 7, 2003, from the prior tenant. However, it was subsequently discovered in this case that the business was actually operated by Barabus, Inc. and not by the Plaintiffs. The prior tenant did not have a written lease, so the new tenant did not have a written lease either.

Rent was routinely late, including bounced checks. Despite this fact, when the Plaintiffs requested a written lease, Chrismos had its counsel prepare one, which was presented to the Plaintiffs. However, it was never signed, nor were any comments sent back about it to Chrismos, much less a counterproposal.

The tax returns filed by the Plaintiffs always showed a loss, although they told others they made quite a bit of money. Indeed, their reported sales from the restaurant always improved, despite their complaints that their business did not make any profits.

Over time, a mutual dissatisfaction with the landlord-tenant relationship developed between the Parties that had not previously existed, but had developed over time due to (1) late rent, (2) bounced checks, (3) poor operations at the restaurant requiring expenditures by Chrismos, (4) disputes between the Plaintiffs and the other tenant at the dive shop and (5) late night parties that led to multiple complaints from neighboring residents that the Plaintiffs failed to address.

Eventually the Parties met and discussed the situation, as Chrismos wanted to know what the Plaintiffs exit strategy was since they were behind on the rent. Rather than discuss any of the outstanding issues, the Plaintiffs abruptly left the meeting. The Defendants left the meeting with the impression that the Plaintiffs wanted to leave immediately, perhaps selling their business. However, the Plaintiffs retained counsel who made it clear her clients would not agree to vacate the premises. Rent was also made current, so no further action was taken by Chrismos, as an eviction action was never filed.

The Plaintiffs had in fact already entered into a prospective sale of the business' assets to a new tenant, James Jordan. Chrismos eventually agreed to accommodate this transition by giving James Jordan a written lease so that he could complete a purchase of the restaurant assets. Jordan then paid the Plaintiffs \$30,000, which they would not have been paid if Chrismos had not been willing to assist the Plaintiffs in this transition. In any event, having sold the business, the Plaintiffs voluntarily left the premises.

The Plaintiffs promptly bought a new nightclub, Club 54, in Christiansted, which they successfully operated and sold for a profit. They then bought another nightclub and did equally well, eventually selling that business too.

5. ADMISSIONS AND STIPULATIONS:

As to Chrismos Cane Bay, LLC, Warren Mosler and Chris Hanley:

- a) This Court has jurisdiction pursuant to 4 V.I.C. § 76;
- b) Plaintiffs Joseph Gerace and Victoria Vooyoys, did business as and ran a business known as Cane Bay Beach Bar;
- c) Defendant, Maria Bentley, as a resident of Buffalo, New York;
- d) Defendant, Warren Mosler, is a resident of St. Croix, United States Virgin Islands;
- e) Defendant, Chris Hanley, is a resident of St. Croix, United States Virgin Islands;
- f) Defendant, Chrismos Cane Bay, LLC, is a Virgin Islands limited liability corporation owned by Chris Hanley and Warren Mosler;
- g) Maria Bentley did not have a lease to operate Cane Bay Beach Bar;
- h) Plaintiffs and Chrismos, Mosler and Hanley had discussions regarding obtaining a lease.
- i) On March 31, 2005, Chris Hanley and Warren Mosler, and Plaintiffs had a meeting.
- j) On that date, Chrismos, through Chris Hanley, told Plaintiffs that they were behind on the rent.

As to Maria Bentley:

- a) Defendant, Maria Bentley, is a resident of Buffalo, New York.
- b) Defendant, Maria Bentley did business as CB3, Inc.
- c) Admit CB3, Inc. entered into an Asset Purchase Agreement with Plaintiffs effective July 1, 2003.

6. AMENDMENT TO PLEADINGS:

The Chrismos Defendants will move to amend their answer to add a response to allegation ¶ 16 that was inadvertently left out, admitting this allegation, but then changing the response to allegation ¶ 17 to "Deny for lack of knowledge" as the response given was obviously an error due to the numbering mistake, as the Defendants would have no knowledge of any such alleged facts between the Plaintiff and Maria Bentley prior to this litigation. No other amendments to the pleadings shall be made. Plaintiffs will object to any attempt to move to amend Defendants' Answer as it is out of time and prejudicial to the Plaintiffs.

7. PLAINTIFFS' STATEMENT OF DAMAGES:

As to Defendants Warren Mosler, Chris Hanley and Chrismos Cane Bay:

In approximately April of 2005, Defendant Mosler represented to the entire community of St. Croix, when he went on Channel 8 and falsely stated that Plaintiffs were being thrown out of Cane Bay because back rent was owed for the establishment, and that Plaintiffs owed family members about \$150,000.00. Thereafter, Defendant Hanley again represented to the entire St. Croix Community, when he went on the Roger Morgan Show, around the same time in April of 2005, and again falsely stated that the Plaintiffs

owed back rent, and that Plaintiffs had been repeatedly asked to stop the Full Moon Parties and had refused. Defendant Mosler sent an email to the Roger Morgan Show in approximately April of 2005 that was read on the air, and which basically reiterated what he had said on the Channel 8 show. Roger Morgan read a document that had been sent to him on Attorney Hunt Logan's letterhead In April of 2005 which claimed that Plaintiffs were behind on their rent; were being evicted from the establishment; and owed family members thousands of dollars. Further, Roger Morgan was told Plaintiffs used drugs, were drugs dealers, and the Gerace's family was mafia. These were statements obviously made to the entire community. Further, Defendant Mosler sent e-mails to some of Plaintiffs' customers around the same time falsely stating that Plaintiffs were unable to successfully run the business and he had someone in place that would. Defendant Mosler printed a full-page ad in the Avis implying that Plaintiffs were drug dealers. Defendants discovery requests in the instant matter even include questions as to Plaintiffs' use of illegal drugs and if Plaintiffs would submit to drug tests.

Defendants Hanley and Mosler stated several times to the Plaintiffs around mid-2003, and going forward, that once certain improvements to the building were completed, that they were going to give Plaintiffs a lease. They promised their utilities would be separated from those of The Dive Shop. They made numerous misrepresentations to the effect that it was not a problem that the rent was occasionally late. Hanley told Plaintiffs not to worry about noise during the Full Moon parties and to turn the speakers towards the water and that he would take care of the neighbors. He also told Plaintiff that he had someone who wanted to buy the business, and that he would give Plaintiffs a 5-year lease

with another 5-year option on the lease, or a 7-year lease, so that Plaintiffs could sell the same to the prospective buyer. Defendant Hanley also told Plaintiffs to deduct all costs from the rent that Plaintiff had paid for plumbing and other repairs.

Between July 2003 through March 2004, Plaintiffs paid a total of \$58,112.50 to Ms. Bentley and CB3, which she was not entitled to receive.

Plaintiffs were forcibly evicted by the Chrismos Defendants, and expended time, monies and efforts to move their equipment. As of June 30, 2005, all Plaintiffs' property was removed from the premises at Cane Bay. In an attempt to recoup some of their losses, the Plaintiffs attempted to negotiate with Mr. James Jordon to enter into a lease to purchase the trade name, property and goodwill from the Plaintiff. However, because of the actions of Chrismos, Plaintiffs were in an unfair bargaining position as they had no lease and were subject to eviction. James Jordan originally agreed to purchase all the goodwill, trade name, and equipment for \$80,000.00. However, it was learned that CB3 had not owned the trade name. As such, the Plaintiffs had not actually purchased the trade name, and did not have the benefits of the lease. Thus, the only "asset" that Plaintiffs had to sell was the equipment, which they sold for \$30,000.00, minus \$3,000.00 that was held in escrow to pay any outstanding bills.

Plaintiff also suffered physical injuries, mental anguish, physical and psychological injuries, medical expenses, pain and suffering, and loss of enjoyment of life.

Plaintiffs also are entitled to a repayment to them of the \$58,000.00 paid to Bentley, plus prejudgment interest, and attorney fees, and costs.

8. DEFENDANT MARIA BENTLEY'S STATEMENT OF DAMAGES:

I have not asserted a claim for any damages for myself, even though I have suffered losses due to the Plaintiffs' actions.

Additionally, there is no evidence to support the Plaintiffs' claim of damages asserted against me, particularly since (1) the Plaintiffs have admitted they knew there was no lease when they bought the property, (2) CB3, Inc. is a legal entity separate from me, so I am not liable for its actions and (3) the Plaintiffs used the tradename the entire time they were in business.

At closing, the Plaintiffs owed money for the inventory and liquor. Joe Gerace said he deposited cash into my bank account, so I paid CB3 bills on the assumption that he had done so, but it turned out he never did deposit the funds for inventory as he said he did, so the checks bounced.

Finally, all the furnishings (tables/chairs, grills, fryers coolers etc) were owned by CB3 and were transferred in sale.

9. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S STATEMENT OF DAMAGES:

Chrismos has filed a counterclaim for rent consisting of \$1500.

Additionally, there is no evidence to support the Plaintiffs' claim of damages asserted against the Chrismos Defendants, particularly since Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation. Indeed, Gerace and Vooy's had their attorney form Baribus when they bought the bar and restaurant from CB3 and filed all of the tax returns in its name, so all of the claims for their business related damages fail as a matter of law, as

the Plaintiffs were not the entity operating the business.

Indeed, the facts will show that the Plaintiffs suffered no damages, as there is no evidence to support the Plaintiffs allegations in each count asserted in this case, nor is there any evidence to support the Plaintiffs' damage claims. By way of example, the Plaintiffs admit they knew there was no written lease when they bought the business and also admit they never met Mosler or Hanley prior to the closing, so they certainly cannot prove the reliance they now claim on some alleged representations. Additionally, only one Plaintiff, Victoria Vooyo, submitted any medical records to support their claim of Reckless Infliction of Emotional Distress, which was treatment for acne. By way of another example, the Plaintiffs only identified one witness who supposedly heard any defamatory statements made by the Chrismos Defendants, without showing any resulting damages from that alleged statement. Likewise, the Plaintiffs sold this business and then opened a new nightclub, where they made money and sold it for a profit.

Other examples could be made, but as the Statement of Damages is limited to one page in the form attached to V.I.R. Civ. P. 16, this section is limited accordingly. However, the evidence will show the Plaintiffs suffered no damages.

10. PLAINTIFFS' STATEMENT OF LEGAL ISSUES PRESENTED:

As to Chrismos Cane Bay, Chris Hanley and Warren Mosler:

- a) Did Defendants breached their agreement to enter into a lease?
- b) What damages did Plaintiff suffered?
- c) Did Defendants defame, slander, libel and defame Plaintiffs?
- d) The scope and duration of Plaintiffs' damages.

- e) Did the Defendants commit fraud in the inducement to get Plaintiffs to make repairs to the premises, and to take other actions?
- f) The scope and duration of Plaintiffs damages.
- g) Did Defendants make misrepresentations to Plaintiffs?
- h) Did Plaintiffs' reasonably rely on the misrepresentation made by Defendants?
- i) What are the scope and duration of Plaintiffs' damages?
- j) Did Defendants intentionally inflict emotional distress on the Plaintiffs?
- k) The extent and duration of Plaintiffs' damages.
- l) Did Defendants breach their duty of good faith and fair dealing?
- m) What is the scope and durations of Plaintiff's damages?
- n) Were Defendants actions done with such reckless disregards to entitle of Plaintiffs to punitive damages?

As to Maria Bentley and CB3:

- a) Did Defendants breach its contract with Plaintiffs?
- b) The extent and duration of Plaintiffs' damages?
- c) Did Maria Bentley and CB3 commit fraud when she claimed she had the ability to sell or transfer items she did not actually possess free, and clear?
- d) The extent and duration of Plaintiffs' damages.
- e) Did Maria Bentley and CB3 engage in misrepresentation to Plaintiffs?
- f) Did Plaintiffs reasonably rely on those representations?
- g) The extent and duration of Plaintiffs' damages.

- h) Do the actions of Maria Bentley and CB3 constitute such reckless disregards as to entitled Plaintiffs to punitive damages?
- i) Are Plaintiffs entitled to prejudgment interest?

11. DEFENDANT MARIA BENTLEY'S STATEMENT OF LEGAL ISSUES PRESENTED:

I was sued in four counts in this case. These counts also included claims against CB3, Inc. and David Bentley, my former husband who has since died. I believe both CB3, Inc. and David Bentley have been dismissed from this case. In addition to the lack of evidence to support the accusations asserted against me, CB3, Inc. is a legal entity separate from me, so I should not be held liable for its actions. The legal issues related to the defense of these counts include:

Count 1-Breach of the sales agreement-the agreement was with CB3, not me personally. Moreover, the contract was fully performed by CB3.

Count 2-Fraud in the inducement of the sales agreement-I never made any material misrepresentations to the Plaintiffs before they purchased the business that they relied upon, nor did anyone else.

Count 3-Misrepresentation related to the sales agreement-I never made any material misrepresentations to the Plaintiffs that they relied upon to their detriment, nor did anyone else.

Count 4-Claim for punitive damages- I never engaged in any conduct that would warrant this type of damages as I understand them.

12. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S STATEMENT OF LEGAL ISSUES PRESENTED:

Chrismos has also filed a counterclaim for unpaid rent. The plaintiffs have asserted seven counts against the Mosler, Hanley and Chrismos ("Chrismos parties") alleging a garden variety of torts and contract claims. In addition to the lack of evidence to support each legal claim asserted against them, the legal issues related to the defense of these counts include:

Count 5-Breach of an agreement to enter into a lease- The Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 6-The plaintiffs claim the Chrismos parties defamed them-the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort.

Count 7- Fraud related to the alleged failure to give the plaintiffs a lease- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 8- Misrepresentation related to the alleged failure to give the plaintiffs lease- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 9-Reckless infliction of emotional distress- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, only one plaintiff, Victoria Vooys, submitted any evidence of any medical treatment, which was one visit to a dermatologist for acne.

Count 10-Violation of good faith and fair dealing- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 11-Claim for punitive damages against the Chrismos parties- Separate counts for punitive damages are barred, so this Count must be dismissed. Moreover, none of the Chrismos Parties ever engaged in any conduct that would warrant the imposition of punitive damages.

13. LEGAL ISSUES, DEFENSES OR CLAIMS TO BE ABANDONED:

Plaintiff: None.

Maria Bentley: None.

Chrismos Parties: Warren Mosler hereby drops his counterclaim for defamation.

14. PLAINTIFFS' EXHIBITS:

See Exhibit "A", attached hereto.

15. DEFENDANT MARIA BENTLEY'S EXHIBITS:

I reserve the right to use any of the exhibits listed by the other Parties in Exhibit A and B attached hereto.

16. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S EXHIBITS:

See Exhibit "B", attached hereto.

17. PLAINTIFFS' ADDITIONAL DISCOVERY:

None. Plaintiffs object to any attempt by Chrismos et al. to reopen discovery in this 16-year-old case. As this Court and Defendants know, this jurisdiction only requires notice pleadings. Defendants chose to take only a two hour deposition of the Plaintiff Vooy and only forty-five minutes of Plaintiff Gerace, and asked very few questions as to the contentions of the Plaintiffs. It clearly did so as a litigation strategy. Mosler himself testified to his anger at Plaintiffs in his deposition. as to his belief that Plaintiffs were making more money than they had told him.

18. DEFENDANT MARIA BENTLEY'S ADDITIONAL DISCOVERY:

None.

19. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S ADDITIONAL DISCOVERY:

The Chrismos Parties have moved to do a second deposition of the Plaintiffs, which is fully briefed and ripe for disposition.

The Plaintiffs have added new allegations in their Statement of Facts that were never disclosed in discovery, so additional discovery is warranted if the Plaintiff is allowed to pursue these new allegations at trial, including but not limited to these new assertions:

- "In around March 2005, Hanley came to Plaintiffs and explained to Plaintiffs that they did not have a lease and that Jordan wanted to take over the bar, and he was willing to pay for a lease assignment and inventory and trade name and good will. Hanley told Plaintiffs that to facilitate the smooth transition into Jordan having the restaurant/bar, Chrismos would give Plaintiffs a seven-year lease for the sole purpose of using it to sell and assign the lease to Jordan, and explained how Plaintiffs should value the business as one and a half times the net income and assets, and came up with a figure of around \$185,000 as the amount that the rights to the bar and restaurant should be sold for."
- "At that time, Hanley gave Plaintiffs a roughed-out lease that was for seven years to review. Plaintiffs agreed that Hanley could tell Jordan that they were willing to sell for that price, and Hanley told Plaintiffs he would get them such a final lease to sign and to be able to sell in exchange for allowing Jordan to buy them out. Plaintiffs gave that roughed out lease to Gerry Groner, their attorney, who lost it."
- "When Mosler found out from Jordan that Plaintiffs had, on Hanley's recommendation, requested \$185,000 for Jordan to buy the restaurant, he became furious and assumed, without factual basis, that Plaintiffs were making a lot more at the restaurant than they were claiming, and decided he would not give Plaintiffs any lease, and he wanted them out immediately. . . ."
- "Hanley then admitted that he had discussed the proposed lease with Mosler, and Mosler said Plaintiffs wanted too much money from Jordan, and he would not give Plaintiffs a lease."

20. PLAINTIFFS' EXPERT WITNESSES:

None.

21. DEFENDANT MARIA BENTLEY'S ADDITIONAL DISCOVERY:

None.

22. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S EXPERT WITNESSES:

None.

23. PLAINTIFFS' NON-EXPERT WITNESSES:

- a. Joseph Gerace
- b. Victoria Vooyo
- c. Chris Hanley
- d. Roger Morgan
- e. Curt Otto
- f. G. Hunter Logan, Jr.
- g. Gerry Groner
- h. Alexandria Myers
- i. Custodians of Records of Dr. Merritt.
- j. Dr. Carolyn Merritt
- k. Christine Flobeck
- l. Barris Lambert
- m. Mike Belcheff
- n. Edwards Gerace

- o. Custodian of Records of St. Croix Avis
- p. Leslie Morrison
- q. Bernard Victor
- r. Lloyd Daniel
- s. Roger Bressi
- t. Brian Updike
- u. Steve Nisky
- v. Dennis McCormick
- w. John Reid
- x. Carl Grina
- y. Garry Anthony
- z. John Woodson
- aa. Donna Christiansen
- bb. Linda Ayer Holt
- cc. Dave Halcome
- dd. Robert Jones
- ee. Pat Loring

24. DEFENDANT MARIA BENTLEY'S NON-EXPERT WITNESSES:

Maria Bentley reserves the right to call Linda Holt, a witness listed by the Plaintiffs in this filing.

25. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S NON-EXPERT WITNESSES:

- a) Warren Mosler
- b) Chris Hanley
- c) Kerri Hanley
- d) G. Hunter Logan
- e) James Jordan
- f) Chris Howell
- g) Hal Rosbach
- h) Suzanne Rosbach
- i) Jim Jordan
- j) Roger Morgan
- k) Gerry Groner

26. PLAINTIFFS' SPECIAL PROBLEMS:

Maria Bentley has refused to participate in this matter, and, as such, Plaintiffs will be filing for sanctions of default.

Plaintiffs oppose any attempt to re-depose the Plaintiffs as the Defendants had a full opportunity to depose the Plaintiffs in 2011 and chose not to do so. Defendants are legally barred from asking questions at any subsequent deposition that could have been asked at the first deposition.

The Defendants' claims of supposed new allegations by the Plaintiffs in their Statement of Facts have been known to Defendants for years, and were contained

in demand letters to the Defendants, and other communications. Defendants chose not to depose Plaintiffs on those issues and are not entitled to do so now. The witnesses listed by Plaintiffs were either disclosed in their Rule 26 Disclosures or identified in depositions of the parties, and Defendants never made any effort to depose them.

Defendants Chrismos Cane Bay, Warren Mosler and Chris Hanley admitted the following in response to Plaintiffs' allegations:

- a) After the Plaintiffs began to operate Cane Bay Beach Bar they learned that most of the property transferred by Bentley was not owned by her, rather it was indebted, and Bentley had failed to pay monies due on the property. Bentley had written checks for insufficient funds to pay for services or filings, owed for filing, and had Health Department citations that had not been paid and the like;
- b) At that meeting, Plaintiffs were told they had no lease or right to pass the property, and were told to vacate the premises on or about that date.

They have never amended those admissions, and Plaintiffs would be prejudiced if they were allowed to do so now.

Defendant Maria Bentley admitted Plaintiffs' allegations:

1. She owned the furniture, furnishings, equipment and inventory, good will contracts and tradename Cane Bay Beach Bar, and account receivables.
2. That CB3 was a corporation in good standing.

3. There were no threatened actions affecting the property to be transferred or the validity of the lease.
4. That she had a lease for the premises that was in good standing.
5. That she would supply a Bill of Sale at closing conveying the property to the Plaintiffs.
6. That at closing she would assign all contracts to Plaintiffs.
7. That she would provide Plaintiffs with an assignment of the lease to the property, approved by the landlord.
8. That at the closing Bentley would assign to Plaintiffs the tradename Cane Bay Beach Bar.

Likewise, Maria Bentley has never amended that answer and Plaintiffs would be prejudiced by any attempt to do so.

27. DEFENDANT MARIA BENTLEY SPECIAL PROBLEMS:

I have not refused to participate in this matter. I live off-island and do not have the funds to pay a lawyer. I will be asking the Court to allow me to attend the pretrial by phone or zoom (or other similar method) due to the surge in COVID as well as the substantial travel costs. I will also need as much advance notice as possible of the trial date to make travel plans.

28. DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S SPECIAL PROBLEMS:

- The Chrismos Parties have moved to do a second deposition of the

Plaintiffs, which is fully briefed and ripe for disposition.

- The Chrismos Defendants have filed a motion in limine to prevent the Plaintiffs from trying to inject racial issues into the trial of this case;
- Depending on what witnesses will testify, there are multiple hearsay issues that may need to be addressed, including but not limited to (1) the Plaintiffs' claims the Gerry Groner spoke to someone about getting a lease from Chrismos prior to the completion of the sale of the restaurant and bar business from CB3; (2) the Plaintiffs' claims that third parties told them that Defendants Mosler and/or Hanley made defamatory statements about them; (3) the Plaintiffs' claims that James Jordan offered them \$80,000 to buy their business.
- The Chrismos Defendants reserve the right to use the deposition testimony of either Plaintiff should (1) either one not show up at trial or (2) either one gives testimony at trial that differs from the testimony they gave in their deposition.
- The Plaintiffs have identified multiple witnesses whose contact information has never been produced. The Chrismos Defendants object to the Plaintiff calling any such witnesses, which may be a moot point, as it is doubtful any of these witnesses will actually be called at trial.
- The Chrismos Defendants object to any of the Plaintiff's proposed witnesses testifying at trial beyond what they have said in their respective

depositions or what the proffer was as to their expected testimony.

- Aside from normal evidentiary objections, the Chrismos Defendants reserve all rights to object to any exhibit on the Plaintiffs' proposed exhibit list, as many of the descriptions are not sufficient to identify what the exhibits are or whether they have ever been identified and produced in discovery. Indeed, the Parties need to exchange the actual exhibits, not just the exhibit lists, so the Parties will know exactly what the opposing Parties' exhibits actually are.
- The Court needs to set a deadline for filing any additional motions in limine as well as for filing any special jury instructions.
- Due to travel issues and the ever changing COVID issues, trial video depositions by zoom, as deposition excerpts, may be needed for off-island witnesses or witnesses who cannot attend the trial.
- The Chrismos Defendants will move to amend their Answer, as noted in the section regarding "Amendments" to the Pleadings.
- The Chrismos Defendants will seek to reopen discovery if the Plaintiffs are allowed to pursue the new allegations set forth in their Statement of Facts.
- This Court needs to address the privilege issues related to Gerry Groner, Plaintiffs' counsel, as the Plaintiffs have listed multiple factual issues that are dependent on his testimony, like (1) his alleged conversations with Hunt

Logan before they purchased the restaurant/bar from CB3, (2) his losing the lease given to the Plaintiffs in 2004 by Chrismos that Plaintiffs claim they gave him and (3) his losing a "roughed-out" lease for seven years allegedly given by Hanley to Plaintiffs solely to help them sell their business to James Jordan, which they also claim they gave to Attorney Groner, who supposedly lost it as well.

29. ESTIMATED LENGTH OF TRIAL:

Plaintiff: The trial should take five (5) days.

Defendants: The trial should take no more than three (3) days.

CONCLUDING CERTIFICATION

WE HEREBY CERTIFY on this 9th day of August, 2021, by the affixing of our signatures to this Joint Final Pretrial Order that it reflects the efforts of all counsel and Maria Bentley, pro se, that we have carefully and completely reviewed all parts of this order prior to its submission to the Court. Further, it is acknowledged that amendments to this Final Pretrial Order will not be permitted except where the Court determines that manifest injustice would result if the amendment is not allowed.


Attorney for Plaintiffs:

By: Is/ Lee J. Rohn
Lee J. Rohn, Esquire
VI Bar No. 52

By: Is/Joel Holt
Joel Holt, Esquire
Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC.

By: Is/ Maria Bentley
Maria Bentley, Pro Se
155 Lakewood Pkwy
Buffalo, NY 14226-4074
Email Address: mariatbentley@hotmail.com

Entry of the foregoing Joint Pretrial Order is hereby **APPROVED** this 12th day
of August, 2021.


Hon. Harold Willocks
Presiding Judge of the Superior Court

EDR

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA
VOOYS d/b/a CANE BAY BEACH
BAR,

Plaintiffs,

v.

MARIA BENTLEY, DAVID BENTLEY,
CB3, INC., WARREN MOSLER,
CHRIS HANLEY, and CHRISMOS
CANE BAY, LLC.,

Defendants.

~~05-CV-368~~
CIVIL NO. 12005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

COMPLAINT

COME NOW Plaintiffs, by and through their undersigned counsel, file their
Complaint against Defendants as follows:

1. This Court has jurisdiction pursuant to Title 4 V.I.C., § 76.
2. Plaintiff, Joseph Gerace, is a resident of St. Croix, United States Virgin Islands.
3. Plaintiff, Victoria Vooy, is a resident of St. Croix, United States Virgin Islands.
4. Plaintiffs Gerace and Vooy did business as and ran a business known as Cane Bay Beach Bar.
5. Defendant, David Bentley, is a resident of St. Croix, United States Virgin Islands.
6. Defendant, Maria Bentley, is a resident of Buffalo, New York.

7. Defendants, David Bentley and Maria Bentley, did business as CB3, Inc.
8. Defendant, Warren Mosler, is a resident of St. Croix, United States Virgin Islands.
9. Defendant, Chris Hanley, is a resident of St. Croix, United States Virgin Islands.
10. Defendant, Chrismos Cane Bay, LLC., is a Virgin Islands Limited Liability Corporation and upon information is owned by Chris Hanley and Warren Mosler.
11. Defendant Bentley and CB3 represented to Plaintiffs that they owned the Tradename Cane Bay Beach Bar and a lease to operate as Cane Bay Beach Bar among other representations.
12. The Plaintiffs wished to purchase Cane Bay Beach Bar and in reliance on the representations of Bentley and CB3 entered into negotiations to purchase the same.
13. Plaintiffs, the Bentleys, and CB3 entered into a Purchase Agreement effective July 1, 2003.
14. In that Purchase Agreement, the Bentleys and CB3 represented the following:
 - a. that they owned the furniture, furnishings, equipment, inventory, goodwill, contracts and the Tradename CANE BAY BEACH BAR, accounts receivables;
 - b. that they were a corporation in good standing;

- c. there were no threatened actions affecting the property to be transferred, the validity of the lease;
 - d. that they had a lease for the premises that was in good standing;
 - e. they would provide a Bill of Sale at closing conveying the property to the Plaintiffs;
 - f. they would assign, at closing, all contracts to the Plaintiffs;
 - g. they would provide an Assignment of the lease to the Plaintiffs approved by the landlord;
 - h. they would provide, at closing, an Assignment of the Tradename Cane Bay Beach Bar.
15. Plaintiffs, in good faith, signed the Purchase Agreement and paid to the Bentleys and CB3, at closing, \$45,000.00 and agreed to pay additional funds on a monthly basis. (See **Exhibits 1 and 2**)
16. It has been determined that the Bentleys and CB3 did not have a lease to operate Cane Bay Beach Bar.
17. After the Plaintiffs began to operate Cane Bay Beach Bar, they learned that most of the property transferred was not owned by the Bentleys and CB3, rather it was indebted and the Bentleys and CB3 had failed to pay monies due on the property. In addition, the Bentleys had written checks for insufficient funds to pay for services or filings, owed for filings, and had Health Department citations that had not been paid and the like.

18. Plaintiff has recently learned that the Bentleys and CB3 did not own the Tradename either, as represented.
19. Equipment purchased by the Plaintiffs from the Bentleys and CB3 has been repossessed as a result of the Bentleys not having paid for the equipment.
20. Plaintiffs then entered into negotiations with the owner of the premises Chrismos Cane Bay, LLC., for a lease.
21. Defendant, Chrismos Cane Bay, LLC., represented to the Plaintiffs that upon completion of necessary repairs they would enter into a long term lease for the premises.
22. In reliance of the representations made by Chrismos Cane Bay, LLC., the Plaintiffs invested large sums of money in making improvements and betterments, building good will, and the like.
23. Defendant, Chrismos Cane Bay, LLC., failed and refused to provide the Plaintiffs with the agreed lease.
24. Defendant, Chrismos Cane Bay, LLC., repeatedly represented to the Plaintiffs that they understood the Plaintiffs were improving the property and building up the business and that it was not a problem if the Plaintiffs were late on the monthly rent.
25. The Plaintiffs relied on the representations of Chrismos Cane Bay, LLC., but nonetheless always paid their rent although not always on the first of the month.

26. On March 13, 2005, Defendant Chris Hanley, as an owner of Chrismos Cane Bay, LLC., came to the bar and announced that he did not like the direction the bar was going with the reggae shows and the type of crowd of people that such shows attracted and that Chrismos Cane Bay, LLC., had decided to turn the property into a "white, middle class restaurant."
27. Defendant Hanley admitted that Chrismos Cane Bay, LLC., was already negotiating with a potential buyer for a lease. He agreed on behalf of Chrismos Cane Bay, LLC., to provide the Plaintiffs with the promised lease for seven (7) years so they could sell the lease, the equipment, and property and good will so the Plaintiffs could recoup their investment.
28. Defendant Hanley represented that the value of the lease and equipment and good will would be \$185,000.00.
29. The next weekend Defendant Warren Mosler came to the bar. He informed the Plaintiffs that he had a different idea for the use of the property, did not like the type of crowds that reggae music brings as they were the "wrong type of people" and that the Plaintiffs should stop that type of entertainment.
30. On March 31, 2005, Defendants Hanley and Mosler, in their individual capacity and as representatives of Chrismos Cane Bay, LLC., and the Plaintiffs, had a meeting.

31. Plaintiffs were informed that they would not be given a lease and they “needed to go.” They were told they should be out in a week but they could have no more than a month.
32. At that meeting Defendants Hanley, Mosler and Chrismos Cane Bay, LLC., falsely represented that the Plaintiffs were behind on their rent.
33. Plaintiffs specifically informed Hanley, Mosler and Chrismos Cane Bay, LLC., that all rent payments had been made by Plaintiffs and that two rent checks received by Chrismos Cane Bay, LLC., remained uncashed.
34. In a subsequent call to Defendant Hanley by Plaintiffs, Plaintiffs again asked why they were not getting the promised lease.
35. Defendant Hanley represented that he had discussed the lease with Mosler and whether the Plaintiffs should be given \$50,000.00 toward their investment and Mosler said it was too much money and not to do it.
36. In that conversation, Plaintiffs specially asked Defendant Hanley for any basis for the accusations that the Plaintiffs were behind in the rent. Defendant Hanley could not give any information and said he would check the records and get back to them. To date he has not.
37. Defendant Hanley and Mosler individually and on behalf of Chrismos Cane Bay, LLC., have falsely publicly stated on radio, newspapers, and to the public and to customers of the Plaintiffs that they have not made their rental payments and are way behind on their rent, that they had not paid

April rent and they did not expect them to be able to do so and that they were not good tenants and that they had mismanaged the business.

38. Defendant Mosler placed an automatic response on his e-mail to anyone that inquired that the Plaintiffs were being evicted for nonpayment of rent.

Such e-mails went to numerous persons and were false.

39. Defendants Mosler, Hanley and Chrismos Cane Bay, LLC., and their agents and employees then falsely stated to governmental authorities, the public, that the Plaintiffs had threatened to burn down the bar.

40. As a result, the Plaintiffs were questioned and investigated by governmental officials.

41. In an attempt to recoup some of their losses, the Plaintiffs attempted to negotiate with the person Chrismos Cane Bay, LLC., had agreed to enter into a lease with, James Jordan to purchase the Tradename, property, and goodwill.

42. Because of the actions of Chrismos Cane Bay, LLC., Plaintiffs were in an unfair bargaining position as they had no lease and were subject to eviction.

43. James Jordan originally agreed to purchase all the goodwill, Tradename, and equipment for \$80,000.00. However, it was learned that CB3 had not owned the Tradename and, as such, the Plaintiffs had not actually purchased the Tradename and the purchase price was reduced to \$50,000.00.

44. To date, Plaintiffs are still attempting to complete the negotiations to sell the equipment and good will.

Count I

45. Plaintiff re-alleges the allegations in paragraphs 1 through 44 above as though fully set forth herein.
46. The actions of the Bentleys and CB3 constitute a breach of contract.
47. As a result, the Plaintiffs suffered economic loss of paying to purchase items not purchased, and not having a lease, Tradename and being kicked out of the premises.

Count II

48. Plaintiff re-alleges the allegations in paragraphs 1 through 47 above as though fully set forth herein.
49. The actions of the Bentleys and CB3 constitute fraud as they knew or should have known that they did not own what they represented they did.
50. As a result, the Plaintiffs suffered damages of economic loss, mental anguish, suffering and loss of enjoyment of life.

Count III

51. Plaintiff re-alleges the allegations in paragraphs 1 through 50 above as though fully set forth herein.
52. The actions of the Bentley and CB3 constitute misrepresentation.
53. As a result, the Plaintiffs have suffered damages as alleged herein.

Count IV

54. Plaintiff re-alleges the allegations in paragraphs 1 through 53 above as though fully set forth herein.
55. The actions of the Bentleys and CB3 are so outrageous and done with such a reckless disregard for the rights of the Plaintiffs as to entitled the Plaintiffs to an award of punitive damages.

Count V

56. Plaintiff re-alleges the allegations in paragraphs 1 through 55 above as though fully set forth herein.
57. The actions of Chrismos Cane Bay, LLC., constitute a breach of an agreement to enter into a lease.
58. As a result, the Plaintiffs invested time and money into the facility that they would not have invested had they known they would not be getting a lease.
59. The Plaintiffs have also suffered mental anguish, physical and psychological injuries, medical expenses, pain and suffering and loss of enjoyment of life that are likely to continue into the foreseeable future as a result of seeing their life's work being taken away from them
60. Plaintiffs were deprived of the ability to sell a lease to a subsequent purchaser.

Count VI

61. Plaintiff re-alleges the allegations in paragraphs 1 through 60 above as though fully set forth herein.
62. Defendants Mosler, Hanley and Chrismos Cane Bay, LLC., engaged in defamation, slander, libel, and defamation per se.
63. As a result, the Plaintiffs have suffered loss of reputation, humiliation, loss of business opportunities and other damages as alleged herein.

Count VII

64. Plaintiff re-alleges the allegations in paragraphs 1 through 63 above as though fully set forth herein.
65. The actions of the Defendant Chrismos Cane Bay, LLC., Hanley and Mosler constitute fraud in that they never intended to keep the representations they made.
66. As a result, the Plaintiffs have suffered injuries as alleged herein.

Count VIII

67. Plaintiff re-alleges the allegations in paragraphs 1 through 66 above as though fully set forth herein.
68. The actions of Defendants Mosler, Hanley and Chirsmos Cane Bay, LLC., constitute misrepresentation.
69. As a result, the Plaintiffs relied on the misrepresentation to their detriment and, as a result, they have suffered damages as alleged herein.

Count IX

70. Plaintiff re-alleges the allegations in paragraphs 1 through 69 above as though fully set forth herein.
71. The actions of Defendants Mosler, Hanley and Chirmsos Cane Bay, LLC., constitute intentional infliction of emotional distress.
72. To the extent it was not intentional then they constitute negligent infliction of emotional distress.
73. As a result, the Plaintiffs have been damaged as alleged herein.

Count X

74. Plaintiff re-alleges the allegations in paragraphs 1 through 73 above as though fully set forth herein.
75. The actions of Hanley, Mosler and Chrismos Cane Bay, LLC., violate their duty of good faith and fair dealing.
76. As a result, the Plaintiffs have been damaged as alleged herein.

Count XI

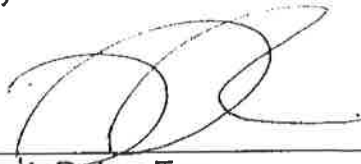
77. Plaintiff re-alleges the allegations in paragraphs 1 through 76 above as though fully set forth herein.
78. The actions of Defendants Hanley, Mosler and Chrismos Cane Bay, LLC., were and are so outrageous as to entitle the Plaintiffs to an award of punitive damages.

WHEREFORE, the Plaintiffs pray for damages as they may appear, for costs and fees, for pre and post judgment interest and for such other relief as this court

deems fair and just.

RESPECTFULLY SUBMITTED
LAW OFFICES OF ROHN AND CAMERON, LLC
Attorneys for Plaintiff

DATED: 6/8/05

BY: 

Lee J. Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 778-8855
Fax: (340) 773-2954

FILED 6/9/05
FEE PAID 850.00
BY [Handwritten Signature]

ASSET PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is executed effective July 1, 2003 between CB3, Inc.; a U.S. Virgin Islands Corporation ("Seller"); Joseph Gerace, as an Individual ("Purchaser"); and CENTURY 21 **Richards & Ayer Real Estate** ("Escrow Agent").

WITNESSETH:

A. Seller is the owner of all the furniture, furnishings, equipment, inventory, goodwill, contracts, and other tangible personal property described on Exhibit "A" attached hereto and made a part hereof and the trade name "CANE BAY BEACH BAR"; accounts receivable and cash (collectively "Property"), which Property is used in connection with the operation of the Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. Seller desires to sell the Property to Purchaser and to assign all of its right, title and interest in the lease agreement, if any ("Lease") pertaining to the current location of the Business ("Leased Premises") pursuant to the provisions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Sale and Purchase of Property.** Subject to and on the terms and conditions provided herein, Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Property and Seller's leasehold interest in the Leased Premises under the Lease.

2. **Purchase Price.**

2.1 The purchase price ("Purchase Price") for the Property and for the assignment of the Lease, if any, shall be **Eighty Thousand Dollars (\$80,000.00)**, subject to the credits and prorations provided for herein and shall be paid at Closing as follows:

2.1 (a) An amount equal to Five Thousand Dollars (\$5,000.00) has been paid into the escrow account of CENTURY 21 Richards & Ayer Real Estate by buyer as earnest money and shall be credited to Buyer at closing.

2.1(b) An amount equal to Fifty Thousand Dollars (**\$50,000.00**), **subject to the credits and prorations provided for herein**, shall be paid by Purchaser at closing by certified or cashier's check or other funds acceptable to Seller; and

2.2 An additional amount of Thirty Thousand Dollars (\$30,000.00) shall be amortized over One year and paid in monthly installments of principal and interest of which interest shall be in the amount of six percent (6.0%) for a total monthly payment of One Thousand Five Hundred Dollars (\$1,500); the remainder amount shall be paid in one balloon payment of

JA 8/7/03 11



Fourteen Thousand Seven Hundred Seventy Three Dollars and Fourteen Cents (\$14,773.14) by August 31, 2004.

2.5 Any and all advertising and other business related commitments currently made and agreed to by Seller on behalf of the Business shall be assumed by and shall become the obligation and sole liability of the Purchaser at closing. Seller shall not enter into any new obligations covered by this Subsection 2.5 without Purchaser's knowledge and consent between the period of this contract date and closing.

3. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Purchaser as follows:

3.1 Seller is a Corporation duly organized, validly existing and in good standing under the laws of the Territory of the United States Virgin Islands. The execution, delivery and performance of this Agreement and the transactions contemplated herein by the Seller are within the powers of the Seller. Upon execution and delivery, this Agreement and the documents contemplated herein shall be legally binding obligations of Seller enforceable in accordance with their provisions.

3.2 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business, the Lease (if any), or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.3 Up to and including the date of the closing, no one will modify or remove any of the personal property comprising the Property, except that inventory may be sold in the ordinary course of business and personal property may be removed and replaced with property of equal quality and value.

3.4 Seller will not execute any new lease, service contract, employment agreement or enter into any agreement concerning the Property or the Business without Purchaser's written consent, unless such agreement shall terminate prior to the effective date of the closing.

3.5 Seller owns good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances.

3.6 This number intentionally left blank

3.7 Neither the execution and delivery of this Agreement nor any agreement required hereby nor the performance by the Seller of its obligations hereunder shall (a) conflict with or result in a breach of or constitute or result in a default under (i) any of the provisions of the Articles of Organization or Operating Agreement or other governing agreements of the Seller; (ii) any agreement between the members of the Seller, or (iii) any judgment, order, injunction,

Mr 2/2/03.

decree, regulation or ruling of any court or any governmental authority to which the Seller is subject and to which notice has been received; (b) give to any person any right of termination, cancellation or acceleration in or with respect to any agreements, contracts or commitments of the Seller, except that the consent of the landlord is required; or (c) result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance upon any of the property or assets of the Seller pursuant to the provisions of any mortgage, lease, or other agreement to which the Seller is a party or is bound. The consummation of the transactions contemplated by this Agreement shall not result in any default by the Seller which will give any person any right to accelerate any obligations under any agreement, contract, indenture or other instrument relating to the borrowing of money or other indebtedness by which the Seller is a party or is bound.

4.0 **Purchaser's Representations and Warranties:**

4.1 Purchaser is taking business as an individual. The execution, delivery and performance of this Agreement and the transactions contemplated herein by the Purchaser are within the powers of the Purchaser. Upon execution and delivery, this Agreement and the documents contemplated herein shall be legally binding obligations of Purchaser enforceable in accordance with their provisions.

4.2 There are no actions, suits or proceedings threatened or pending against, by or affecting Purchaser, which question the validity of this Agreement or question Purchaser's ability to consummate the transaction described herein or contemplated hereby or any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason.

4.4 There are no outstanding options, subscriptions, claims, warrants or other rights to subscribe for or purchase or require the issuance of Stock from the Purchaser. There are no contracts or commitments providing for the issuance of, or the granting of rights to acquire, and no securities convertible into or exchangeable for, any shares of capital stock or any other ownership interest of the Purchaser. Purchaser has the right, ability and the available authorized shares of common stock to issue the shares of stock in Purchaser to Seller if it elects to convert the Loan to common stock of the Purchaser before or after closing as provided in Section 2 hereof.

4.5 Neither the execution and delivery of this Agreement nor any agreement required hereby nor the performance by the Purchaser of its obligations hereunder shall (a) conflict with or result in a breach of or constitute or result in a default under (i) any of the provisions of the Articles, Bylaws, or other governing agreements of the Purchaser; (ii) any agreement between the shareholders of the Purchaser, or (iii) any judgment, order, injunction, decree, regulation or ruling of any court or any governmental authority to which the Purchaser is subject and to which notice has been received; (b) give to any person any right of termination, cancellation or acceleration in or with respect to any agreements, contracts or commitments of the Purchaser, except that the consent of the landlord is required; or (c) result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance upon any of the property

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or assets of the Purchaser pursuant to the provisions of any mortgage, lease, or other agreement to which the Purchaser is a party or is bound. The consummation of the transactions contemplated by this Agreement shall not result in any default by the Purchaser which will give any person any right to accelerate any obligations under any agreement, contract, indenture or other instrument relating to the borrowing of money or other indebtedness by which the Purchaser is a party or is bound.

5.0 **Closing.** The closing ("Closing") of the transaction contemplated herein shall occur on or before August 1, 2003 on a date and time acceptable to Seller and Purchaser and shall be held at the law offices of _____. If Seller and Purchaser are unable to agree upon a time and date for the Closing, then the closing shall be held on _____. Time is of the essence.

5.1 At the closing Seller shall deliver or cause to be delivered the following documents:

(a) A Bill of Sale conveying the Property to the Purchaser, in a form satisfactory to Seller's counsel and Purchaser's counsel.

(b) An assignment of any contracts (in a form satisfactory to Seller's counsel and Purchaser's counsel) which Purchaser elects to assume.

(c) An assignment and assumption agreement of the Lease and the assignment of the Lease to the Landlord to the Lease assignment, if required under the terms of the Lease, in a form satisfactory to Seller's counsel and Purchaser's counsel.

(d) Resolution(s) authorizing the transactions contemplated herein from the members of Seller.

(e) A Closing Statement.

(f) An assignment of the trade name Cane Bay Beach Bar.

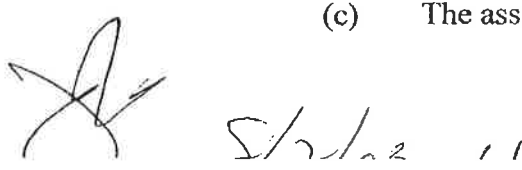
(g) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein in accordance with the provisions of the Agreement.

5.2 At the Closing, Purchaser shall deliver or cause to be delivered the following items:

(a) The Note;

(b) A Closing Statement.

(c) The assignment of any contracts, which Purchaser elects to assume.

A handwritten signature, possibly 'S/...', followed by the date '5/2/02' and some illegible scribbles.

(d) The assignment and assumption agreement of the Lease, if any.

(e) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein in accordance with the provisions of this Agreement.

5.3 Possession of the Property shall be delivered to the Purchaser at Closing.

5.4 Purchaser shall pay the cost of the recording fees for any documents needed to provide clear title to the Property as required under this Agreement. Purchaser shall pay the costs for any title examination obtained by Purchaser. Each party shall pay its own attorney's fees.

5.5 The current payments due under the Lease and any Contracts affecting the Property which are being assumed by Purchaser shall be prorated as of the closing date.

5.6 Seller shall pay for all merchandise which ordered by it and received prior to closing and Purchaser shall pay for all merchandise received after closing.

5.7 The rent due under the Lease, all real property taxes assessed against the Property, all other expenses and obligations under the contracts, if any, to be paid by Seller, all other operating costs and expenses with respect to the Property shall be prorated between Seller and Purchaser as of the Closing Date, with the Seller responsible for all such items applicable to the period prior to the Closing Date and the Purchaser responsible for all such items applicable to the Closing Date and the time period thereafter. Seller shall be responsible for paying all amounts due under any Contract not to be assigned to Purchaser at Closing, including without limitation, any termination fee. Purchaser shall reimburse Seller for any security deposit paid to the Landlord under the Lease.

5.8 Final readings on all metered utilities, including without limitation, water, sewer, gas and electric, serving the Property shall be made on the Closing Date. Seller shall be responsible for all charges for consumption of utilities until the Closing Date and Purchaser shall be responsible for utility charges on and after the Closing Date. All deposits or bonds for utility services to the Property shall be transferred to Purchaser and Seller shall receive a credit at closing in such amount or Purchaser shall pay its own utility deposits. If a final reading cannot be taken for any utility on the Closing Date, then the respective utility charge shall be prorated as of the Closing Date based upon the most current available bill therefor and promptly re-prorated upon receipt of a final bill for such charges.

5.9 All items shall be prorated as of 11:59 p.m. on the day before the Closing Date. All of the above-listed items which are required to be prorated as of the Closing Date and which are not subject to an exact determination shall be estimated by the parties. If the actual amount of any such item, when later determined and re-prorated for the applicable period, differs



from the credit given therefore at Closing, the parties shall promptly make the appropriate adjustment.

6.0 **Real Estate Brokers.** The parties acknowledge that CENTURY 21 **Richards & Ayer Real Estate** is the real estate broker ("Broker"), who brought about this transaction. Seller shall pay a 10% commission ("Commission") to Broker as stipulated in the listing agreement between Seller and the Broker at the closing. Purchaser hereby represents and warrants to the Seller that it has not dealt with any real estate agent or broker in connection with the transaction contemplated herein, other than CENTURY 21 **Richards & Ayer Real Estate**.

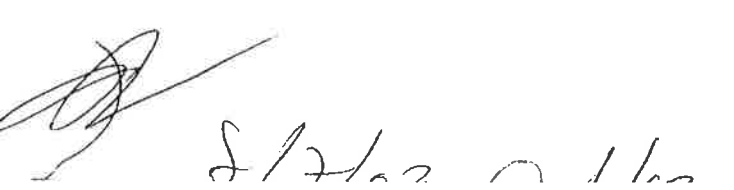
7.0 **Casualty.** If, prior to the Closing, the Property or any improvements comprising the leased premises are destroyed or damaged by fire or other casualty and such repairs or replacements have not have been completed by Seller at Seller's expense prior to the Closing to Purchaser's reasonable satisfaction, then Purchaser shall have the right and option to terminate this Agreement in accordance with Section 8.0 hereof. If Purchaser does not terminate this Agreement, then all insurance money payable as a result of such casualty shall be paid to Purchaser for the purpose of making the required repairs or replacements.

8.0 **Default.**

8.1 If Seller defaults in the performance of any of its obligations under this Agreement, through no fault of Purchaser, Purchaser shall have the right only (i) to terminate this Agreement by written notice to Seller, and thereafter, the Earnest Money shall be paid to Seller and no party shall have any further rights, obligations or liabilities under, arising out of or resulting from this Agreement; or (ii) to file an action for specific performance.

8.2 In the event the transaction contemplated herein is not closed by _____, for any reason, including but not limited to, Purchaser's default or refusal to perform Purchaser's obligations hereunder, the Earnest Money shall be paid to Seller as full liquidated damages, and no party shall have any further rights, obligations or liabilities under, arising out of or resulting from this Agreement. Purchaser and Seller recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure to perform, it being specifically acknowledged and agreed by Seller and Purchaser that such liquidated damages are reasonable.

9.0 **Notices.** All notices, demands, or requests (collectively "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent through the United States Postal Service, by express mail or certified mail, return receipt requested, to the parties at the following addresses:



Seller: CB3, Inc
C/o Maria Bentley
PO Box 2307
Kingshill, VI 00851
(340) 513-3902

With a copy to: Jim Meaney
7/8 Queen Street
Christiansted, Virgin Islands 00820

Purchaser: Joseph Gerace
627 West Sterling Place
Chandler, AZ 85225
(602) 570-8040

With a copy to:

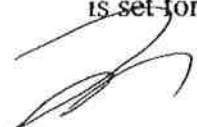

All Notices shall be deemed effective upon being hand delivered, or if sent by registered mail, the date deposited with the United States Postal Service; provided, however, the time period in which a response to any Notice must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given shall constitute receipt of the Notice. Either party shall have the right to change its address for Notice hereunder by giving two (2) days prior notice thereof to the other party in the manner set forth above.

10.0 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.0 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute the same instrument.

12.0 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Territory of the United States Virgin Islands.

13.0 **Prior Discussions and Amendments.** This Agreement supersedes all prior discussions and agreements between the parties hereto with respect to the transactions contemplated herein and constitutes the sole and entire agreement between the parties hereto with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.


02/13


14.0 Captions. All captions, headings, and section numbers are solely for the purpose of convenience and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

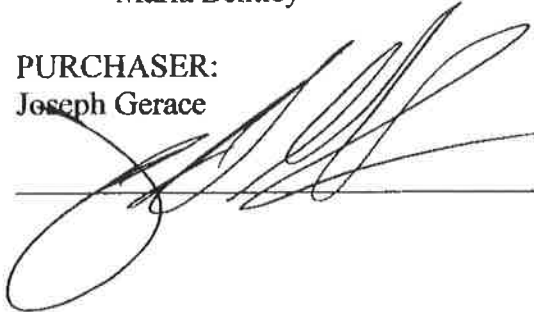
15.0 Other. Seller is a Virgin Islands licensed real estate sales person

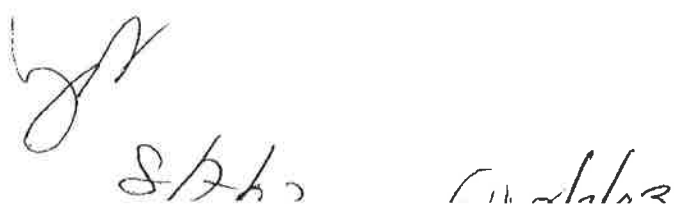
IN WITNESS WHEREOF, the parties, by their duly authorized officers, have executed this Agreement effective the day and year first above written.

SELLER:
CB3, Inc.

By: _____
Maria Bentley

PURCHASER:
Joseph Gerace





ESCROW AGENT:

CENTURY 21 Richards & Ayer Real Estate

By: Linda Ayer Hoet
Broker

List of Exhibits

- | | |
|-----------|-------------------------------|
| Exhibit A | Schedule of Personal Property |
| Exhibit B | List of Creditors |
| Exhibit C | Lease, if any |

[Handwritten initials] 8/2/03 *[Handwritten initials]* 8/2/03

RICHARDS & AYER ASSOCIATES

340 Strand St., Frederiksted
St. Croix, USVI 00840
(340) 772-0420

53B Company St., Christiansted
St. Croix, USVI 00820
(340) 719-5550

1678

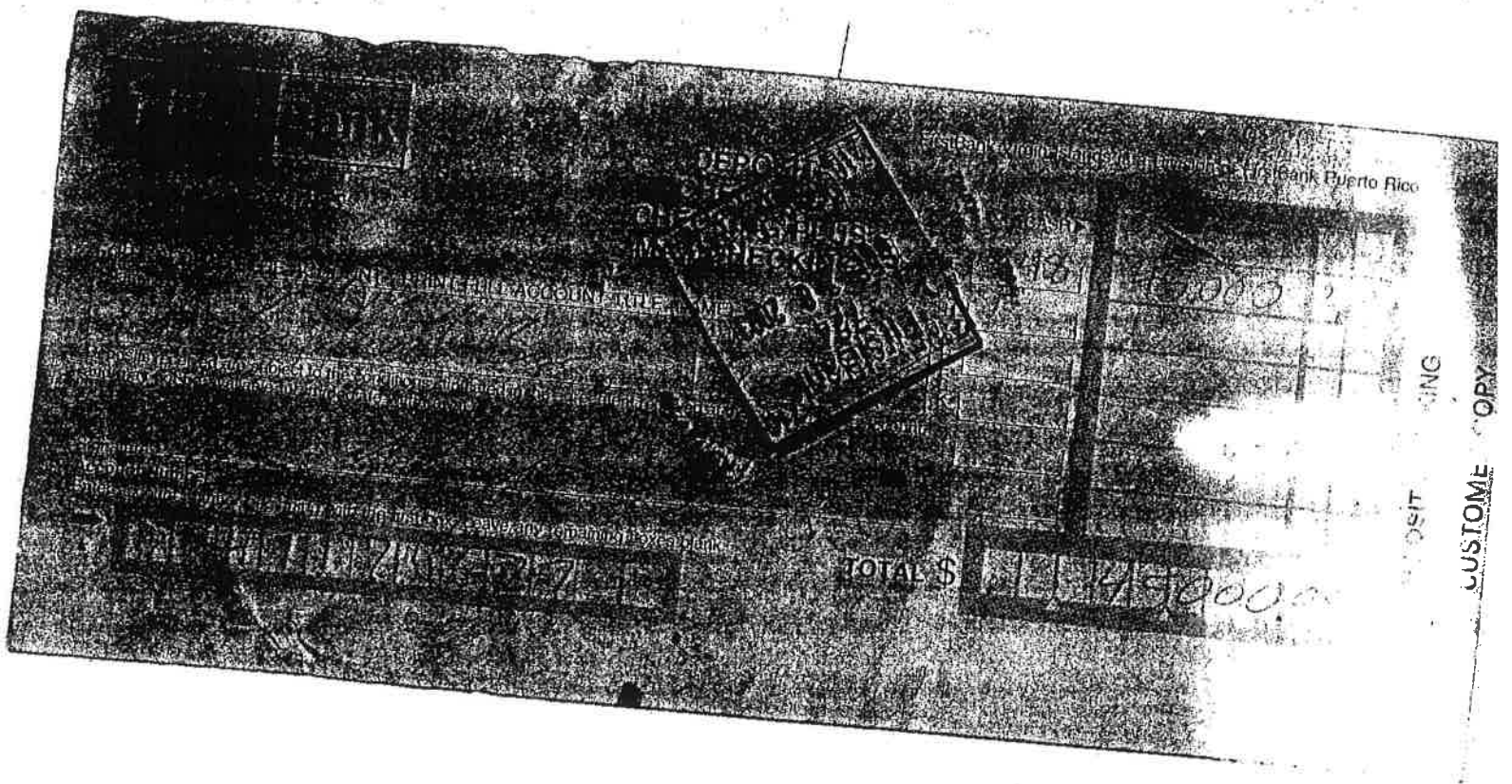
DATE 8-7-03

RECEIVED FROM Joe Grace
Fifty Five Thousand \$ 45,000
FOR Sale of Case Bay Beach Bar DOLLARS

AMOUNT OF ACCOUNT		
THIS PAYMENT	<u>45,000</u>	<u>-</u>
BALANCE DUE		

- CASH
- CHECK
- M.O.

BY J. Duthler **Thank You**



Blumberg No. 5208
EXHIBIT
2

FILED

December 01, 2021 11:04 AM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. CROIX**

JOSEPH GERACE, VICTORIA
VOOYS d/b/a CANE BAY BEACH
BAR

Plaintiffs,

v.

MARIA BENTLEY, DAVID BENTLEY,
CB3, INC., WARREN MOSLER
CHRIS HANLEY, and CHRISMOS
CANE BAY, LLC.,

Defendants.

CIVIL NO SX- 2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

FIRST AMENDED ANSWER

COMES NOW, the defendants Chrismos Cane Bay, LLC. and Warren Mosler,
through counsel, and answer as follows:

1. Admit
2. Admit
3. Admit
4. Admit
5. Deny for lack of knowledge.
6. Deny for lack of knowledge.
7. Deny for lack of knowledge.
8. Admit
9. Admit
10. Admit
11. Deny for lack of knowledge.

12. Deny for lack of knowledge.
13. Deny for lack of knowledge.
14. Deny for lack of knowledge.
15. Deny for lack of knowledge.
16. Admit
17. Deny for lack of knowledge.
18. Deny for lack of knowledge.
19. Deny for lack of knowledge.
20. Admit discussions took place, but otherwise deny as worded.
21. Deny
22. Deny
23. Deny, as a lease was presented to plaintiffs which the plaintiffs rejected.
24. Deny
25. Deny
26. Deny
27. Deny
28. Deny
29. Deny
30. Admit that a meeting took place between Hanley and Mosler as representatives of Chrismos. Otherwise, deny.
31. Admit the plaintiffs have no lease or right to possess the property and were told to vacate the premises on or about that time. Otherwise deny.

32. Deny
33. Deny
34. Deny
35. Deny
36. Deny as worded. Plaintiffs asked about rent, but Chrismos, (through Hanley) said the plaintiffs were behind in rent. Hanley then requested the plaintiffs to produce their receipts, which they never did produce.
37. Deny
38. Deny
39. Deny
40. Deny for lack of knowledge.
41. Deny for lack of knowledge.
42. Deny for lack of knowledge.
43. Deny for lack of knowledge.
44. Deny for lack of knowledge.
45. As alleged
46. Deny for lack of knowledge.
47. Deny
48. As alleged
49. Deny
50. Deny
51. As alleged

- 52. Deny
- 53. Deny
- 54. As alleged
- 55. Deny
- 56. As alleged
- 57. Deny
- 58. Deny
- 59. Deny
- 60. Deny
- 61. As alleged
- 62. Deny
- 63. Deny
- 64. As alleged
- 65. Deny
- 66. Deny
- 67. As alleged
- 68. Deny
- 69. Deny
- 70. As alleged
- 71. Deny
- 72. Deny
- 73. Deny

- 74. As alleged
- 75. Deny
- 76. Deny
- 77. As alleged
- 78. Deny

AFFIRMATIVE DEFENSES

Chrismos Cane Bay, LLC. hereby asserts the following affirmative defenses:

1. The complaint fails to state a cause of action upon which relief can be granted.
2. The complaint is barred by the statute of frauds.
3. The complaint is barred by the equitable doctrines of laches, estoppel, waiver, and unclean hands.
4. The complaint is barred due to the failure of consideration.

Wherefore, the defendants Chrismos Cane Bay, LLC. and Warren Mosler request that this complaint be dismissed with prejudice along with an award of fees and costs against the plaintiffs.

Dated: December 1, 2021

/s/ Joel Holt
Joel H. Holt
2132 Company Street
Christiansted, St. Croix
USVI, 00820
(340) 773-8709

CERTIFICATE OF SERVICE

First Amended Answer
Page 6

I hereby certify that on this December 1, 2021, I caused a true and exact copy of the foregoing Amended **Answer** to be emailed to:

Lee J. Rohn
1101 King Street, Ste. 2
Christiansted, St. Croix
USVI, 00820

Email:
Maria Bentley, pro se
155 Lakewood Parkway
Amherst, NY 14226
mariatbentley@hotmail.com

/s/ Joel H. Holt

FILED

December 01, 2021 10:59 AM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. CROIX**

JOSEPH GERACE, VICTORIA
VOOYS d/b/a CANE BAY BEACH
BAR

Plaintiffs,

v.

MARIA BENTLEY, DAVID BENTLEY,
CB3, INC., WARREN MOSLER
CHRIS HANLEY, and CHRISMOS
CANE BAY, LLC.,

Defendants.

CIVIL NO SX- 2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

FIRST AMENDED ANSWER

COMES NOW, the defendant Chris Hanley, through counsel, and answers as follows:

1. Admit
2. Admit
3. Admit
4. Admit
5. Deny for lack of knowledge.
6. Deny for lack of knowledge.
7. Deny for lack of knowledge.
8. Admit
9. Admit
10. Admit
11. Deny for lack of knowledge.

12. Deny for lack of knowledge.
13. Deny for lack of knowledge.
14. Deny for lack of knowledge.
15. Deny for lack of knowledge.
16. Admit
17. Deny for lack of knowledge
18. Deny for lack of knowledge.
19. Deny for lack of knowledge.
20. Admit discussions took place, but otherwise deny as worded.
21. Deny
22. Deny
23. Deny, as a lease was presented to plaintiffs which the plaintiffs rejected.
24. Deny
25. Deny
26. Deny
27. Deny
28. Deny
29. Deny
30. Admit that a meeting took place between Hanley and Mosler as representatives of Chrisomos. Otherwise, deny.
31. Admit the plaintiffs have no lease or right to possess the property and were told to vacate the premises on or about that time. Otherwise deny.

32. Deny
33. Deny
34. Deny
35. Deny
36. Deny as worded. Plaintiffs asked about rent, but Chrisomos, (through Hanley) said the plaintiffs were behind in rent. Hanley then requested the plaintiffs to produce their receipts, which they never did produce.
37. Deny
38. Deny
39. Deny
40. Deny for lack of knowledge.
41. Deny for lack of knowledge.
42. Deny for lack of knowledge.
43. Deny for lack of knowledge.
44. Deny for lack of knowledge.
45. As alleged
46. Deny for lack of knowledge.
47. Deny
48. As alleged
49. Deny
50. Deny
51. As alleged

52. Deny
53. Deny
54. As alleged
55. Deny
56. As alleged
57. Deny
58. Deny
59. Deny
60. Deny
61. As alleged
62. Deny
63. Deny
64. As alleged
65. Deny
66. Deny
67. As alleged
68. Deny
69. Deny
70. As alleged
71. Deny
72. Deny
73. Deny

- 74. As alleged
- 75. Deny
- 76. Deny
- 77. As alleged
- 78. Deny

AFFIRMATIVE DEFENSES

Chris Hanley hereby asserts the following affirmative defenses:

1. The complaint fails to state a cause of action upon which relief can be granted.
2. The complaint is barred by the statute of frauds.
3. The complaint is barred by the equitable doctrines of laches, estoppel, waiver, and unclean hands.
4. The complaint is barred due to the failure of consideration.

Wherefore, the defendant Chris Hanley requests that this complaint be dismissed with prejudice along with an award of fees and costs against the plaintiffs.

Dated: November 1, 2021

/s/ Joel Holt
Joel H. Holt
2132 Company Street
Christiansted, St. Croix
USVI, 00820
(340) 773-8709

CERTIFICATE OF SERVICE

I hereby certify that on this November 1, 2021, I caused a true and exact copy of the foregoing Amended **Answer** to be emailed to:

Amended Answer
Page 6

Lee J. Rohn
1101 King Street, Ste. 2
Christiansted, St. Croix
USVI, 00820

Maria Bentley, pro se
155 Lakewood Parkway
Amherst, NY 14226
mariatbentley@hotmail.com

/s/ Joel H. Holt

FILED

July 26, 2021

(-2005-CV-00368

MARLA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

MARIA BENTLEY, DAVID BENTLEY,
CB3, WARREN MOSLER, CHRIS
HANLEY, and CHRISMOS CANE BAY,
LLC.,

Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MOTION IN LIMINE RE RACIAL COMMENTS

The Chrismos Defendants (Mosler, Hanley and Chrismos Cane Bay, LLC) hereby move in limine to exclude the Plaintiffs from making any type or racial statements at trial. In this regard, the Plaintiffs' portion of the JFPTO contains a sentence with such statements, stating on pp. 4-5 (See Exhibit 1):

The following week, Mosler again reiterated his dislike for the direction the bar was going **with the reggae shows and the type of crowd of people that such shows attracted** and that **Chrismos had decided to turn the property into a "white, middle class restaurant."** (Emphasis added).

Such statements are not only irrelevant, as there is not a racial discrimination claim in this case, but even if they were relevant, they would be barred under V.I. Evid. R. 403 that provides:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issue, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

As noted by the V.I. Supreme Court in *Alexander v. People of the Virgin Islands*, 60 V.I.

486, 496 (V.I. 2014):

As elucidated by the advisory committee notes to Rule 403, unfair prejudice within the context of Rule 403 means “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” FED. R. EVID. 403, advisory committee’s note. **In essence, evidence which tends to lure the trier of fact to arrive at a conclusion on an improper, emotional or other basis is unfairly prejudicial.** *Id.* at 496. (Emphasis added) (Citations omitted).

Clearly the referenced statements fall within this rule, even if they had any marginal relevance. Indeed, this is not the first time the undersigned counsel has had to seek such relief from a court where counsel for the Plaintiffs, Lee Rohn, was also counsel of record in that case. See Exhibit 2.

In conclusion, it is respectfully submitted that this Court should enter an Order in limine directing that the Plaintiffs not make any such comments to the jury in this case, including the statements in the sentence quoted above.

DATED: July 26, 2021

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 26th day of July, 2021 I caused a true and correct copy of foregoing to be served via the Court’s ECF system and by email on:

Lee Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

Email:
Maria Bentley, pro se
155 Lakewood Parkway
Amherst, NY 14226

/s/ Joel H. Holt

FILED

July 26, 2021
-2005-CV-00368

AMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

MARIA BENTLEY, CB3, WARREN
MOSLER, CHRIS HANLEY, and
CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

JOINT FINAL PRETRIAL ORDER

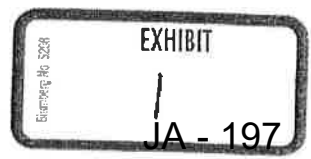
The following shall constitute the Final Pretrial Order pursuant to Rule 16(e) of the Federal Rules of Civil Procedure and this Final Pretrial Order shall govern the conduct of the trial of this case. Amendments to this order will be allowed only in exceptional circumstances to prevent manifest injustice.

APPEARANCES:

Lee J. Rohn, Esquire
Attorney for Plaintiff
1108 King Street, Suite 3 (mailing)
56 King Street, Third Floor (physical)
Christiansted, St. Croix 00820
Attorney For: Plaintiffs

Joel Holt, Esquire
Quinn House
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
Email Address: holtvi@aol.com
Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC.

ROHN AND
CIATES, LLC
ing St, Ste 3
iansted, VI
00820
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0.773.2954
ohnlaw.com



for the premises. In reliance on the representations made by Chrismos, the Plaintiffs invested large sums of money in making improvements and betterments, building good will, and the like. Thereafter, Chrismos failed and refused to provide the Plaintiffs with the agreed lease. Chrismos repeatedly represented to the Plaintiffs that they understood the Plaintiffs were improving the property and building up the business and that it was not a problem if the Plaintiffs were late on the monthly rent. The Plaintiffs relied on the representations of Chrismos, but, nonetheless, always paid their rent, although not always on the first of the month. Defendants then used the late payments as an excuse not to enter into a lease as agreed, attempted to forcibly evict the Plaintiffs, even though rent had been paid, and bad mouthed the Plaintiffs.

Defendant Hanley then admitted that Chrismos was already negotiating with a potential new tenant for a lease. Hanley agreed on, behalf of Chrismos, to provide the Plaintiffs with the previously promised 7-year lease so they could sell the lease, the equipment, and property and good will to the new tenant so the Plaintiffs could recoup their investment. Defendant Hanley represented that the value of the lease and equipment and good will would be \$185,000.00. Instead, what was tendered was a two-year lease, with higher rent, and to have Plaintiffs personally liable. Then in March 2005, Defendant Warren Mosler came to the bar and asked if the Plaintiffs had an exit strategy.

He informed the Plaintiffs that he had a different idea for the use of the property, did not like the type of crowds that reggae music brings, as they were the "wrong type of people" and that the Plaintiffs should stop that type of entertainment. The following week, Mosler again reiterated his dislike for the direction the bar was going with the reggae shows and

the type of crowd of people that such shows attracted and that Chrismos had decided to turn the property into a "white, middle class restaurant."

On March 31, 2005, Defendants Hanley and Mosler, in their individual capacity and as representatives of Chrismos Cane Bay, LLC and the Plaintiffs, had a meeting. Plaintiffs were informed that they would not be given a lease as had been agreed to, and they "needed to go." They were told they should be out in a week, but they could have no more than one (1) month. At that meeting, Defendants Hanley, Mosler and Chrismos falsely represented that the Plaintiffs were behind on their rent. Plaintiffs specifically informed Hanley, Mosler and Chrismos that all rent payments had been made by Plaintiffs and that two rent checks received by Chrismos Cane Bay, LLC remained uncashed. In a subsequent call to Defendant Hanley by Plaintiffs, Plaintiffs again asked why they were not getting the promised lease. Defendant Hanley represented that he had discussed the lease with Defendant Mosler and whether the Plaintiffs should be given \$50,000.00 toward their investment and Defendant Mosler said it was too much money and not to do it. In that conversation, Plaintiffs specially asked Defendant Hanley for any basis for the accusations that the Plaintiffs were behind on the rent. Defendant Hanley could not give any information and said he would check the records and get back to them. To date he has not. Warren Mosler and Chris Hanley made it clear that Plaintiffs would never get a lease, were month to month tenants, and Defendants would make sure they lost the restaurant.

Thereafter, Defendants Hanley and Mosler individually and on behalf of Chrismos falsely and publicly stated on radio shows, newspapers, and to the public and to

CONCLUDING CERTIFICATION

WE HEREBY CERTIFY by the affixing of our signatures to this Joint Final Pretrial Order that it reflects the efforts of all counsel and that we have carefully and completely reviewed all parts of this order prior to its submission to the Court. Further, it is acknowledged that amendments to this Final Pretrial Order will not be permitted except where the Court determines that manifest injustice would result if the amendment is not allowed.

Attorney for Plaintiffs:

By: s/
Lee J. Rohn, Esquire
VI Bar No. 52

DATED: July 19, 2021

By: s/
Joel Holt, Esquire
Attorney For: Warren Mosler, Chris Hanley & Chrisomos Cane Bay, LLC.

By: s/
Maria Bentley, Pro Se
155 Lakewood Pkwy
Buffalo, NY 14226-4074
Email Address: mariatbentley@hotmail.com
Attorney For: Maria Bentley

Entry of the foregoing Joint Pretrial Order is hereby **APPROVED** this _____ day
of _____, 2021.

Hon. Harold Willocks
Presiding Judge of the Superior Court

FILED
July 26, 2021
12-2005-CV-00368
SAMARA CHARLES
CLERK OF THE COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

EVARISTO RODRIGUEZ and	:	1:12-cv-29
JULIO BECERRIL,	:	
Plaintiffs,	:	
	:	
v.	:	Hon. John E. Jones III
	:	
SPARTAN CONCRETE PRODUCTS,	:	
LLC,	:	
Defendants.	:	

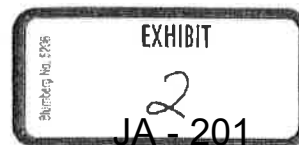
ORDER

January 20, 2016

A telephonic pretrial conference was held on this date between the Court and counsel for the parties to this action, during which stipulations were reached regarding several preliminary matters that must be resolved before trial. The following order reflects these stipulations and other pretrial matters.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Jury Selection.** Jury selection will be held on June 20, 2016, at 9:30 a.m. Counsel are considered attached for trial.
2. **Trial date.** Trial will commence immediately following jury selection on June 20, 2016.



13. **Exhibit Lists.** The parties shall submit updated exhibit lists by or before June 3, 2016.
14. **Motions in Limine.** As discussed at the conference with the parties, Defendant's Motion in Limine re: Questions as to Race (Doc. 99) is **GRANTED.** The Court shall defer a ruling on Defendant's Motion in Limine re: Evidence of Wages (Doc. 100) until the motion has been fully briefed.
15. **Settlement.** In the event that this matter is amicably settled by the parties, they shall file a joint letter on the docket so advising the Court.
16. **Status Conference.** The Court shall conduct a telephonic status conference with the parties on April 4, 2016 at 11:00 a.m. Eastern Standard Time to discuss final scheduling matters. Counsel for the Plaintiffs shall initiate the call to Chambers, (717) 221-3986, with all counsel on the line and prepared to proceed.



John E. Jones III
United States District Judge

FILED

August 12, 2021

2005-CV-00368

AMARA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

MARIA BENTLEY, CB3, WARREN
MOSLER, CHRIS HANLEY, and
CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

OPPOSITION TO MOTION REGARDING ALLEGED RACIAL COMMENTS

Plaintiffs, by and through undersigned counsel, oppose Defendants' motion seeking to preemptively bar Plaintiffs from offering any evidence or testimony at trial that Defendants used racial statements. The evidence is neither "irrelevant" under Rules 401 and 402 nor unfairly prejudicial under Rule 403. None of Defendants' arguments can withstand judicial scrutiny and Defendants' motion must be **DENIED**.

ARGUMENTS AND AUTHORITIES

The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege. See V.I. R. EVID. 104(a). When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist, but the court may admit the proposed evidence on the condition that the proof be introduced later. See V.I. R. EVID. 104(b).

Unlike a summary judgment motion, which is designed to eliminate a trial in cases where there are not genuine issues of fact, a motion *in limine* is designed to narrow the evidentiary issues for trial. See, e.g., V.I. R. EVID. P. 104(a); *Bradley*, 913 F.2d at 1069; *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984). Parties often invite courts to make pre-trial rulings on issues of prejudice, relevance and admissibility through motions *in limine*, but the United States Court of Appeals for the Third Circuit has cautioned, however, that “pretrial [rulings regarding evidentiary] exclusions should rarely be granted. . . . Excluding evidence as being more prejudicial than probative at the pretrial stage is an extreme measure that is rarely necessary, because no harm is done by admitting it at that stage.” See *In re Paoli R. Yard PCB Litig.*, 916 F.2d 829, 859 (3d Cir. 1990); *Grill v. Aversa*, 2014 U.S. Dist. LEXIS 132806 (M.D. Pa. Sept. 22, 2014); see also *Spain v. Gallegos*, 26 F.3d 439, 453 (3d Cir. 1994).

To obtain a pretrial *in limine* ruling excluding evidence, the movant must demonstrate that the evidence is inadmissible on any ground for any purpose. See *Plair v. E.J. Brach & Sons, Inc.*, 864 F. Supp. 67, 69 (N.D. Ill. 1994). “[I]t is often the better practice to wait until trial to rule on objections when admissibility substantially depends upon what facts may be developed there.” See *Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975); *Rosenberg v. Cottrell, Inc.*, No. 05-545, 2007 U.S. Dist. LEXIS 50383, at *1-3 (S.D. Ill. July 12, 2007). Thus, courts should deny a motion *in limine* when it is vague, ambiguous or fails to establish the grounds for excluding specific evidence, and a court may reserve judgment until trial, so that the motion is placed “in an appropriate factual context.” See *National Union Fire Ins. Co. v. L.E. Myers Co. Group*, 937 F. Supp. 276, 287 (S.D.N.Y. 1996)

a. Defendants use of racial statements is relevant.

Virgin Islands Rule of Evidence 401 provides that evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” See V.I. R. EVID. 401. Virgin Islands Rule of Evidence 402 provides that “all relevant evidence is admissible,” unless a specific rule makes it inadmissible. See V.I. R. EVID. 402. The Third Circuit, whose decisions remain persuasive, has stated that “Rule 401 does not raise a high standard,” see *Hurley v. Atl. City Police Dep’t*, 174 F.3d 95, 109-10 (3d Cir. 1999) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 782-83 (3d Cir. 1994)), observing that:

As noted in the Advisory Committee’s Note to Rule 401, “relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case.” Because the rule makes evidence relevant “if it has any tendency to prove a consequential fact, it follows that evidence is irrelevant only when it has no tendency to prove the fact.”

See *Blancha v. Raymark Indus.*, 972 F.2d 507, 514 (3d Cir. 1992) (quoting Charles A. Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5166, at 74 n.47 (1978)).

Plaintiffs have a claim for fraud and punitive damages in this case. (Complaint at Counts II and IV, pp. 8-9 filed June 8, 2005.) Defendants filed their motion *in limine* relying on language contained in a draft of the Joint Final Pretrial Order and not the final draft filed August 11, 2021. This is sufficient grounds to deny the motion.

At trial, Plaintiffs intend to introduce evidence consistent with “Factual Contention of Plaintiffs” at pp. 2-9 of the JFPTO that the Plaintiffs, as part of their operation of the

restaurant, began to have Full Moon Reggae Nights at the bar in about mid-2004. While there had been music and such parties previously by other bar tenants, they did not attract the same crowds as the reggae music events. Neighbors, most of whom were white, began to complain to Hanley and Mosler, as to the noise, the types of people, and the cars parking in the area. This continued over the months. JFPTO at p. 4. Defendant Mosler also criticized Plaintiffs, the type of people they were attracting, that he no longer wanted reggae music and he wanted to turn the restaurant/bar into a white middle-class restaurant. JFPTO at p. 4

Defendants were determined to get rid of Plaintiffs and their "local" crowd and replace it with a white middle class clientele. However, Defendants could not use that as the reason to kick Plaintiffs out. Instead, they went on radio shows, took out advertisements in the newspapers, and had a popup on Mosler's email, all falsely claiming Plaintiffs were dead beats, didn't pay the rent, were from a "mafia family" and were involved in drugs. JFPTO at pp. 14. After that smear campaign, Plaintiffs' business declined.

Therefore, statements that Defendants told Plaintiffs that they wanted to attract a whiter clientele are relevant and material to Plaintiffs' cause of actions as it goes to the motive behind Defendants' conduct in this case. Evidence of motive¹ is always relevant. See FRE 404(b)(evidence of motive is relevant) See *e.g. Galloway v. Islands Mech. Contr., Inc.*, 2012 U.S. Dist. LEXIS 129014 (D.V.I. Sept. 11, 2012)(Finding probative the use of the word "nigger" with regard to motive and intent and holding that "[A] statement which suggests that a [] decision was motivated by a racist stereotype is relevant evidence of intent and motive.")

b. Exclusion standard of Rule 403 has not been met

Rule 403 of the Virgin Islands Rules of Evidence, provides: “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. In this context, “unfair prejudice means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *United States v. Knight*, 700 F.3d 59, 63, 57 V.I. 941 (3d Cir. 2012) (quoting Fed. R. Evid. 403 advisory committee's note). Rule 403 is a rule of inclusion, which favors the admissibility of evidence unless its probative value is substantially outweighed by the danger of one or more of the factors enumerated in the rule. *See id.*; *United States v. Clarke*, 24 F.3d 257, 265, 306 U.S. App. D.C. 251 (D.C. Cir. 1994) (observing that the D.C. Circuit “has previously noted that the language of Rule 403 ‘tilts, as do the rules as a whole, toward the admission of evidence in close cases’”) (quoting *United States v. Moore*, 732 F.2d 983, 989, 235 U.S. App. D.C. 381 (D.C. Cir. 1984)).

Further, the Third Circuit instructs that “evidence that is highly probative is exceptionally difficult to exclude.” *Coleman v. Home Depot, Inc.*, 306 F.3d 1333, 1344 (3d Cir. 2002)(citation omitted). There is no doubt that this evidence is prejudicial, or Defendants would not seek to have it excluded. *Carter v. Hewitt*, 617 F.2d 961, 972 n.14 (3d Cir. 1980) (“Virtually all evidence is prejudicial or it isn't material.”) (citation and internal quotation marks omitted). The question under Rule 403, however, is whether the evidence is unfairly prejudicial, and so much to substantially outweigh its probative value. *Id.* (“[Rule

¹ Motive" is "[s]omething . . . that leads one to act." Black's Law Dictionary at 1110 (9th ed. 2009).

403] does not offer protection against evidence that is merely prejudicial, in the sense of being detrimental to a party's case. Rather, the rule only protects against evidence that is unfairly prejudicial.”).

Permitting Plaintiffs to offer evidence that Defendants’ motive behind their conduct that forms the basis of Plaintiffs various causes of action is because they wanted to attract a whiter clientele is not unfairly prejudicial, so much so as to outweigh the probative value. As the Third Circuit in *Carter* determined, virtually all evidence is prejudicial or is not material to the case. *Carter v. Hewitt*, 617 F.2d 961, 972 n.14 (3d Cir. 1980) (“Virtually all evidence is prejudicial, or it isn't material. Exclusion under Rule 403 is unwarranted.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiffs

DATED: August 12, 2021

BY: /s/ Lee J. Rohn
Lee J. Rohn, Esq.
VI Bar No. 52
1108 King Street, Suite 3 (mailing)
56 King Street, Third Floor (physical)
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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).

BY: /s/ Lee J. Rohn
Lee J. Rohn, Esq.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on August 12, 2021, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

Joel Holt, Esquire
Quinn House
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
Email Address: holtvi@aol.com
Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC.

Maria Bentley, Pro Se
155 Lakewood Pkwy
Buffalo, NY 14226-4074
Email Address: mariatbentley@hotmail.com
Attorney For: Maria Bentley

BY: Isl Lee J. Rohm

FILED

August 16, 2021

18-2005-CV-00368

SAMARA CHARLES

CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

MARIA BENTLEY, DAVID BENTLEY,
CB3, WARREN MOSLER, CHRIS
HANLEY, and CHRISMOS CANE BAY,
LLC.,

Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO
THEIR MOTION IN LIMINE RE RACIAL COMMENTS**

The Chrismos Defendants moved in limine to exclude the Plaintiffs from making any type of racial statements at trial. While portions of the JFPTO referenced in the Defendants' initial motion were changed, the same basic statement was included again, along with this new statement (See Exhibit 1 at p. 4):

The Plaintiffs, as part of their operation of the restaurant, began to have Full Moon Reggae Nights at the bar in about mid-2004. While there had been music and such parties previously by other bar tenants, they did not attract the same crowds as the reggae music events. **Neighbors, most of whom were white, began to complain to Hanley and Mosler, as to the noise, the types of people, and the cars parking in the area.** (Emphasis added).

As for the statement in the initial motion in limine, it was slightly altered in the Plaintiffs' final statement of facts in the JFPTO, but it still contains an overtly racial statement, as will be discussed herein.

It is respectfully submitted that these (and any similar) statements are not only irrelevant, but even if they were relevant, they would be barred under V.I. Evid. R. 403.

In opposing this motion, the Plaintiffs argue this offensive language is admissible to help prove "intent" for their claim for fraud as well as to prove their punitive damages claim. An analysis of the Complaint renders this assertion frivolous.

For the sake of clarity, each specific offending statement will be addressed in the order raised in the JFPTO, although this motion in limine is directed at barring all such racial statements.

I. The "Mostly White" Neighbors

Even if true, the allegation that the neighbors living near the Plaintiffs' restaurant who complained about the loud music at the Full Moon parties were "mostly white" has absolutely no bearing on any issues in this case. Indeed, both Plaintiffs are "white", operating an restaurant in the very neighborhood that they now argue should somehow now impute some racial animus to the Chrisomos Defendants. In short, how does the racial make-up of the neighborhood have anything to do with the alleged misconduct of either Defendant Warren Molser or Chris Hanley? Indeed, Plaintiff Victoria Vooyo testified that Chris Hanley told her not to worry about the neighbors complaining, testifying in part (See Exhibit 2 at pp. 67-68):

Q. Okay. And were you aware of the fact that neighbors were complaining about the noise after a certain hour of the night?

A. Not until close to them telling us that we needed to get out.

Q. Okay.

A. And when -- when -- Hanley was the one that mentioned it, and he didn't seem to really think it was a problem.

In short, the racial make-up of the nearby neighbors has no relevance to the issues in this case, so such references should be barred from this trial.

II. The “white, middle class restaurant” Statement

The final version of the JFPTO attributes this statement to Warren Mosler (See Exhibit 1 at p. 6):

When Mosler found out from Jordan that Plaintiffs had, on Hanley’s recommendation, requested \$185,000 for Jordan to buy the restaurant, he became furious and assumed, without factual basis, that Plaintiffs were making a lot more at the restaurant than they were claiming, and decided he would not give Plaintiffs any lease, and he wanted them out immediately.

After that Mosler’s whole attitude towards the Plaintiffs changed. He criticized Plaintiffs, the type of people they were attracting, **that he no longer wanted reggae music and he wanted to turn the restaurant/bar into a white middle-class restaurant.** (Emphasis added).

However, the Complaint contains a completely different version regarding this alleged statement, which it attributed to Chris Hanley, not Mosler, supposedly made by Hanley on March 13, 2005. See Exhibit 3 at ¶26. Thus, this discrepancy by itself is enough to exclude attributing any such statement to Mosler, as it was never alleged in any pleadings, Rule 26 disclosure or discovery response that Mosler made any such statement.

Moreover, all of the facts related to the allegations of fraud are contained in ¶20-25 of the Complaint, which allege that the Chrismos Defendants had promised the Plaintiffs a lease if they made certain improvements, which they claim they had already made by March 13, 2005. Of particular significance, there is no allegation in the Complaint that the alleged misrepresentations were based on any racial animus. To the contrary, ¶26 that contains this “white, middle class” statement begins with the allegation that Chrismos did not like the direction the restaurant was **now** heading with its reggae music parties, so there was a decision to **now** take it in a different direction. In short, the alleged racial statement was not made by Mosler, nor was it made before the alleged fraud took

place, so there is no such connection between the alleged fraud and the alleged referenced statement.

Indeed, in his deposition, the Plaintiff Joseph Gerace was specifically asked why he thought Mosler and Hanley wanted the premises vacated, to which he responded (See Exhibit 4 at pp. 17)

Q. (Mr. Holt) Why do you say you lost Cane Bay? Why did you leave Cane Bay?

A. Well, the letter that was read over the air kind of directly affected our business. All the stuff in the media directly affected our business. **And it was clear that Chris and Warren didn't want us there, and they testified that our relationship wasn't the same anymore, because they felt -- I forgot the word he used, but somewhere in the deceived maybe. I don't remember the exact word he used.** (Emphasis added).

In short, Gerace did not attribute any racial motive to Mosler and Hanley now wanting him to vacate the premises. Instead, the Plaintiffs admit that their relationship with the Chrisomos Defendants changed in March of 2005 because of other business related issues, which the Plaintiffs fully described in the JFPTO at p. 6 as follows (See Exhibit 1):

When Mosler found out from Jordan that Plaintiffs had, on Hanley's recommendation, requested \$185,000 for Jordan to buy the restaurant, he became furious and assumed, without factual basis, that Plaintiffs were making a lot more at the restaurant than they were claiming, and decided he would not give Plaintiffs any lease, and he wanted them out immediately.

Equally important, ¶30 of the Complaint then describes a meeting with Mosler and Hanley on March 31, 2005, during which time no racial statements are attributed to Mosler, nor were the alleged statements made by Hanley on March 13, 2005, referenced again either. See Exhibit 3. Instead, the Complaint alleges that Mosler and Hanley accused the Plaintiffs of being behind in their rent payments and complained that they were not good tenants. See Exhibit 3 at ¶31-¶37.

In short, neither Plaintiff has submitted any verified document averring that race had anything to do with their landlord-tenant issues. To the contrary, the problems arose when the Plaintiffs disclosed their financials to the prospective purchaser, which contradicted all of their prior complaints of being financially unable to pay their rent or make needed repairs to the premises, which is the “deception” that Gerace referenced in his deposition.

Equally important, the Chrismos Defendants never evicted the Plaintiffs, as the Plaintiffs retained counsel after these alleged statements were made, who made it clear her clients would not leave the premises. See Exhibit 5. Glaringly missing from this letter is any reference to any such racial comments or motive. Moreover, at the time the Complaint in this case was filed, the Plaintiffs were still in possession of the premises, which they allege they were trying to sell. See Exhibit 3 at ¶44. Likewise, their counsel made it clear on June 8, 2005, that unless her clients received the price they wanted to sell the premises for from the prospective buyer, they would remain in business at that location. See Exhibit 6.

Finally, after this lawsuit was filed, the Plaintiffs sold their assets to a third party in late June of 2005, including their “tenancy” rights, and voluntarily vacated the premises. See Exhibit 7.

Thus, the alleged racial statements are irrelevant to the alleged fraud claim, or any punitive damage claim. Moreover, even if there was some tenuous relevance, such allegations should still be excluded pursuant to Rule 403. As noted by the V.I. Supreme Court in *Alexander v. People of the Virgin Islands*, 60 V.I. 486, 496 (V.I. 2014):

As elucidated by the advisory committee notes to Rule 403, unfair prejudice within the context of Rule 403 means “an undue tendency to suggest decision on an

improper basis, commonly, though not necessarily, an emotional one.” FED. R. EVID. 403, advisory committee’s note. **In essence, evidence which tends to lure the trier of fact to arrive at a conclusion on an improper, emotional or other basis is unfairly prejudicial.** *Id.* at 496. (Emphasis added) (Citations omitted).

Clearly the referenced statement falls within this rule, even if it had any marginal relevance, as the alleged fraud took place well before Hanley (not Mosler, as set forth in JFPTO), allegedly made the statement in question, which was then followed by another meeting where Mosler was present, with the discussions centering around the non-payment of rent. Finally, the Complaint predated the Plaintiffs departure from the premises, which was only done on their own terms after retaining counsel and selling their business to a third party. Thus, to suggest that Mosler had a racial bias, **based on a statement he did not make by Plaintiffs own admission**, creates a risk of such undue prejudice that Rule 403 does not permit even if the statement were otherwise relevant.

III. Conclusion

In conclusion, it is respectfully submitted that this Court should enter an Order in limine directing that the Plaintiffs not make any such comments to the jury in this case, including the statements in the sentences quoted above.

DATED: August 16, 2021

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 16th day of July, 2021 I caused a true and correct copy of foregoing to be served via the Court's ECF system and by email on:

Lee Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

Maria Bentley, pro se
155 Lakewood Parkway
Amherst, NY 14226

/s/ Joel H. Holt

FILED
August 16, 2021
2021-2005-CV-00368
SAMARA CHARLES
CLERK OF THE COURT

EXHIBIT 1

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

MARIA BENTLEY, CB3, WARREN
MOSLER, CHRIS HANLEY, and
CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

JOINT FINAL PRETRIAL ORDER

The following shall constitute the Final Pretrial Order pursuant to Rule 16(e) of the Federal Rules of Civil Procedure and this Final Pretrial Order shall govern the conduct of the trial of this case. Amendments to this order will be allowed only in exceptional circumstances to prevent manifest injustice.

APPEARANCES:

Lee J. Rohn, Esquire

Attorney for Plaintiff

1108 King Street, Suite 3 (mailing)

56 King Street, Third Floor (physical)

Christiansted, St. Croix 00820

Attorney For: Plaintiffs

Joel Holt, Esquire

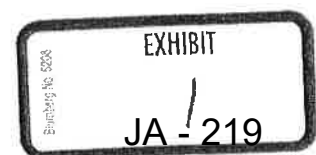
Quinn House

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Email Address: holtvi@aol.com

Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC.



Maria Bentley, Pro Se

155 Lakewood Pkwy

Buffalo, NY 14226-4074

Email Address: mariatbentley@hotmail.com

1. NATURE OF ACTION AND JURISDICTION OF THE COURT:

The Court has jurisdiction over the parties and the subject matter.

2. FACTUAL CONTENTIONS OF PLAINTIFFS:

Defendant Maria Bentley and CB3 represented to Plaintiffs, Joseph Gerace and Victoria Vooyoys, that they owned the trade name Cane Bay Beach Bar and had a lease to operate as Cane Bay Beach Bar, among other misrepresentations. In 2003, Plaintiff Joseph Gerace wished to purchase Cane Bay Beach Bar and in reliance on the representations of Mrs. Bentley and CB3 entered into negotiations to purchase it. On August 7, 2003, the Plaintiffs, Ms. Bentley and CB3 entered into an Asset Purchase Agreement. In that Asset Purchase Agreement, Bentley and CB3 represented the following:

- 1) that they owned the furniture, furnishings, equipment, inventory, goodwill, contracts and the Trade name Cane Bay Beach Bar and accounts receivables;
- 2) that they were a Corporation in good standing;
- 3) that they had no threatened actions affecting the property to be transferred, which would question the validity of the Lease;
- 4) that they had a Lease for the premises that was in good standing;
- 5) that they would provide a Bill of Sale at closing conveying the property to the Plaintiffs;
- 6) that they would assign, at closing, all contracts to the Plaintiffs;

- 7) that they would provide an Assignment of the lease to the Plaintiffs approved by the landlord; and
- 8) that they would provide, at closing, an Assignment of the Trade name Cane Bay Beach Bar.

Plaintiffs, in good faith, signed the Asset Purchase Agreement and at closing paid Mrs. Bentley \$45,000.00 and agreed to pay additional funds on a monthly basis.

Prior to the closing, Chrismos had agreed to purchase the property where the bar was located. At the closing, it was determined that Bentley and CB3 did not have a lease to operate Cane Bay Beach Bar. However, Defendants Chrismos Cane Bay, Warren Mosler and Chris Hanley agreed they would give Plaintiffs a reasonable lease as they were going to be the new owners, so the closing took place. After the Plaintiffs began to operate Cane Bay Beach Bar, they learned that most of the furnishings transferred were not owned by Ms. Bentley or CB3. Rather, they were indebted and Ms. Bentley and CB3 had failed to pay monies due. In addition, the Bentleys had written checks for insufficient funds to pay for services or equipment, owed for services and equipment, and had Health Department citations that had not been paid, and the like. Further, Mr. Gerace later learned that Ms. Bentley and CB3 did not own the trade name Cane Bay Beach Bar as represented. Equipment purchased by the Plaintiffs from Bentley and CB3 was repossessed as a result of the Bentleys not having paid for the equipment. CB3 has been defaulted, and its counter-claim stricken for lack of filing a proper answer through counsel.

Plaintiffs entered into negotiations with the new owner of the premises Chrismos Cane Bay, LLC ("Chrismos") for a lease. Defendant Chrismos, through Hanley and Mosler, represented to the Plaintiffs that upon completion of necessary repairs to be paid

for by Plaintiffs they would enter into a long-term lease for the premises for at least seven (7) years. In reliance on those representations made by Chrismos, the Plaintiffs invested about \$30,000 to \$50,000 in making improvements and betterments, building good will, and the like.

The Plaintiffs, as part of their operation of the restaurant, began to have Full Moon Reggae Nights at the bar in about mid-2004. While there had been music and such parties previously by other bar tenants, they did not attract the same crowds as the reggae music events. Neighbors, most of whom were white, began to complain to Hanley and Mosler, as to the noise, the types of people, and the cars parking in the area. This continued over the months.

In March of 2004, Plaintiffs were presented with a lease that was for only two and a half years, had rentals of between \$2,000 and \$1,500, when Plaintiffs were only paying \$1,500 in rent at the time, refused to make any repairs to the building, despite the fact the roof leaked, and the building was in need of serious repairs, charged high late fee amounts, did not allow any assignment or subletting of the lease, required payment by Plaintiffs of the property taxes and other onerous clauses.

Plaintiffs rejected the lease as not what had been agreed to. The parties continued with Plaintiffs as month to month tenants.

Because Plaintiffs were making repairs to the building and sometimes had cash flow problems, both Hanley and Mosler assured Plaintiffs that was not an issue as long as Plaintiffs paid when they could. Defendants accepted delayed or late rentals through

all of 2004 and early 2005. Chrismos continued to get complaints about the types of crowds at the bar and the music.

The Plaintiffs relied on the representations of Chrismos, but, nonetheless, always paid their rent, although not always on the first of the month.

In late 2004 or early 2005, Mosler met James Jordan who had come to St. Croix with his own yacht, at the Marina partially owned by Mosler. Jordan informed Mosler he was interested in making investments in St. Croix and buying a house. Mosler introduced Jordan to Hanley, who became his realtor on the investments.

Jordan learned of the bar owned by Defendants and expressed an interest in taking over the operations in around early 2005. In around March 2005, Hanley came to Plaintiffs and explained to Plaintiffs that they did not have a lease and that Jordan wanted to take over the bar, and he was willing to pay for a lease assignment and inventory and trade name and good will. Hanley told Plaintiffs that to facilitate the smooth transition into Jordan having the restaurant/bar, Chrismos would give Plaintiffs a seven-year lease for the sole purpose of using it to sell and assign the lease to Jordan, and explained how Plaintiffs should value the business as one and a half times the net income and assets, and came up with a figure of around \$185,000 as the amount that the rights to the bar and restaurant should be sold for. At that time, Hanley gave Plaintiffs a roughed-out lease that was for seven years to review. Plaintiffs agreed that Hanley could tell Jordan that they were willing to sell for that price, and Hanley told Plaintiffs he would get them such a final lease to sign and to be able to sell in exchange for allowing Jordan to buy them out. Plaintiffs gave that roughed out lease to Gerry Groner, their attorney, who lost it.

When Mosler found out from Jordan that Plaintiffs had, on Hanley's recommendation, requested \$185,000 for Jordan to buy the restaurant, he became furious and assumed, without factual basis, that Plaintiffs were making a lot more at the restaurant than they were claiming, and decided he would not give Plaintiffs any lease, and he wanted them out immediately.

After that Mosler's whole attitude towards the Plaintiffs changed. He criticized Plaintiffs, the type of people they were attracting, that he no longer wanted reggae music and he wanted to turn the restaurant/bar into a white middle-class restaurant.

On or around March 31, 2005, Chris Hanley and Warren Mosler came to the restaurant for a meeting with Plaintiffs. Mosler accused the Plaintiffs of lying about how much money they were making. Mosler informed Plaintiffs he was not going to give them a lease, that they were month to month tenants. Mosler falsely claimed Plaintiffs were behind on their rent, and he wanted them out of the property in one week, but in no event more than by the end of the month and demanded to know what Plaintiffs' exit strategy was. He reiterated that he intended to give the bar to James Jordan who would attract a more 'middle class clientele', and there was no way he would allow Plaintiffs to stay at the restaurant/bar.

Plaintiffs specifically told Defendants that all rent payments had been given to Hanley, but two had not been cashed, and asked why they were not getting the promised lease. Hanley then admitted that he had discussed the proposed lease with Mosler, and Mosler said Plaintiffs wanted too much money from Jordan, and he would not give Plaintiffs a lease. Hanley said he had also discussed whether Plaintiffs should receive at

least \$50,000 from Jordan to vacate the premises, and Mosler responded that was still too much money. Mosler made it clear Plaintiffs would never get a lease, and he wanted them out of the premises. Plaintiffs were so hurt and angry that they got up and walked out of the meeting. Plaintiffs paid April rent and Defendants cashed the check. The same is true for May rent.

On April 12, 2005, Defendants had Hunt Logan write a letter to Plaintiffs that falsely represented Plaintiffs had agreed to vacate the premises by April 30, 2005, and that anything of Plaintiffs that were left at the premises, after that date, would be treated as abandoned, and would be disposed of by Defendants.

An April 16, 2005, a news story appeared in the St. Croix Avis that the Full Moon Parties were about to end, and that Mosler and Hanley were kicking Plaintiffs out of the restaurant and bar. Mosler falsely stated that the reason Plaintiffs had been told to leave was because they were constantly behind on their rent, that Plaintiffs had agreed to vacate, and that Gerace had stiffed his parents for \$150,000 in loans, and that there had never been an agreement to give Plaintiffs a lease.

There was a public local backlash to Mosler and Hanley's shutting down the Full Moon Parties and they began to receive threats. As a result, Defendants increased their lies that the reason for the shutdown was not the clientele, but rather because Plaintiffs were deadbeats and drug users and sellers.

Thereafter, Defendants Hanley and Mosler individually, and on behalf of Chrismos, falsely and publicly stated on radio shows, newspapers, to the public, and to customers of the Plaintiffs that they had not made their rental payments, and were way behind on

their rent; that they had not paid April 2005 rent, and they did not expect them to be able to do so; that they were not good tenants; and that they had mismanaged the business. Warren Mosler also claimed that Plaintiffs were drug dealers, drug users, and that Gerace's family belonged to an organized crime family. Defendant Mosler placed an automatic response on his e-mail to anyone that inquired that the Plaintiffs were being evicted for nonpayment of rent. Such e-mails went to numerous persons and were false. Defendants Mosler, Hanley and Chrismos Cane Bay, LLC, and their agents and employees then falsely stated to governmental authorities, and the public that the Plaintiffs had threatened to burn down the bar. As a result, the Plaintiffs were questioned and investigated by governmental officials. The reputation of Plaintiffs and the restaurant, and bar was destroyed, profitability decreased, and it became even more clear that Defendants were doing everything they could to ruin Plaintiffs, and the bars reputation until they went into bankruptcy.

Plaintiffs eventually agreed to leave. Mosler only allowed them to claim \$30,000 for their inventory. Defendants then gave Jordan a seven-year lease with fair terms and began making repairs to the building Defendants should have made during Plaintiffs' tenancy.

The actions of the Bentleys and CB3 constitute a breach of contract, misrepresentation and fraud as they knew that they did not own what they represented they did.

Likewise, the actions of Chrismos Cane Bay, LLC constitute a breach of an agreement to enter into a lease. As a result, the Plaintiffs invested time and money into

the facility that they would not have invested had they known they would not be getting a lease. The actions of the Defendants Chrismos Cane Bay, LLC, Hanley and Mosler constitute fraud in that they never intended to keep the representations they made. The actions of Hanley, Mosler and Chrismos Cane Bay, LLC, violated their duty of good faith and fair dealing.

Further, the actions of Defendants Warren Mosler, Chris Hanley and Chrismos Cane Bay, LLC constitute intentional infliction of emotional distress. To the extent it was not intentional then they constitute negligent infliction of emotional distress.

The Plaintiffs relied on the misrepresentations of the Defendants to their detriment and, as a result, they have suffered damages as alleged herein. Further, Defendants Mosler, Hanley and Chrismos Cane Bay, LLC, engaged in defamation, slander, libel, and defamation per se. As a result, the Plaintiffs have suffered loss of reputation, humiliation, loss of business opportunities and other damages as alleged herein.

The actions of all Defendants are so outrageous and done with such a reckless disregard for the rights of the Plaintiffs so as to entitle the Plaintiffs to an award of punitive damages.

3. FACTUAL CONTENTIONS OF DEFENDANT MARIA BENTLEY:

The restaurant and bar at Cane Bay had been owned by CB3, Inc, a company my deceased husband managed. Pursuant to the divorce agreement with my deceased husband, I took over the business, which I listed for sale. The Plaintiffs contacted Linda Holt, the realtor who had the listing. They made an offer, which was accepted, and closed on the transaction with CB3, Inc., by paying \$50,000 down, with \$30,000 still owed. The

FILED
August 16, 2021
2021-2005-CV-00368
SAMARA CHARLES
CLERK OF THE COURT

EXHIBIT 2

1 IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

2 DIVISION OF ST. CROIX

3
4 JOSEPH GERACE, VICTORIA VOOYS)
d/b/a CANE BAY BEACH BAR,)
5)
Plaintiff,)
6)

7 vs.)

Case No. 368/2005

8 MARIA BENTLEY, DAVID BENTLEY,)
CB3, WARREN MOSLER, CHRIS HANLEY,)
and CHRISMOS CANE BAY, L.L.C.,)
9)
Defendant.)
10

11 THE ORAL DEPOSITION OF VICTORIA VOOYS

12 was taken on the 28th day of June, 2011, at the Law Offices
13 of Joel H. Holt, 2132 Company Street, Christiansted,
14 St. Croix, U.S. Virgin Islands, between the hours of
15 8:30 a.m. and 10:30 a.m. pursuant to Notice and Federal
16 Rules of Civil Procedure.

17
18
19 Reported by:

20 Cheryl L. Haase
Registered Professional Reporter
21 Caribbean Scribes, Inc.
2132 Company Street, Suite 3
22 Christiansted, St. Croix U.S.V.I.
(340) 773-8161

23 EXHIBIT

24 2

25 EXHIBIT

2JA - 229

VICTORIA VOOYS -- DIRECT

1 Donna Christensen that he stopped reggae parties and
2 karaoke.

3 Q. Were you the ones that told Donna Christensen that
4 he stopped reggae parties and karaoke?

5 A. I told her that he wanted to stop full moon
6 parties.

7 Q. Okay.

8 A. I think he's the one that got the karaoke wrong,
9 but --

10 Q. Okay. Because you never had karaoke parties?

11 A. We did, but I don't know where that came from, --

12 Q. Okay.

13 A. -- about stopping.

14 Q. When you ran the full moon parties, how late did
15 they go?

16 A. Think between 2:00 a.m. to 4:00 a.m., maybe.

17 Q. Okay. And were you aware of the fact that
18 neighbors were complaining about the noise after a certain
19 hour of the night?

20 A. Not until close to them telling us that we needed
21 to get out.

22 Q. Okay.

23 A. And when -- when -- Hanley was the one that
24 mentioned it, and he didn't seem to really think it was a
25 problem.

Cheryl L. Haase
(340) 773-8161

JA - 230

VICTORIA VOOYS -- DIRECT

1 Q. So when Chris Hanley mentioned it to you that the
2 neighbors were complaining, he didn't really think it was a
3 problem?

4 A. It didn't sound like it, no.

5 Q. And during the time that there were full moon
6 parties, did you ever see anyone using drugs?

7 A. Not that I can recall, no.

8 Q. Do you ever recall any police officers or DEA
9 agents coming to the restaurant saying that people were
10 using drugs there?

11 A. No, but after we bought 54, we had the DEA trying
12 to -- we were told the DEA was after us.

13 Q. This was after you left Cane Bay and moved into
14 town?

15 A. Yeah.

16 Q. Okay. Who told you the DEA was after you?

17 A. It came through a bunch of different rumor mills
18 that we had the DEA, --

19 Q. Were --

20 A. -- ATF after us.

21 Q. I'm sorry. I didn't mean to cut you off. You
22 finished with the answer?

23 A. Yeah.

24 Q. Did you ever have the DEA come to the premises at
25 Cane Bay Beach Bar, to your knowledge?

FILED

August 16, 2021

2005-CV-00368

MARA CHARLES

CLERK OF THE COURT

EXHIBIT 3

EDR

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA
VOOYS d/b/a CANE BAY BEACH
BAR,

Plaintiffs,

v.

MARIA BENTLEY, DAVID BENTLEY,
CB3, INC., WARREN MOSLER,
CHRIS HANLEY, and CHRISMOS
CANE BAY, LLC.,

Defendants.

~~SX~~05-CV-368
CIVIL NO. 12005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

COMPLAINT

COME NOW Plaintiffs, by and through their undersigned counsel, file their
Complaint against Defendants as follows:

1. This Court has jurisdiction pursuant to Title 4 V.I.C., § 76.
2. Plaintiff, Joseph Gerace, is a resident of St. Croix, United States Virgin Islands.
3. Plaintiff, Victoria Vooy, is a resident of St. Croix, United States Virgin Islands.
4. Plaintiffs Gerace and Vooy did business as and ran a business known as Cane Bay Beach Bar.
5. Defendant, David Bentley, is a resident of St. Croix, United States Virgin Islands.
6. Defendant, Maria Bentley, is a resident of Buffalo, New York.

7. Defendants, David Bentley and Maria Bentley, did business as CB3, Inc.
8. Defendant, Warren Mosler, is a resident of St. Croix, United States Virgin Islands.
9. Defendant, Chris Hanley, is a resident of St. Croix, United States Virgin Islands.
10. Defendant, Chrismos Cane Bay, LLC., is a Virgin Islands Limited Liability Corporation and upon information is owned by Chris Hanley and Warren Mosler.
11. Defendant Bentley and CB3 represented to Plaintiffs that they owned the Tradename Cane Bay Beach Bar and a lease to operate as Cane Bay Beach Bar among other representations.
12. The Plaintiffs wished to purchase Cane Bay Beach Bar and in reliance on the representations of Bentley and CB3 entered into negotiations to purchase the same.
13. Plaintiffs, the Bentleys, and CB3 entered into a Purchase Agreement effective July 1, 2003.
14. In that Purchase Agreement, the Bentleys and CB3 represented the following:
 - a. that they owned the furniture, furnishings, equipment, inventory, goodwill, contracts and the Tradename CANE BAY BEACH BAR, accounts receivables;
 - b. that they were a corporation in good standing;

- c. there were no threatened actions affecting the property to be transferred, the validity of the lease;
 - d. that they had a lease for the premises that was in good standing;
 - e. they would provide a Bill of Sale at closing conveying the property to the Plaintiffs;
 - f. they would assign, at closing, all contracts to the Plaintiffs;
 - g. they would provide an Assignment of the lease to the Plaintiffs approved by the landlord;
 - h. they would provide, at closing, an Assignment of the Tradename Cane Bay Beach Bar.
15. Plaintiffs, in good faith, signed the Purchase Agreement and paid to the Bentleys and CB3, at closing, \$45,000.00 and agreed to pay additional funds on a monthly basis. (See **Exhibits 1 and 2**)
16. It has been determined that the Bentleys and CB3 did not have a lease to operate Cane Bay Beach Bar.
17. After the Plaintiffs began to operate Cane Bay Beach Bar, they learned that most of the property transferred was not owned by the Bentleys and CB3, rather it was indebted and the Bentleys and CB3 had failed to pay monies due on the property. In addition, the Bentleys had written checks for insufficient funds to pay for services or filings, owed for filings, and had Health Department citations that had not been paid and the like.

18. Plaintiff has recently learned that the Bentleys and CB3 did not own the Tradename either, as represented.
19. Equipment purchased by the Plaintiffs from the Bentleys and CB3 has been repossessed as a result of the Bentleys not having paid for the equipment.
20. Plaintiffs then entered into negotiations with the owner of the premises Chrismos Cane Bay, LLC., for a lease.
21. Defendant, Chrismos Cane Bay, LLC., represented to the Plaintiffs that upon completion of necessary repairs they would enter into a long term lease for the premises.
22. In reliance of the representations made by Chrismos Cane Bay, LLC., the Plaintiffs invested large sums of money in making improvements and betterments, building good will, and the like.
23. Defendant, Chrismos Cane Bay, LLC., failed and refused to provide the Plaintiffs with the agreed lease.
24. Defendant, Chrismos Cane Bay, LLC., repeatedly represented to the Plaintiffs that they understood the Plaintiffs were improving the property and building up the business and that it was not a problem if the Plaintiffs were late on the monthly rent.
25. The Plaintiffs relied on the representations of Chrismos Cane Bay, LLC., but nonetheless always paid their rent although not always on the first of the month.

26. On March 13, 2005, Defendant Chris Hanley, as an owner of Chrismos Cane Bay, LLC., came to the bar and announced that he did not like the direction the bar was going with the reggae shows and the type of crowd of people that such shows attracted and that Chrismos Cane Bay, LLC., had decided to turn the property into a "white, middle class restaurant."
27. Defendant Hanley admitted that Chrismos Cane Bay, LLC., was already negotiating with a potential buyer for a lease. He agreed on behalf of Chrismos Cane Bay, LLC., to provide the Plaintiffs with the promised lease for seven (7) years so they could sell the lease, the equipment, and property and good will so the Plaintiffs could recoup their investment.
28. Defendant Hanley represented that the value of the lease and equipment and good will would be \$185,000.00.
29. The next weekend Defendant Warren Mosler came to the bar. He informed the Plaintiffs that he had a different idea for the use of the property, did not like the type of crowds that reggae music brings as they were the "wrong type of people" and that the Plaintiffs should stop that type of entertainment.
30. On March 31, 2005, Defendants Hanley and Mosler, in their individual capacity and as representatives of Chrismos Cane Bay, LLC., and the Plaintiffs, had a meeting.

31. Plaintiffs were informed that they would not be given a lease and they "needed to go." They were told they should be out in a week but they could have no more than a month.
32. At that meeting Defendants Hanley, Mosler and Chrismos Cane Bay, LLC., falsely represented that the Plaintiffs were behind on their rent.
33. Plaintiffs specifically informed Hanley, Mosler and Chrismos Cane Bay, LLC., that all rent payments had been made by Plaintiffs and that two rent checks received by Chrismos Cane Bay, LLC., remained uncashed.
34. In a subsequent call to Defendant Hanley by Plaintiffs, Plaintiffs again asked why they were not getting the promised lease.
35. Defendant Hanley represented that he had discussed the lease with Mosler and whether the Plaintiffs should be given \$50,000.00 toward their investment and Mosler said it was too much money and not to do it.
36. In that conversation, Plaintiffs specially asked Defendant Hanley for any basis for the accusations that the Plaintiffs were behind in the rent. Defendant Hanley could not give any information and said he would check the records and get back to them. To date he has not.
37. Defendant Hanley and Mosler individually and on behalf of Chrismos Cane Bay, LLC., have falsely publicly stated on radio, newspapers, and to the public and to customers of the Plaintiffs that they have not made their rental payments and are way behind on their rent, that they had not paid

April rent and they did not expect them to be able to do so and that they were not good tenants and that they had mismanaged the business.

38. Defendant Mosler placed an automatic response on his e-mail to anyone that inquired that the Plaintiffs were being evicted for nonpayment of rent. Such e-mails went to numerous persons and were false.

39. Defendants Mosler, Hanley and Chrismos Cane Bay, LLC., and their agents and employees then falsely stated to governmental authorities, the public, that the Plaintiffs had threatened to burn down the bar.

40. As a result, the Plaintiffs were questioned and investigated by governmental officials.

41. In an attempt to recoup some of their losses, the Plaintiffs attempted to negotiate with the person Chrismos Cane Bay, LLC., had agreed to enter into a lease with, James Jordan to purchase the Tradename, property, and goodwill.

42. Because of the actions of Chrismos Cane Bay, LLC., Plaintiffs were in an unfair bargaining position as they had no lease and were subject to eviction.

43. James Jordan originally agreed to purchase all the goodwill, Tradename, and equipment for \$80,000.00. However, it was learned that CB3 had not owned the Tradename and, as such, the Plaintiffs had not actually purchased the Tradename and the purchase price was reduced to \$50,000.00.

44. To date, Plaintiffs are still attempting to complete the negotiations to sell the equipment and good will.

Count I

45. Plaintiff re-alleges the allegations in paragraphs 1 through 44 above as though fully set forth herein.
46. The actions of the Bentleys and CB3 constitute a breach of contract.
47. As a result, the Plaintiffs suffered economic loss of paying to purchase items not purchased, and not having a lease, Tradename and being kicked out of the premises.

Count II

48. Plaintiff re-alleges the allegations in paragraphs 1 through 47 above as though fully set forth herein.
49. The actions of the Bentleys and CB3 constitute fraud as they knew or should have known that they did not own what they represented they did.
50. As a result, the Plaintiffs suffered damages of economic loss, mental anguish, suffering and loss of enjoyment of life.

Count III

51. Plaintiff re-alleges the allegations in paragraphs 1 through 50 above as though fully set forth herein.
52. The actions of the Bentley and CB3 constitute misrepresentation.
53. As a result, the Plaintiffs have suffered damages as alleged herein.

Count IV

54. Plaintiff re-alleges the allegations in paragraphs 1 through 53 above as though fully set forth herein.
55. The actions of the Bentleys and CB3 are so outrageous and done with such a reckless disregard for the rights of the Plaintiffs as to entitled the Plaintiffs to an award of punitive damages.

Count V

56. Plaintiff re-alleges the allegations in paragraphs 1 through 55 above as though fully set forth herein.
57. The actions of Chrismos Cane Bay, LLC., constitute a breach of an agreement to enter into a lease.
58. As a result, the Plaintiffs invested time and money into the facility that they would not have invested had they known they would not be getting a lease.
59. The Plaintiffs have also suffered mental anguish, physical and psychological injuries, medical expenses, pain and suffering and loss of enjoyment of life that are likely to continue into the foreseeable future as a result of seeing their life's work being taken away from them
60. Plaintiffs were deprived of the ability to sell a lease to a subsequent purchaser.

Count VI

61. Plaintiff re-alleges the allegations in paragraphs 1 through 60 above as though fully set forth herein.
62. Defendants Mosler, Hanley and Chrismos Cane Bay, LLC., engaged in defamation, slander, libel, and defamation per se.
63. As a result, the Plaintiffs have suffered loss of reputation, humiliation, loss of business opportunities and other damages as alleged herein.

Count VII

64. Plaintiff re-alleges the allegations in paragraphs 1 through 63 above as though fully set forth herein.
65. The actions of the Defendant Chrismos Cane Bay, LLC., Hanley and Mosler constitute fraud in that they never intended to keep the representations they made.
66. As a result, the Plaintiffs have suffered injuries as alleged herein.

Count VIII

67. Plaintiff re-alleges the allegations in paragraphs 1 through 66 above as though fully set forth herein.
68. The actions of Defendants Mosler, Hanley and Chirmsos Cane Bay, LLC., constitute misrepresentation.
69. As a result, the Plaintiffs relied on the misrepresentation to their detriment and, as a result, they have suffered damages as alleged herein.

Count IX

- 70. Plaintiff re-alleges the allegations in paragraphs 1 through 69 above as though fully set forth herein.
- 71. The actions of Defendants Mosler, Hanley and Chirmsos Cane Bay, LLC., constitute intentional infliction of emotional distress.
- 72. To the extent it was not intentional then they constitute negligent infliction of emotional distress.
- 73. As a result, the Plaintiffs have been damaged as alleged herein.

Count X

- 74. Plaintiff re-alleges the allegations in paragraphs 1 through 73 above as though fully set forth herein.
- 75. The actions of Hanley, Mosler and Chrismos Cane Bay, LLC., violate their duty of good faith and fair dealing.
- 76. As a result, the Plaintiffs have been damaged as alleged herein.

Count XI

- 77. Plaintiff re-alleges the allegations in paragraphs 1 through 76 above as though fully set forth herein.
- 78. The actions of Defendants Hanley, Mosler and Chrismos Cane Bay, LLC., were and are so outrageous as to entitle the Plaintiffs to an award of punitive damages.

WHEREFORE, the Plaintiffs pray for damages as they may appear, for costs and fees, for pre and post judgment interest and for such other relief as this court

Cane Bay Beach Bar v. Chrismos Cane Bay, Civil No. /2005

COMPLAINT

Page 12

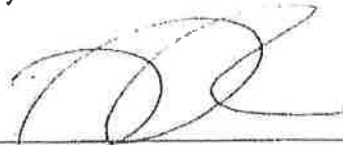
deems fair and just.

RESPECTFULLY SUBMITTED
LAW OFFICES OF ROHN AND CAMERON, LLC
Attorneys for Plaintiff

DATED:

6/8/05

BY:



Lee J. Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 778-8855
Fax: (340) 773-2954

FILED

FEE PAID

BY

6/9/05

850.00

~~Christy Cameron~~

FILED

August 16, 2021

Case No. 2005-CV-00368

AMARA CHARLES

CLERK OF THE COURT

EXHIBIT 4

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS)
d/b/a CANE BAY BEACH BAR,)

Plaintiff,)

vs.)

Case No. 368/2005

MARIA BENTLEY, DAVID BENTLEY,)
CB3, WARREN MOSLER, CHRIS HANLEY,)
and CHRISMOS CANE BAY, L.L.C.,)

Defendant.)

THE ORAL DEPOSITION OF JOSEPH GERACE

was taken on the 28th day of June, 2011, at the Law Offices
of Joel H. Holt, 2132 Company Street, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
10:45 a.m. and 11:30 a.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

EXHIBIT
EXHIBIT
4

COPY

JOSEPH GERACE -- DIRECT

1 MR. HOLT: Yeah, I'll remind you.

2 Q. (Mr. Holt) On here there's a statement, "It's
3 been a lifetime experience. We were just talking today
4 about why things happen for a reason. If it wasn't for
5 losing Cane Bay, we would not have this place and all this
6 experience." What do you mean by that?

7 A. Well, if we didn't lose Cane Bay, we'd probably
8 still be there to this day, as Warren Mosler testified. We
9 came down with the hopes and dreams of a restaurant, not a
10 nightclub. I didn't waste my time and money in culinary
11 school to run a nightclub. It was just an opportunity to
12 not go home, you know, as a failure.

13 Q. (Mr. Holt) Why do you say you lost Cane Bay? Why
14 did you leave Cane Bay?

15 A. Why?

16 Q. Uh-huh.

17 A. Well, the letter that was read over the air kind
18 of directly affected our business. All the stuff in the
19 media directly affected our business. And it was clear that
20 Chris and Warren didn't want us there, and they testified
21 that our relationship wasn't the same anymore, because they
22 felt -- I forgot the word he used, but somewhere in the
23 deceived maybe. I don't remember the exact word he used.

24 You know, after having a sit-down with your
25 landlord and his partner, and them telling you how filthy

Cheryl L. Haase
(340) 773-8161

FILED

August 16, 2021

2005-CV-00368

AMARA CHARLES

CLERK OF THE COURT

EXHIBIT 5

Law Offices Of

Rohn and Cameron, LLC

1101 King Street, Christiansted VI 00820-4933

340.778.8855 • Fax 340.773.2954

TOLL FREE

866.778.0044 • Fax 866.778-0055

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Mary Faith Carpenter
(Lic. New Jersey and U.S.V.I.)
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K. Glenda Cameron
(Lic. New York and U.S.V.I.)
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Cathy M. Smith
(Lic. Louisiana and U.S.V.I.)
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Royette U. Russell
(Lic. U.S.V.I. - Of Counsel)
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April 20, 2005

VIA HAND DELIVERY

Hunter G. Logan, Esquire
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
St. Croix, VI 00820-4971

RE: Cane Bay Beach Bar v. Chrismos Cane Bay, LLC.

Dear Attorney Logan:

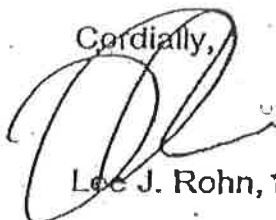
I represent the tenants of the Cane Bay Beach Bar, Joe Gerace and Victoria Vooyo. This is in response to your letter dated April 12, 2005 and received some days thereafter.

My clients have never agreed to vacate the premises on April 30, 2005 and will not do so. It is their position that there was a promise made to them to enter into a two (2) year lease with them and they relied on that promise in expending funds to improve the premises.

As you are well aware, self help is not allowed in this jurisdiction and if you attempt to come in and take my client's property I will ask for sanctions. My clients, in keeping with the promises of a long term lease, have bookings through May they have to honor. Further, they intend to continue paying rent and occupying the premises:

Further, any attempt to evict them will be met with a law suit for refusal to provide a lease, slander, defamation, and fraud. See enclosed letter.

Cordially,

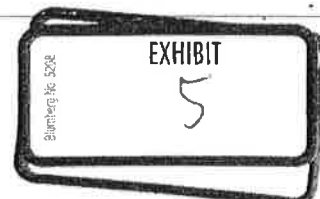


Lee J. Rohn, Esquire

LJR/jb

cc: Joseph Gerace
Victoria Vooyo

APR 20 2005



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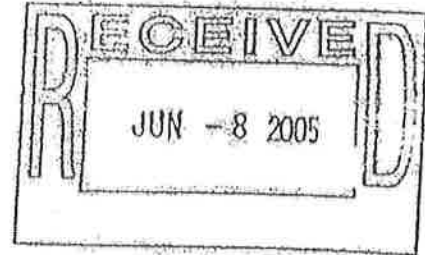
FILED
August 16, 2021
-2005-CV-00368
AMARA CHARLES
CLERK OF THE COURT

EXHIBIT 6

ATTORNEYS AT LAW

NICHOLS NEWMAN LOGAN & D'ERAMO, P.C.

June 8, 2005



Via Fax: 773-2954

Lee J. Rohn, Esq.
Law Offices of Lee J. Rohn
1101 King St.
Christiansted, VI 00820

Re: *Jim Jordan - Purchase of Leasehold Interest from Joe Geraco and Victoria Vooy's / Cane Bay Beach Bar*

Dear Lee:

Jim Jordan has returned to the island and has visited the Cane Bay Beach Bar. Mr. Geraco and Ms. Vooy's have apparently removed all of the personal property from the leased premises and locked the building. It appears they have abandoned the leased premises. We are also advised that they have failed to pay money owed to WAPA and to the Dive Shop for electricity.

Mr. Jordan will pay the approximately \$1,500 owed to WAPA and the amount owed to the Dive Shop for electricity (not to exceed a total of \$2,000) in return for an assignment of any and all leasehold rights they may have in the property.

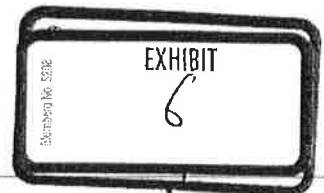
If this offer is acceptable to your clients, I will prepare the Assignment of Leasehold Interest and get the funds from Mr. Jordan. Please advise.

Very truly yours,

NICHOLS NEWMAN LOGAN
& D'ERAMO, P.C.

[Handwritten Signature]
G. Hunter Logan, Jr.

GHL/slp
cc: Jim Jordan



FILED

August 16, 2021

2005-CV-00368

AMARA CHARLES

CLERK OF THE COURT

EXHIBIT 7

ASSET PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is executed effective June 17, 2005, by and between Joe Gerace and Victoria Vooys (collectively "Seller"), and James Jordan ("Purchaser"), and Nichols Newman Logan & D'Eramo, PC ("Escrow Agent").

WITNESSETH:



A. Seller is the owner of all the furniture, furnishings, equipment, inventory, goodwill and other personal property and the trade name Cane Bay Beach Bar (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. Seller desires to sell the Property to Purchaser and to assign all of its right, title and interest in the verbal lease agreement with Chrismos Cane Bay LLC ("Landlord"), as lessor ("Lease") pertaining to the current location of the Business pursuant to the provisions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

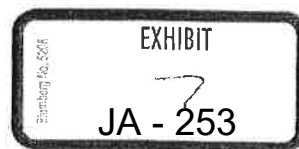
1.0 Sale and Purchase of Property. Subject to and on the terms and conditions provided herein, Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Property.

2.0 Purchase Price; Escrow.

2.1 The purchase price ("Purchase Price") for the Property and for the assignment of the Lease shall be **Thirty Thousand Dollars (\$30,000.00)**. The Purchase Price after deducting the Earnest Money and subject to such other credits, prorations and adjustments as are provided herein, shall be paid at closing by certified or cashier's check or other funds acceptable to Seller.

2.2 Contemporaneously with the execution of this Agreement, Purchaser shall pay to Escrow Agent the sum of **\$1,000.00** as earnest money ("Earnest Money") under this Agreement. Escrow Agent shall hold the Earnest Money pursuant to the provisions of this Agreement. Escrow Agent acknowledges receipt of the Earnest Money. If the closing is consummated, then the Earnest Money shall be paid to Seller and credited towards the Purchase Price at the Closing. If the closing is not consummated, then the Earnest Money shall be paid to Seller or Purchaser as provided in Sections 10.0 or 11.0 hereof.

2.3 Purchaser shall not hereby, or in connection herewith, whether by implication or otherwise, assume or become obligated or liable for any liability, indebtedness or other obligation of Seller of any nature whatsoever, whether now or hereafter existing, due or to



become due, absolute or contingent, or otherwise, whether or not any such liability, indebtedness or other obligation was disclosed to Purchaser, including, without limitation, any contracts, mortgages, liens, leases, charges, or encumbrances affecting the Seller, the Property or the Business, except the Lease.

2.4 At the Closing, Seller shall deposit into escrow with Nichols Newman Logan & D'Eramo, P.C. as escrow agent the sum of \$3,000.00 which shall be held in escrow under the terms of the Escrow Agreement attached hereto. The funds are being held in escrow as a means to guarantee and be collateral for the indemnification obligations of the Seller contained in Section 22 hereof. Seller grants Purchaser a a first priority perfected security interest in such funds.

3.0 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Up to and including the date of the closing, no one will modify or remove any of the personal property comprising the Property, except that inventory may be sold in the ordinary course of business.

3.3 Seller will not execute any new lease, service contract, employment agreement, or enter into any other agreement concerning the Property or the Business without Purchaser's prior written consent, unless such agreement shall terminate prior to the effective date of the Closing.

3.4 The Property and the premises to be leased pursuant to the Lease shall be in the same condition as it is on the effective date of this Agreement.

3.5 Seller owns and will convey to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances: There are no unsatisfied judgments against Seller or the Property.

3.6 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.7 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

4.0 Conditions Precedent To Purchaser's Obligation. The obligations of Purchaser hereunder are subject to the satisfaction, at or prior to the Closing, of the following conditions:

4.1 All representations and warranties made by Seller shall be true and correct as of the date of closing as though they were made again on such date.

4.2 Seller shall have complied with all its obligations under this Agreement.

4.3 There is no material change in the physical condition of the leased premises or the Property or the financial condition of the Business between the effective date of this Agreement and the Closing.

4.4 Purchaser entering into a new written lease agreement with the Landlord on terms and conditions acceptable to the Purchaser in its discretion.

4.4 Purchaser is able to obtain property and liability insurance for the Property and the leased premises (including without limitation coverage against loss or damage by fire, windstorm, earthquake and against other risks now embraced by the so-called broad form extended coverage endorsement) from a company licensed to do business in the United States Virgin Islands acceptable to Purchaser for a premium not to exceed 2.75% of the amount of the insurance.

5.0 Title Examination. Purchaser shall have until Closing to examine the title to the Property and to notify Seller of any title objections Purchaser may find. Seller shall then have until the Closing to cure any valid title objections raised by Purchaser. Seller shall, at or prior to Closing, pay all taxes and assessments which constitute a lien upon the Property (other than those not then due and payable) and pay all indebtedness secured by the Property. If Seller fails or is unable to cure such valid title objections, then Purchaser shall have the following alternatives: (1) to cure any such valid title objections which are a mortgage, judgment lien, mechanic's or materialman's lien or tax lien, to deduct from the Purchase Price the amount paid to cure such liens or mortgages, and to close the transaction contemplated hereby; (2) to waive such title objections and to close the transaction contemplated hereby without any deduction in the Purchase Price; (3) to terminate this Agreement in accordance with Section 10.0 hereof or to declare a default pursuant to Section 11.0 hereof or both; or (4) to extend the date of Closing for an additional thirty (30) days to allow Seller to try to cure such objections. Purchaser shall have five (5) days from the date of notice by Seller that Seller is unable to cure any such title objections in which to elect one of the options set forth above in this Section 5.0, and Purchaser may extend the time for Closing to the extent necessary to provide such five (5) day period. If Purchaser elects option (4) above and if at the end of such thirty (30) day period Seller has not cured such objection, then Purchaser shall have the right to elect one of options (1) through (3) above.


6.0 **Closing.** The closing ("Closing") of the transaction contemplated herein shall occur on or before **June 30, 2005**, on a date and time acceptable to Seller and Purchaser and shall be held at the law offices of Nichols Newman Logan & D'Eramo, P.C., 1131 King Street, Christiansted, St. Croix, U.S.V.I. If Purchaser and Seller are unable to agree upon a time and date for Closing, then such Closing shall be held at 10:00 AST on **June 30, 2005**, at the law offices of Nichols Newman Logan & D'Eramo, P.C.

6.1 At the closing Seller shall deliver or cause to be delivered the following documents:

(a) A bill of sale conveying the Property to the Purchaser, in a form satisfactory to Purchaser's counsel, together with a warranty of title and a certificate that there are no liens or other encumbrances against the Property.

(b) An assignment of the Lease, in a form satisfactory to Purchaser's counsel.

(c) A Closing Statement and the Escrow Agreement.

(d) ~~An assignment of the trade name Cane Bay Beach Bar.~~ 

(e) Any other documents necessary and reasonably requested by Purchaser to consummate the transaction contemplated herein.

6.2 At the Closing, Purchaser shall deliver or cause to be delivered the following items:

(a) The Lease Assignment.

(b) A Closing Statement and the Escrow Agreement.

(c) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein.

6.3 Possession of the Property shall be delivered to the Purchaser at Closing.

6.4 Seller shall pay the cost of the recording fees for any documents needed to provide clear title to the Property as required under this Agreement. Purchaser shall pay the costs for any title examination obtained by Purchaser. Each party shall pay its own attorney's fees.

6.5 All of Seller's accounts payable shall be paid by the Seller.

7.0 **Real Estate Brokers.** Purchaser and Seller hereby represent and warrant to the other party that it has not dealt with any real estate agent or broker in connection with the transaction contemplated herein.

8.0 Casualty. If, prior to the Closing, the Property or any improvements comprising the leased premises are destroyed or damaged by fire or other casualty and such repairs or replacements have not have been completed by Seller at Seller's expense prior to the Closing to Purchaser's reasonable satisfaction, then Purchaser shall have the right and option to terminate this Agreement in accordance with Section 10.0 hereof. If Purchaser does not terminate this Agreement, then all insurance money payable as a result of such casualty shall be paid to Purchaser for the purpose of making the required repairs or replacements.

9.0 Condemnation. If any action or proceeding is filed (or notice of such action or proceeding given) under which all or any portion of the leased premises where the Business is located may be taken by condemnation or other right of eminent domain, then, Seller shall immediately notify Purchaser, and at the option of Purchaser, either (a) Purchaser may terminate this Agreement in accordance with Section 10.0 hereof, or (b) the transaction contemplated hereby shall be closed as provided herein, and Seller shall assign to Purchaser all its rights in the condemnation proceeds.

10.0 Right to Terminate Agreement In addition to Purchaser's other rights set forth in this Agreement, Purchaser, at Purchaser's sole election, may terminate this Agreement by written notice to Seller, if any one or more of the following conditions or state of facts shall exist:

(a) Purchaser is entitled to terminate this Agreement pursuant to Sections 5.0, 8.0, 9.0 or 19.2 hereof.

(b) The failure of Seller to satisfy the conditions precedent contained in Section 4.0 hereof.

10.2 If Purchaser elects to terminate this Agreement pursuant to the provisions of this Section 10.0, then this Agreement shall be terminated, and no party shall have any further rights or obligations under this Agreement, except that if the Seller is in default of its obligations under this Agreement, then Purchaser shall also have the rights and remedies provided in Section 11.0 hereof. Purchaser's rights and remedies under Sections 10.0 and 11.0 hereof shall be cumulative.

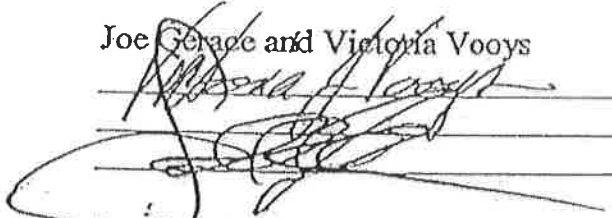
11.0 Default. If Seller defaults in the performance of any of its obligations under this Agreement, through no fault of Purchaser, then Purchaser shall be entitled to pursue any and all remedies available to it at law or in equity, including without limitation an action for specific performance. In the event the transaction contemplated herein is not closed by reason of Purchaser's default or refusal to perform Purchaser's obligations hereunder, through no fault of Seller, then this Agreement shall be terminated, and no party shall have any further rights or obligations under this Agreement and the Earnest Money will be kept by the payees, and Seller hereby agrees that Purchaser shall have no further liability hereunder or by reason of Purchaser's breach hereof. Purchaser and Seller recognize that it would be difficult to ascertain the actual

damages suffered by Seller as a result of such failure to close, it being specifically acknowledged and agreed by Seller and Purchaser that the payment of the Earnest Money to the payees constitutes liquidated damages and such amount is reasonable.

12.0 Notices. All notices, demands, or requests (collectively "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent through the United States Postal Service, by express mail or certified mail, return receipt requested, to the parties at the following addresses:

SELLER:

Joe Gerace and Victoria Vooy's



w/ a copy to:

Lee J. Rohn, Esq.
Rohn and Cameron, LLC
1101 King Street
Christiansted, VI 00820

PURCHASER:

James Jordan



w/ a copy to:

G. Hunter Logan, Jr., Esq.
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
Christiansted, VI 00820

All Notices shall be deemed effective upon being hand delivered, or if sent by mail, upon the date deposited with the United States Postal Service; provided, however, the time period in which a response to any Notice must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given shall constitute receipt of the Notice. Either party shall have the right to change its address for Notice hereunder by giving two (2) days prior notice thereof to the other party in the manner set forth above.

13.0 Binding Effect, Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Purchaser shall have the right to assign this Agreement to another person or entity without the consent of Seller.

14.0 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

15.0 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Territory of the United States Virgin Islands.

16.0 Prior Discussions and Amendments. This Agreement supersedes all prior discussions and agreements between the parties hereto with respect to the transactions contemplated herein and constitutes the sole and entire agreement between the parties hereto with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

17.0 Judicial Interpretation. If any provision of this Agreement requires judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. It is agreed that the agents of all parties participated in the preparation hereof.

18.0 Survival of Agreement. All agreements, representations, and warranties shall survive the Closing and shall not be merged into the documents executed and delivered at Closing.

19.0 Access, Inspection and Cooperation.

19.1 During the period from the date of this Agreement through the date of Closing, Purchaser and Purchaser's agents, employees, independent contractors, engineers, surveyors and other representatives shall have the right to enter the Property at any time for the purposes of inspecting the Property; performing all activities relating to any of the foregoing in any respect, and for any other reasonable purposes related to the transaction contemplated herein. Purchaser agrees that the entry permitted by this section shall not injure or damage the Property so as to materially decrease its value or reduce its salability, result in injury or damage to the real property adjoining the Property or cause injury or damage to persons or personal property lawfully upon the Property. Purchaser indemnifies and holds harmless Seller against any such injury or damage caused by Purchaser's entry.

19.2 During the period from the Date of this Agreement through fifteen (15) days thereafter ("Due Diligence Period"), if Purchaser shall be, for any reason, in Purchaser's sole opinion, dissatisfied with any aspect of the Property, or for any other reason specified elsewhere in this Agreement, Purchaser shall be entitled to terminate this Agreement by sending written notice to Seller at or before the expiration of the Due Diligence Period and this Agreement shall be terminated, the Earnest Money shall be returned to Purchaser and no party will have any further rights, obligations or other liabilities under, arising out of or resulting from this Agreement. If Purchaser does not exercise this right of termination as set forth above, then this right shall expire and the Closing shall be consummated pursuant to the other terms contained herein.

20.0 Captions. All captions, headings, and section numbers are solely for the purpose of convenience and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

21.0 Attorneys' Fees. In the event of litigation between the parties hereto, declaratory or otherwise, in connection with this Agreement, the non-prevailing party shall pay the costs thereof and attorneys' fees actually incurred by the prevailing party, which shall be determined and fixed by the court as part of the judgment.

22.0 Indemnification By Seller.

22.1 Seller, jointly and severally, hereby indemnifies and holds Purchaser and its managers, members, officers, directors, employees and agents harmless from and against any and all claims, demands, obligations, damages, recoveries, liabilities, losses or deficiencies, whether accrued, absolute, contingent, known, unknown, or otherwise (including, without limitation, any and all penalties, interest, costs of investigation and defense, attorneys' fees and other costs and expenses relating to any and all actions, suits, proceedings, demands, assessments, and judgments), which arise out of, result from or relate to any one or more of the following, whether or not involving a third-party claim (collectively "Damages"):

- (a) any breach of any representation or warranty made by Seller (i) in this Agreement;
- (ii) any certificate delivered pursuant hereto, (iii) any transfer instrument or (iv) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;
- (b) any breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;
- (c) any liability arising out of or resulting from the ownership or operation of the Business prior to the Closing other than any liabilities expressly assumed by Seller in this Agreement; or
- (d) any environmental, health and safety liabilities arising out of or relating to: (i) the ownership or operation by any person or entity at any time on or prior to the Closing Date of any of the Business, or (ii) any hazardous materials or other contaminants that were present on the leased premises at any time on or prior to the Closing Date.

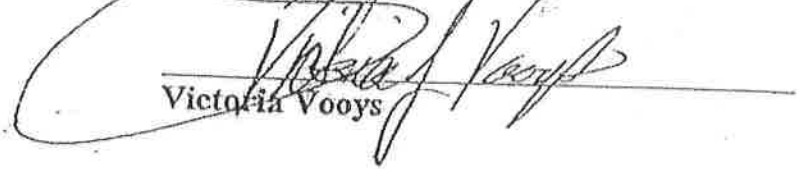
Purchaser shall be entitled to be represented by counsel of its choice.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

SELLER:



Joe Gerace



Victoria Vooyo

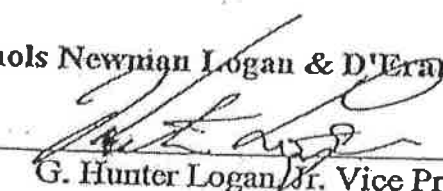
PURCHASER:



James Jordan

ESCROW AGENT:

Nichols Newman Logan & D'Eramo, P.C.

By: 

G. Hunter Logan Jr. Vice President

BILL OF SALE AND CERTIFICATION

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned, Joe Gerace and Victoria Vooyo ("Seller"), has effective June 30, 2005, sold to and transferred to James Jordan ("Purchaser") the following :

All the furniture, furnishings, equipment, inventory, goodwill and other personal property ~~and the trade name Cane Bay Beach Bar~~ (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

Seller does hereby certify that the Personalty has been fully paid for and that there are no unpaid liens, retention of title contracts, or any other form of encumbrance against the title to the Personalty other than as described on Exhibit "C" attached hereto and made a part hereof by this reference.

N/A

Seller and its heirs, personal representatives, successors, and assigns shall warrant and forever defend the right and title to the Personalty unto Purchaser, its heirs, personal representatives, successors, and assigns, against the lawful claims of all persons whomsoever.

Seller and Purchaser agree that the purchase price for the Property is Thirty Thousand and NO/100 Dollars (\$30,000.00)

Seller is executing this Bill of Sale for the purpose of consummating the sale of the Property and is fully aware that the statements contained herein may be relied upon by the Purchaser.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale hereto effective the day and year first above written.

SELLER:

Joe Gerace

Victoria Vooyo

and:\Files\convert\where\146.DOC\Real Estate\Jordan\Cane Bay Beach Bar\BILL of SALE.doc

SUBSCRIBED & SWORN

TO BEFORE ME THIS

1st day of July 2005

Anita M. Baron

Anita M. Baron
Notary Public, Territory of the Virgin Islands
No. NP-042-04
Qualified in Judicial District of St. Croix
Commission expires: 04/22/2008

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into effective June ___ 2005 between Joe Gerace and Victoria Vooyo, as Assignor, whose address is P.O. B 2307, WYTHAM AVE ("Seller") and James Jordan, as Assignee, whose address is POB 26503, CROIX VIE ("Buyer").

RECITALS:

A. Seller has contemporaneously with the execution hereof sold and conveyed to Buyer all the furniture, furnishings, equipment, inventory, goodwill and other personal property and ~~the trade name Cane Bay Beach Bar~~ (collectively "Property") which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. In connection with the sale of the Property, Seller has agreed to assign to Buyer the existing "Verbal Tenancy" with Chrisomos Corporation, as Landlord, pertaining to the use of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands, and Buyer has agreed to assume Seller's obligations under such Verbal Tenancy from and after the date hereof.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Seller and Buyer hereby agree as follows:

1.0 Seller does hereby transfer, assign and convey to Buyer all of Seller's right, title and interest in and to the Verbal Tenancy, including all rights, duties, obligations, powers and privileges conferred by the Verbal Tenancy upon Seller.

2.0 Buyer hereby accepts this assignment of the Verbal Tenancy from and after the date hereof, and assumes and agrees to be bound by and timely perform all of Seller's agreements, duties, obligations, covenants and undertakings under the Verbal Tenancy arising from and after the date hereof.

3.0 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Seller has executed any new lease, service contract, employment agreement, or entered into any other agreement concerning the Property.

3.3 The Property and the premises is in the same condition as it was on the effective date of the Asset Purchase Agreement between the parties.

3.4 Seller owns and has conveyed to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances. There are no unsatisfied judgments against Seller or the Property.

3.5 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.6 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

4.0 Seller hereby indemnifies and agrees to hold harmless Buyer from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Buyer may incur or which may be asserted against Buyer, arising out of the Verbal Tenancy, prior to the date hereof. If Buyer believes that any claim has been asserted which is covered by this indemnity provision, then Buyer shall immediately provide written notice to the Seller to afford the Seller the right and opportunity to defend such claim.

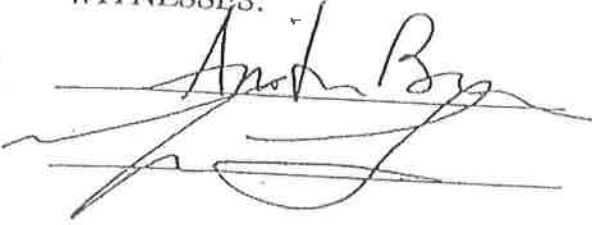
5.0 Buyer hereby indemnifies and agrees to hold harmless Seller from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Seller may incur or which may be asserted against Seller, arising out of the Verbal Tenancy, after the date hereof. If Seller believes that any claim has been asserted which is covered by this indemnity provision, then Seller shall immediately provide written notice to the Buyer to afford the Buyer the right and opportunity to defend such claim.

6.0 This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns.


7.0 Neither this Agreement nor any term, provision or condition hereof may be changed, amended or modified, and no obligation, duty or liability of any party hereto may be released, discharged or waived, except in a writing signed by all parties hereto.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the date first above written.

WITNESSES:



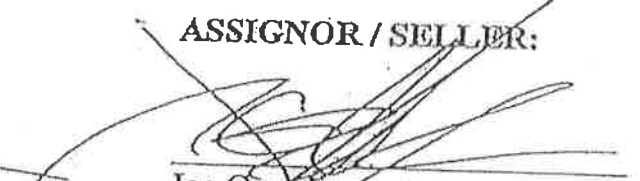
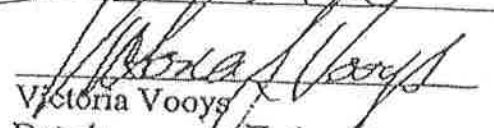
ASSIGNEE / BUYER:


James Jordan
Dated: 7/1/05

WITNESSES:



ASSIGNOR / SELLER:


Joe Gerace
Dated: 7-1-05

Victoria Vooy
Dated: 7-1-05

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Escrow Agreement

This Escrow Agreement ("Agreement") is entered into as of June 17, 2005 (the "Closing Date") by and between Joe Gerace and Victoria Vooyoys (collectively "Seller"), and James Jordan ("Purchaser"), and Nichols Newman Logan & D'Eramo, PC ("Escrow Agent").

This is the Escrow Agreement referred to in the Asset Purchase Agreement dated June 17, 2005 (the "Purchase Agreement"), by and among Seller and Purchaser. Capitalized terms used in this Agreement without definition shall have the respective meanings given to them in the Purchase Agreement.

The parties hereby agree as follows:

1. ESTABLISHMENT OF ESCROW

- (a) Seller is depositing with Escrow Agent an amount equal to Three Thousand Dollars (\$3,000.00) in immediately available funds (as reduced by any disbursements, amounts withdrawn under Section 5(j), the "Escrow Fund"). Escrow Agent acknowledges receipt thereof.
- (b) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Escrow Fund pursuant to the terms and conditions hereof.

2. INVESTMENT OF FUNDS

The Escrow Fund shall be held in the non-interest bearing trust account of the Escrow Agent.

3. CLAIMS

- (a) From time to time on or before October 1, 2005, Purchaser may give notice (a "Notice") to Seller and Escrow Agent specifying in reasonable detail the nature and dollar amount of any claim (a "Claim") it may have under the Purchase Agreement, including without limitation under the indemnification provisions contained in Section 22; Purchaser may make more than one claim with respect to any underlying state of facts. If Seller gives notice to Purchaser and Escrow Agent disputing any Claim (a "Counter Notice") within ten (10) days following receipt by Escrow Agent of the Notice regarding such Claim, such Claim shall be resolved as provided in Section 3(b). If no Counter Notice is received by Escrow Agent within such ten-day (10-day) period, then the dollar amount of damages claimed by Seller as set forth in its Notice shall be deemed established for purposes of this Agreement and the Purchase Agreement and, at the end of such ten-day (10-day) period, Escrow Agent shall pay to Seller the dollar amount claimed in the Notice from (and only to the extent of) the Escrow Fund. Escrow Agent shall not inquire into or consider whether a Claim complies with the requirements of the Purchase Agreement.

(b) If a Counter Notice is given with respect to a Claim, Escrow Agent shall make payment with respect thereto only in accordance with (i) joint written instructions of Seller and Purchaser or (ii) a final, non-appealable order of a court of competent jurisdiction. Any court order shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to Escrow Agent to the effect that the order is final and non-appealable. Escrow Agent shall act on such court order and legal opinion without further question.

4. TERMINATION OF ESCROW

On October 1, 2005, Escrow Agent shall pay and distribute the then amount of the Escrow Fund to Seller, unless (a) any Claims are then pending, in which case an amount equal to the aggregate dollar amount of such Claims (as shown in the Notices of such Claims) shall be retained by Escrow Agent in the Escrow Fund (and the balance paid to Seller), or (b) Purchaser has given notice to Seller and Escrow Agent specifying in reasonable detail the nature of any other claim it may have under the Purchase Agreement with respect to which it is unable to specify the amount of Damages, in which case the entire Escrow Fund shall be retained by Escrow Agent, in either case until it receives joint written instructions of Seller and Purchaser or a final, non-appealable order of a court of competent jurisdiction as contemplated by Section 3(b).

5. DUTIES OF ESCROW AGENT

(a) Escrow Agent shall not be under any duty to give the Escrow Fund held by it hereunder any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder except as directed in this Agreement. Escrow funds held hereunder shall not earn or accrue interest.

(b) Escrow Agent shall not be liable for actions or omissions hereunder, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against Escrow Agent, the other parties hereto shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays not resulting from its gross negligence or willful misconduct) in the investment or reinvestment of the Escrow Fund or any loss of interest incident to any such delays.

(c) Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service hereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement execute any document in connection with the provisions hereof has been duly authorized to do

so. Escrow Agent may conclusively presume that the undersigned representative of any party hereto which is an entity other than a natural person has full power and authority to instruct Escrow Agent on behalf of that party unless written notice to the contrary is delivered to Escrow Agent.

(d) Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice.

(e) Escrow Agent does not have any interest in the Escrow Fund deposited hereunder but is serving as escrow holder only and has only possession thereof. Any payments of income from the Escrow Fund shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide Escrow Agent with appropriate Internal Revenue Service Forms W-9 for tax identification number certification, or nonresident alien certifications. This Section 5(e) and Section 5(b) shall survive notwithstanding any termination of this Agreement or the resignation of Escrow Agent.

(f) Escrow Agent makes no representation as to the validity, value, genuineness or collectability of any security or other document or instrument held by or delivered to it.

(g) Escrow Agent shall not be called upon to advise any party as to the wisdom in selling or retaining or taking or refraining from any action with respect to any securities or other property deposited hereunder.

(h) Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Escrow Fund to any successor Escrow Agent jointly designated by the other parties hereto in writing, or to any court of competent jurisdiction, whereupon Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of Escrow Agent will take effect on the earlier of (i) the appointment of a successor (including a court of competent jurisdiction) or (ii) the day which is thirty (30) days after the date of delivery of its written notice of resignation to the other parties hereto. If, at that time, Escrow Agent has not received a designation of a successor Escrow Agent, Escrow Agent's sole responsibility after that time shall be to retain and safeguard the Escrow Fund until receipt of a designation of successor Escrow Agent or a joint written disposition instruction by the other parties hereto or a final, nonappealable order of a court of competent jurisdiction.

(i) In the event of any disagreement between the other parties hereto resulting in adverse claims or demands being made in connection with the Escrow Fund or in the event that Escrow Agent is in doubt as to what action it should take hereunder, Escrow Agent shall be entitled to retain the Escrow Fund until Escrow Agent shall have received (i) a final, nonappealable order of a court of competent jurisdiction directing delivery of the Escrow Fund or (ii) a written agreement executed by the other parties hereto directing delivery of the Escrow Fund, in which event Escrow Agent shall disburse the Escrow Fund in accordance with such order or agreement. Any court order shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to Escrow Agent to the effect that the order is final and nonappealable. Escrow Agent shall act on such court order and legal opinion without further question.

(j) No printed or other matter in any language (including, without limitation, prospectuses, notices, reports and promotional material) that mentions Escrow Agent's name or the rights, powers or duties of Escrow Agent shall be issued by the other parties hereto or on such parties' behalf unless Escrow Agent shall first have given its specific written consent thereto.

6. LIMITED RESPONSIBILITY

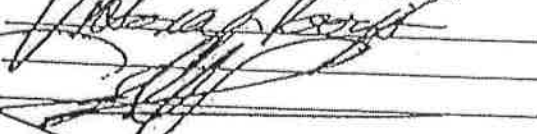
This Agreement expressly sets forth all the duties of Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement.

7. NOTICES

All notices, Consents, waivers and other communications required or permitted under this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by a nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail (with confirmation by the transmitting equipment); or (c) received by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and facsimile numbers and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number or person as a party may designate by notice to the other parties):

SELLER:

Joe Gerace and Victoria Vooys



w/ a copy to:

Lee J. Bohn, Esq.
Bohn and Cameron, LLC
1101 King Street
Christiansted, VI 00820

PURCHASER:

James Jordan



ESCROW AGENT:

G. Hunter Logan, Jr., Esq.
Nichols Newman Logan & D'Bramo, PC
1131 King Street, Suite 204
Christiansted, VI 00820

9. JURISDICTION; SERVICE OF PROCESS

Any Proceeding arising out of or relating to this Agreement may be brought in the courts of the United States Virgin Islands, District of St. Croix, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding and waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement in any other court. Process in any Proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

10. EXECUTION OF AGREEMENT

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for any purposes whatsoever.

11. SECTION HEADINGS, CONSTRUCTION

The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

12. WAIVER

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement supersedes all prior agreements among the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by Seller, Purchaser and Escrow Agent.

14. GOVERNING LAW

This Agreement shall be governed by the laws of the United States Virgin Islands without regard to conflicts of law principles that would require the application of any other Law.

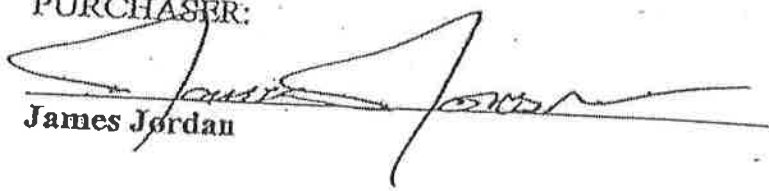
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

SELLER:


Joe Gerace


Victoria Voors

PURCHASER:


James Jordan

ESCROW AGENT:

Nichols Newman Logan & D'Eramo, P.C.

By:


G. Hunter Logan, Jr. Vice President

ASSIGNMENT OF TRADE NAME

THE UNDERSIGNED, being the whole current user of the trade name "CANE BAY BEACH BAR" ("Transferor") hereby transfers and assigns to JAMES JORDAN or Assigns, ("Transferee") the right to use the name "CANE BAY BEACH BAR".

Transferee hereby accepts this Assignment and after the date hereof, hereby indemnifies and agrees to hold harmless Transferor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, attorneys' fees and court costs) which Transferor may incur, sustain or suffer or which may be asserted or assessed against Transferor on or after the date hereof, arising out of, pertaining to or in any way connected with the obligations, duties and liabilities under the arising from and after the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this assignment this _____ day of _____, 2005.

Witness as to All:

Joe Gerace

Victoria Vooy's

TERRITORY OF THE VIRGIN ISLANDS)
JUDICIAL DIVISION OF ST. CROIX)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2005 by Joe Gerace and Victoria Vooy's.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Notary Seal)

Notary Public

3,000.00

Release Escrow Funds
Jordan=Cane Bay Beach Bar

MEMO Release Escrow Funds #6593-4 (HL FF)

⑈013455⑈ -⑈021606069⑈ 058⑈45094218⑈

CHOLS NEWMAN LOGAN & D'ERAMO, PC TRUST ACCOUNT

Joseph Gerace And Victoria Vooyo
RefundEscrow/Jordan=Cane Bay BB

10/3/2005

1345
3,000.00

S Trust Acct

Release Escrow Funds #6593-4 (HL FF)

3,000.00

LS NEWMAN LOGAN & D'ERAMO, PC TRUST ACCOUNT

Joseph Gerace And Victoria Vooyo
RefundEscrow/Jordan=Cane Bay BB

10/3/2005

1345
3,000.00

PAYMENT
RECORD

Trust Acct

Release Escrow Funds #6593-4 (HL FF)

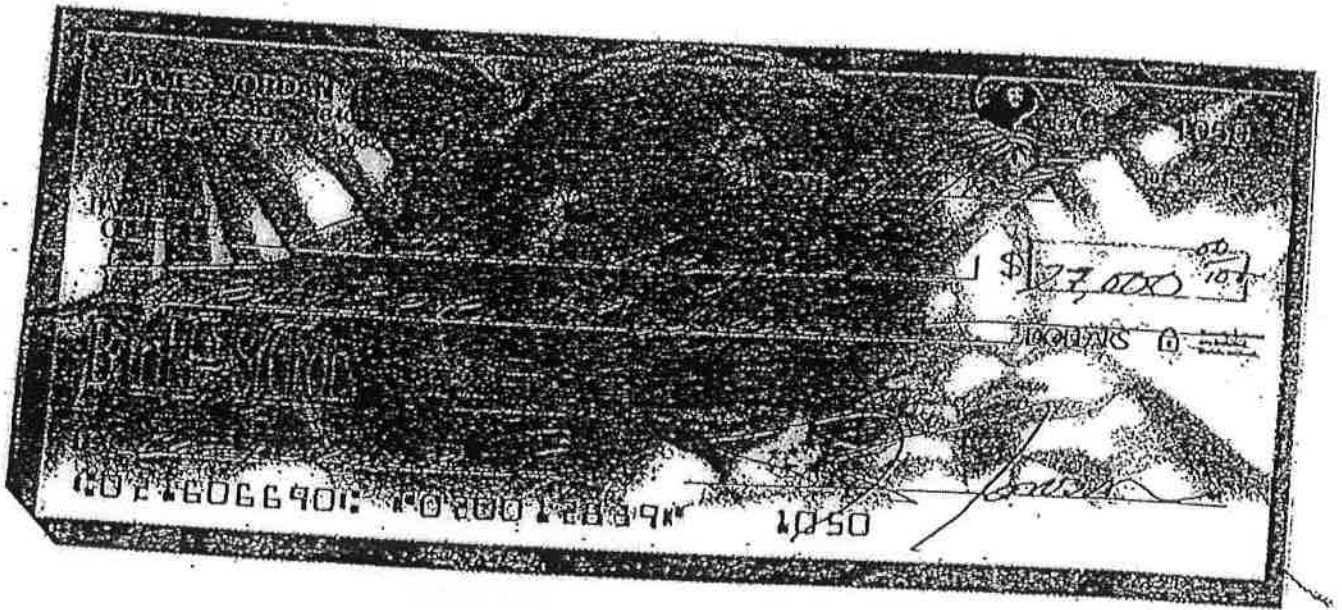
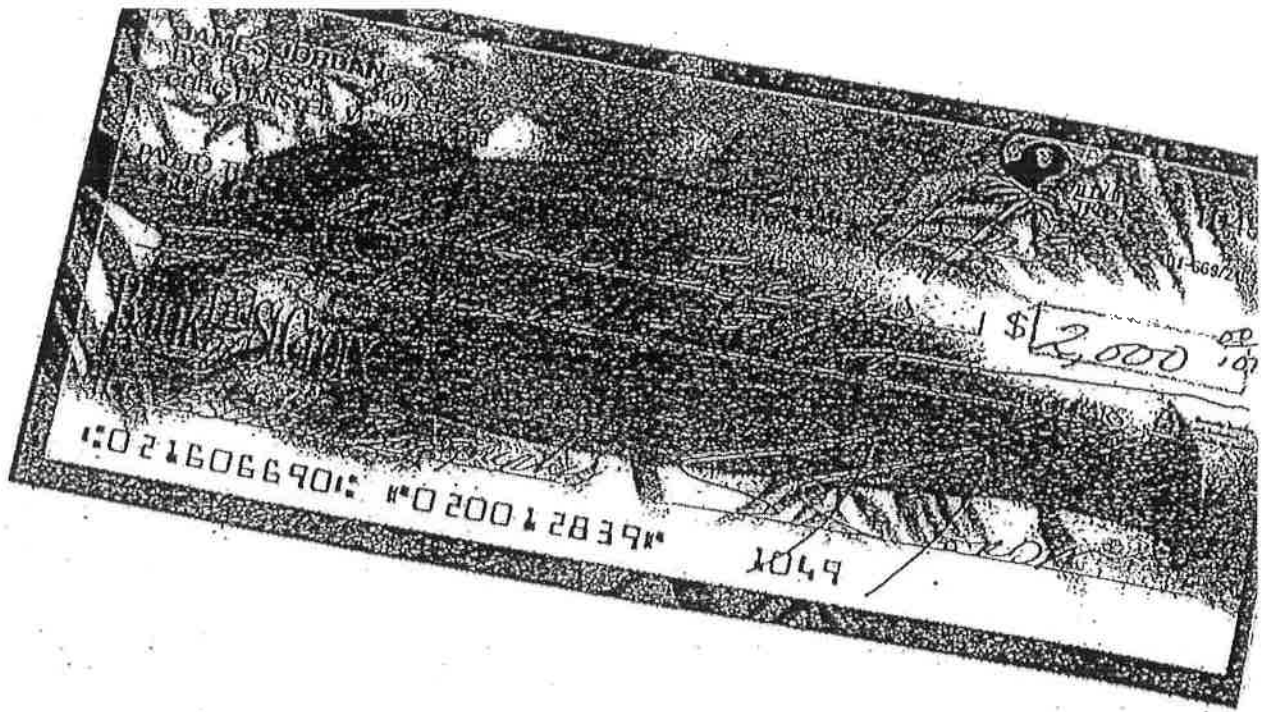
3,000.00

Pat Ellison

From: Anita Baron
Sent: Monday, October 03, 2005 11:30 AM
To: Pat Ellison
Subject: CHK.doc

TO: Pat Ellison
FR: Anita
DA: October 3, 2005
RE: Jim Jordan
Property: Cane Bay Beach Bar
File # 6593-4 HL FF

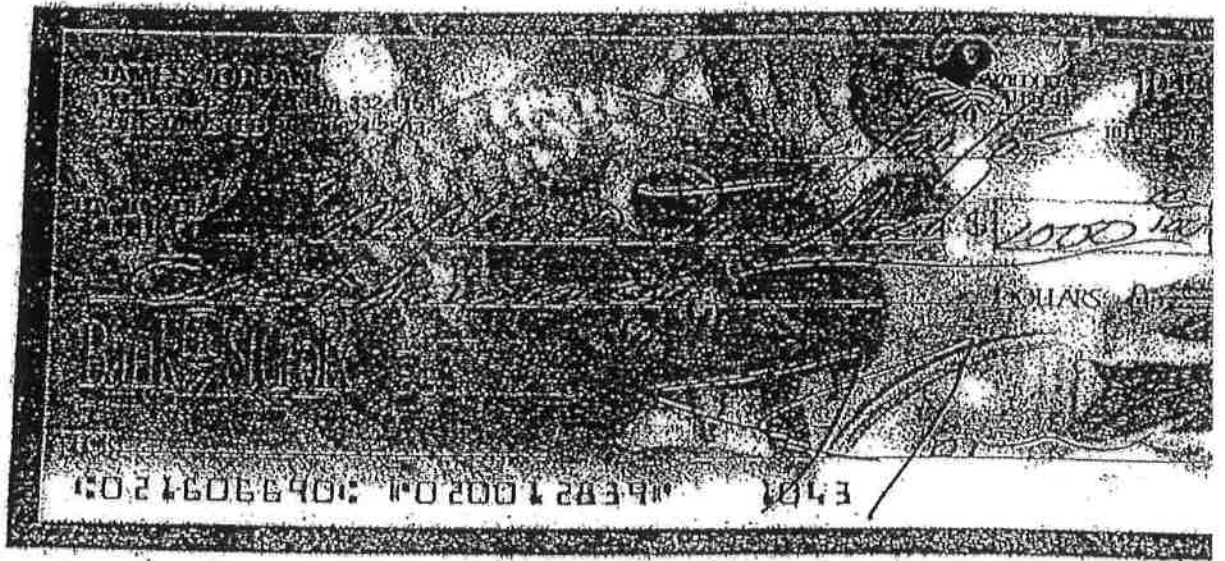
Joseph Gerace and Victoria Vooy's Release of Escrowed funds	3,000.00

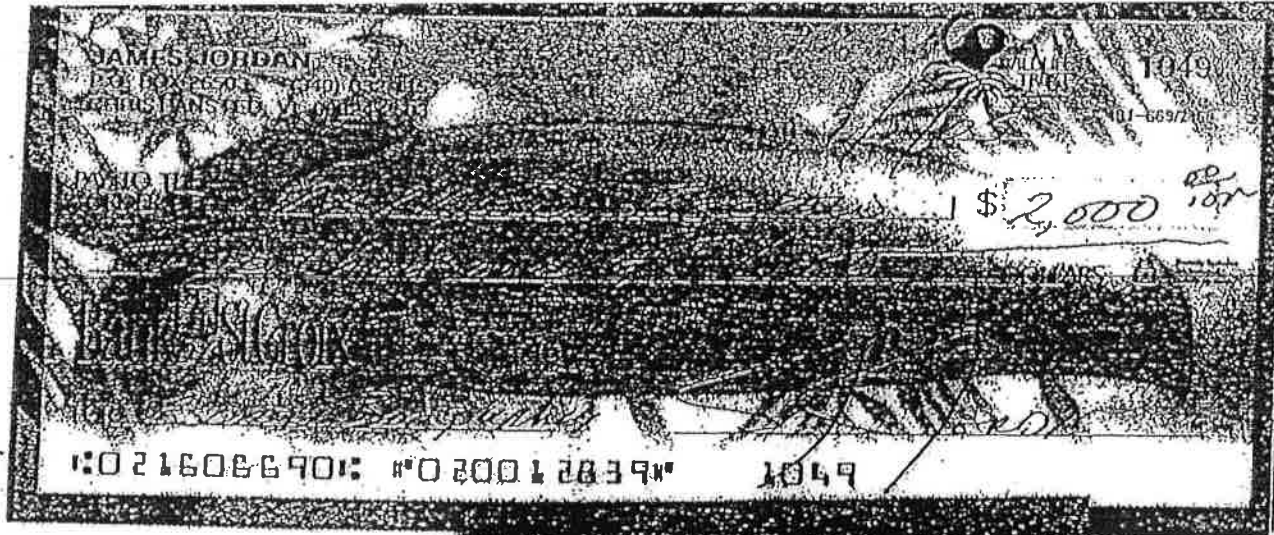


7/1/2005

Cane Bay BB #0593-4 (HL FF)
1/26/1998 Through 7/1/2005

Date	Account	Num	Description	Memo	Category	Clr	Amount	Page	
6/24/2005	BNS Trust ...	DEP					1,000.00		
7/1/2005	BNS Trust ...	DEP		Ck#1043 James Jordan (BSC ... EscrowDeposit/Jordan=Cane Bay ...			2,000.00		
				Ck#1049 James Jordan (BSC ... EscrowDeposit/Jordan=Cane Bay ...			3,000.00		
<u>TOTAL 1/26/1998 - 7/1/2005</u>									
TOTAL INFLOWS								3,000.00	
TOTAL OUTFLOWS								0.00	
NET TOTAL								3,000.00	





6/24/2005

Jordan-Cane Bay BB #6593-4 (HL FF)

1/26/1998 Through 6/24/2005

Date	Account	Num	Description	Memo	Category	Clr	Amount	Page
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6/24/2005 BNS Trust ... DEP

TOTAL 1/26/1998 - 6/24/2005

Ck#1043 James Jordan (BSC ... EscrowDeposit/Jordan=Cane Bay ...

1,000.00

1,000.00

TOTAL INFLOWS

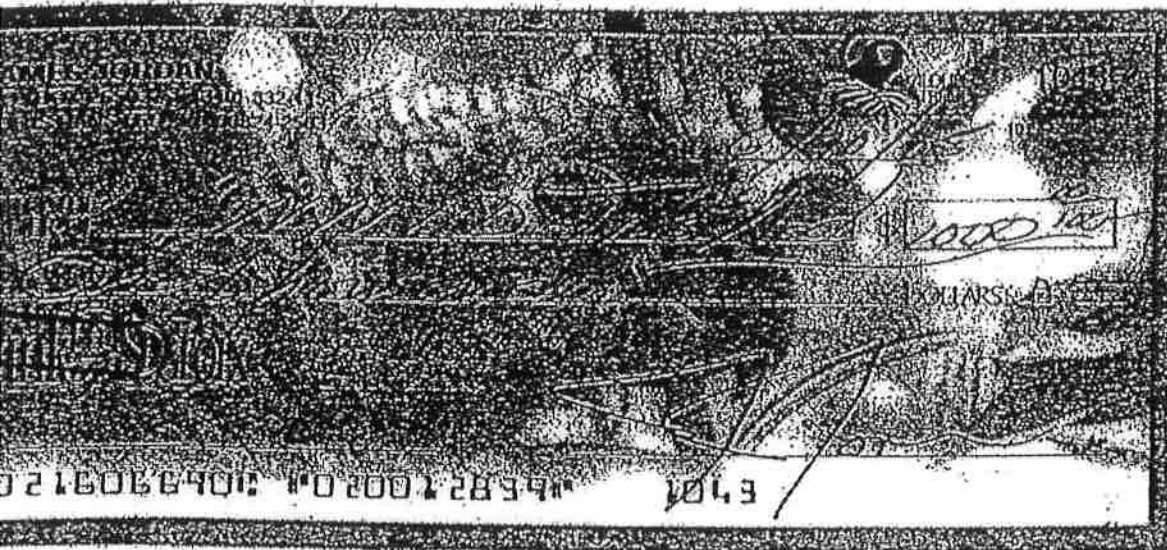
1,000.00

TOTAL OUTFLOWS

0.00

NET TOTAL

1,000.00



File
6573
Jordan
Bar

6593-2
JORDAN / CB BB

(HL)

10/3/2005

Date	Account	Num	Description	Memo	Category	Clr	Amount	Page	
6/24/2005	BNS Trust A...	DEP							
7/1/2005	BNS Trust A...	DEP		Ck#1043 James Jordan (BS... EscrowDeposit/Jordan=Cane Ba...		R	1,000.00		
10/3/2005	BNS Trust A...	13455	Joseph Gerace And Victoria Vooyo	Ck#1049 James Jordan (BS... EscrowDeposit/Jordan=Cane Ba...		R	2,000.00		
TOTAL 1/26/1998 - 10/3/2005								-3,000.00	
								0.00	

TOTAL INFLOWS 3,000.00

TOTAL OUTFLOWS -3,000.00

NET TOTAL 0.00

NICHOLS NEWMAN LOGAN & D'ERAMO, PC TRUST ACCOUNT

Joseph Gerace And Victoria Vooyo
 RefundEscrow/Jordan=Cane Bay BB

10/3/2005

13455

3,000.00

Received
PAYMENT
RECORD

OCT 11 2005

BNS Trust Acct

Release Escrow Funds #6593-4 (HL FF)

3,000.00

FILED

February 27, 2022 02:25 PM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

DEFENDANTS' TRIAL BRIEF RE THEIR RULE 12(b)(6) MOTIONS

At the end of the Plaintiffs' case, the Defendants moved to dismiss certain claims and parties based on (1) the "gist of the action doctrine" and (2) 13 V.I.C. § 1303. The Plaintiffs argued that both issues require separate, specific affirmative defenses, while the Defendants argued that these issues are both preserved by the Rule 12(b)(6) defense that was raised in their Answer, which is not disputed. This Court then instructed the Parties to brief these issues.

It must be noted that Rule 12(b)(6) expressly states that a defendant can move to dismiss a claim if it fails to state a claim upon which relief can be granted. Rule 12(h)(2) provides that this defense can be asserted at any time, including "at trial." The V.I. Supreme Court acknowledged this rule in *Matthew v. Herman*, 56 V.I. 674 (2012):

Herman argues in his brief that the motion to dismiss on the morning of trial, which he characterizes as coming under Federal Rule of Civil Procedure 12, was untimely and was thus inadequate to preserve the issue for appeal. However, Rule 12 specifically permits a motion to dismiss for failure to state a claim to be raised "at trial." Fed.R.Civ.P. 12(h)(2)(C). Therefore, because Matthew raised his motion to dismiss for failure to state a claim at trial, the issue was properly presented to the Superior Court and preserved for review on appeal. *Id.* at pp 677, 678.

Thus, the Defendants' current Rule 12(b)(6) motion seeking to dismiss certain counts and parties is properly before this Court.

I. The “gist of the action doctrine” defense

The “gist of the action doctrine” seeks to avoid the double recovery of damages for the breach of a contract by barring tort claims based on the same contractual allegations at issue in the case. The Virgin Islands Supreme Court did a *Banks* analysis of the “gist of the action doctrine” and adopted it as law in this jurisdiction in *Pollara v. Chateau St. Croix LLC*, 2016 WL 2865874 (V.I. 2016). In that case, the Court first noted:

The application of the gist of the action doctrine arises “... out of the concern that tort recovery should not be permitted for contractual breaches.” Parties to a contract are not automatically prevented from bringing a tort action, however “... the gist of the action doctrine precludes tort suits for the mere breach of contractual duties unless the plaintiff can point to separate or independent events giving rise to the tort.” *Id.* at *6.

The Court then set forth the when this doctrine is applicable:

Briefly, the gist of the action doctrine is applied when the claims are: “(1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where liability stems from a contract; or (4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of a contract.” *Id.* at *6.

In that case, the Court then dismissed the Plaintiffs’ tort claim for fraudulent misrepresentation since it was based on the performance of the underlying contract for which there was a breach of contract claim, holding:

The Court is satisfied that the record establishes that Plaintiffs’ claims are subject to the application of the gist of the action doctrine in that there existed a Contract between the parties (Pollara and Chateau) from which Plaintiffs’ claims arise; that Chateau allegedly did not perform duties created by and grounded in the terms of that Contract, as amended; and that Plaintiffs’ common law tort claims of negligent and fraudulent misrepresentation claims and damages incurred arose solely and directly as a result of Defendant Chateau’s alleged nonperformance of the Contract. *Id.* at *6.¹

¹ *Pollara* noted that fraud inducing one to enter into a contract may still be alleged to void or terminate the contract, as it is not interwoven into the performance of the contract, but that a claim of fraud in the performance of the contract—the failure to perform one’s promises as alleged in this case—is barred by this doctrine.

Thus, as applied to the claims in this case, Counts VII (Fraud for failing to “keep the representations they made), VIII (Misrepresentation) and X (Breach of the Duty of Good Faith) should be dismissed, as all three counts are based on the Defendants’ alleged breach of their contractual duties alleged in Count I (Breach of Contract). Thus, they are barred by the gist of the action doctrine.²

Counsel could not find any cases that have held that this defense must be pled in any way other than as a Rule 12(b)(6) defense. Indeed, in the *Pollara* case, no such separate affirmative defense was pled as the “gist of the action doctrine”, as the only defense raised was the same Rule 12(B)(6) defense that was raised here. See Exhibit 1.

Moreover, multiple courts have dismissed cases based on this doctrine pursuant to Rule 12(b)(6), as noted in *The Knit With v. Knitting Fever, Inc.*, No. CIV.A.NO.08-4221, 2009 WL 3427054, at *8 (E.D. Pa. Oct. 20, 2009), *aff’d*, 625 F. App’x 27 (3d Cir. 2015):

Nonetheless, “there is precedent in this Court for invocation of the gist of the action doctrine at that stage of the litigation in a 12(b)(6) dismissal.” *Metro Auto. Sales*, 2006 WL 237505, at *3 (citing *Owen J. Roberts Sch. Dist. v. HTE, Inc.*, No. CIV.A.02-7830, 2003 WL 735098 (E.D.Pa. Feb.28, 2003)). Many cases from within this Circuit have dismissed claims under the gist of the action doctrine at the Rule 12(b)(6) stage. See, e.g., *Bryan’s Quality Plus, LLC v. Shaffer Builders, Inc.*, No. CIV.A.07-2311, 2008 WL 3523935, at *5 (E.D.Pa. Aug.12, 2008) (dismissing, pursuant to Rule 12(b)(6), plaintiff’s fraud and misrepresentation claims under the gist of the action doctrine); *KSM Assoc., Inc. v. ACS State Healthcare, LLC*, No. CIV.A.05-4118, 2006 WL 847768, at *4 (E.D.Pa. Mar. 30, 2006) (dismissing, on Rule 12(b)(6) motion, fraud counterclaim under the gist of the action doctrine); *Freedom Props., L.P. v. Lansdale Warehouse Co., Inc.*, No. CIV.A.06-5469, 2007 WL 2254422, at *6 (E.D.Pa. Aug.2, 2007) (granting, based on gist of the action doctrine, Rule 12(b)(6) motion to dismiss fraudulent inducement and negligent misrepresentation claims based on plaintiff’s failure to perform its contractual duty).

² Indeed, the Plaintiffs only submitted one instruction on “Fraudulent Misrepresentation” rather a separate instruction for “fraud” and for “misrepresentation.” Thus, it is surprising that the Plaintiffs are seeking to now keep both counts which are actually the same cause of action seeking the same damages based upon the same contractual promises.

As noted in *Knit With*, which the Third Circuit affirmed, there is a related doctrine called the “economic loss” doctrine, *id.* at *5, which is also often used to dismiss claims pursuant to Rule 12(b)(6), *id.* at *8:

Likewise, federal courts within the Third Circuit have repeatedly granted Rule 12(b)(6) dismissals of cases under the economic loss doctrine. *Sovereign Bank v. BJ's Wholesale Club, Inc.*, 533 F.3d 162, 177-78 (3d Cir.2008) (affirming district court's dismissal of negligence claim under the economic loss doctrine); *Fleet Nat. Bank v. Boyle*, No. CIV.A.04-1277, 2005 WL 2455673, at *17 (E.D.Pa.2005) (granting motion to dismiss negligent misrepresentation claim under economic loss doctrine) *Constar, Inc. v. Nat'l Distrib. Ctrs., Inc.*, 101 F.Supp.2d 319, 322-23 (E.D.Pa.2000) (dismissing, under Rule 12(b)(6), plaintiff's negligence claim under the economic loss doctrine); *Titan Stone, Tile & Masonry, Inc. v. Hunt Constr. Group, Inc.*, 2007 WL 174710, at *4 (D.N.J.2007) (granting Rule 12(b)(6) dismissal of fraud and conversion claims under economic loss doctrine).

In short, the “gist of the action doctrine” is just that—a legal doctrine of pure law, created to prevent a party from recovering the same damages in tort and contract based on the same transaction that can be raised by a Rule 12(b)(6) motion. This is the precise affirmative defense raised by the Defendants in their answer, requiring dismissal of these counts based on the law, as opposed to having to prove any facts.

Indeed, citing *Pollara*, this Court applied this doctrine in denying a motion to amend a complaint to add a tort claim as being “futile” where a contract claim already existed, holding in *Matthews v. R&M Gen. Contractors, Inc.*, 72 V.I. 583, 2020 VI SUPER 033, ¶ 18 (V.I. Super 2020):

The gist of the action doctrine bars tort claims:

- (1) arising solely from a contract between the parties;
- (2) where the duties allegedly breached were created and grounded in the contract itself;
- (3) where liability stems from a contract; or
- (4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on [the] terms of a contract.”

Thus, while multiple counts might be pled, where these elements exist, only one count arising from the contractual dispute of the parties can be permitted as a matter of law.³

In short, the Defendants preserved the right to assert this doctrine by including a Rule 12(b)(6) defense in their answer. Once that defense is preserved, the defendant can then move to dismiss claims pursuant to the “gist of the action” doctrine at any time, including at trial, which the V.I. Supreme Court has held is procedurally proper.

II. 13 V.I.C. §1303

Under 13 V.I.C. §1302, an LLC is liable for the acts of its members, stating:

A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.

Section 1303 then provides as follows:

Except as otherwise provided in subsection (c) of this section, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.⁴

As ¶ 10 of the Complaint alleges, Warren Mosler and Chris Hanley are the “owners” of Chrismos Cane Bay, LLC (“Chrismos LLC”), an allegation the Defendants admitted.

Thus, the issue is whether this statutory language must be pled as a separate affirmative defense or whether it is properly raised by a Rule 12(b)(6) defense. An analysis

³ Indeed, in a recent case, the Court sua sponte considered the application of the “gist of the action doctrine” at the conclusion of the trial. See, *Joseph v. Divine Funeral Servs. LLC.*, 71 V.I. 121, 128, (Super Ct. 2020)(“Therefore, the first question to be addressed is whether this tort claim can survive notwithstanding the contractual agreement between the parties, or whether such a claim is precluded by the gist of the action doctrine).

⁴ Section (c) is not relevant here, as the Chrismos LLC filing, admitted as Exhibit P-4, expressly declined to extend any further liability to any member.

of the Plaintiffs' claims explains why no additional affirmative defense is needed other than this one as to certain counts, as Chrismos LLC is being sued in its capacity as the Plaintiff's landlord, as it is the owner of the property where Cane Bay Beach Bar is located.

In this regard, Count VI is a claim for defamation. As the alleged defamatory statements by Hanley and Mosler were not made solely by reason of their being a member in Chrismos LLC, that count would not be subject to dismissal pursuant to Rule 12(b)(6), as it states a cause of action separate from Chrismos LLC's obligations as a landlord.

However, Counts VII (Fraud), Count VIII (Misrepresentation) and Count X (Good Faith and Fair Dealing) all allege liability on the part of Chrismos LLC as the Plaintiffs' landlord, seeking damages against it for failing to give them a lease. However, only Chrismos LLC (as the owner of the premises) can enter into a lease with the Plaintiffs. Thus, these counts fail to state a cause of action against Mosler and Hanley personally, as the claim is based on the failure to give a lease, which only Chrismos LLC can do.⁵ Thus, the only duty allegedly breached in these counts is the failure to give the Plaintiffs a lease, which Mosler and Hanley could only do "by reason of being or acting as a member or manager," so that the Complaint fails to allege a separate duty owed by them apart from being members of Chrismos LLC.

Again, while the Defendants could not locate a case which held that being a member of an LLC has to be raised as a separate affirmative defense. This precise issue

⁵ Indeed, it would be unreasonable to rely on a promise of an individual to give a person a lease when the individual does not own the property where the tenant is located.

was raised and disposed of by way of a Rule 12(b)(6) motion in *Ayres v. AG Processing Inc.*, 345 F. Supp. 2d 1200, 1216 (D. Kan. 2004)

Plaintiffs are also purportedly suing the Individual Defendants in their capacities as managers of the LLC. The Complaint is not clear as to the specific time period during which the Individual Defendants served as managers of AEP LLC. Even if the Court were to find that the Individual Defendants were managers at the time of the alleged breaches of the Operating Agreement, Plaintiffs have not alleged any legal theories that would hold LLC managers liable for breach of contract.

Because Plaintiffs have failed to allege that the Individual Defendants are parties to the AEP LLC Operating Agreement, or allege some other capacity in which the Individual Defendants may be held liable for breaches of the Operating Agreement, Plaintiffs do not state a claim for breach of contract against the Individual Defendants. The Court therefore grants Defendants' Motion to Dismiss Plaintiffs' Breach of Contract Claims Against Defendants Reagan, Hoover, and Campbell in its entirety.

See also, *Cormier v. Peterson Homes, LLC*, No. WWMCV126005066S, 2012 WL 6965412, at *2 (Conn. Super. Ct. Dec. 28, 2012)(dismissing a complaint against an LLC member for failing to state a claim based on the alleged liability of LLC members to a third party, citing to a Connecticut statute that states: "a person who is a member or manager of a limited liability company is not liable, solely by reason of being a member or manager, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.")

This is similar to 13 V.I.C. §344(b) which prohibits suits against an officer or director of a corporation for a debt or liability of a corporation unless a judgment is first obtained against the corporation:

(b) No suit shall be brought against any officer, director or stockholder for any debt or liability of a corporation, of which he is an officer, director or stockholder, until judgment be obtained therefor against the corporation

Thus, if one sued an officer for an obligation of a corporation, a Rule 12(b)(6) defense would bar any such claim, as such suits cannot be brought as a matter of law.

An analogy is helpful here. Under the applicable tort law in establishing a negligence claim, a plaintiff must allege that the defendant owed a duty to the plaintiff, that was breached, causing damages. See, e.g., *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (2014). When a defendant responds to a negligence claim, there is no need to allege separate specific affirmative defenses that (1) no duty was owed, (2) there was no causation or (3) there were no damages. These are the elements a plaintiff must prove. A defendant certainly preserve his defenses to this claim by denying the allegations and filing a Rule 12(b)(6) defense with the answer.

As the V.I. Supreme Court stated in *Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471 (2013):

To succeed on a claim of fraudulent misrepresentation one must prove **that the maker of the contract** “intends his assertion to induce a party to manifest his assent and the maker (a) knows or believes that the assertion is not in accord with the facts, or (b) does not have the confidence that he states or implies in the truth of the assertion, or (c) knows that he does not have the basis that he states or implies for the assertion.” (Emphasis added).

In this case, the Plaintiffs had to allege a specific duty owed by either Mosler or Hanley as the “maker of the contract”—a lease—but only the landlord, Chrismos, LLC, could be the maker of this contract. Thus, to survive a Rule 12(b)(6) defense raised by Mosler and Hanley to the fraudulent misrepresentation counts (Counts VII and VIII), the Plaintiffs were required to plead a separate liability other than the same contract—the lease—that only Chrismos LLC could provide. The exact same analysis applies to Count X, which the Plaintiff concedes is nothing more than a contract claim (Breach of the Duty of Good Faith and Fair Dealing), which only Chrismos could breach.

In summary, absent proof of a separate claim against Mosler and Hanley that does not arise from a contractual relationship unrelated to their acting as a member or manager of Chrismos LLC, the allegations in Counts VII, VIII and X fail to state a cause of action against them individually—a pure Rule 12(b)(6) defense—pursuant to 13 V.I.C. §1303. As the Rule 12(b)(6) defense was properly raised in the Defendants' Answer, it can be asserted at trial, as is the case here, the claims asserted against Mosler and Hanley in Counts VII, VIII and X must be dismissed as to them.

III. Summary

The V.I. Supreme Court held in *Powell v. FAM Protective Servs., Inc.*, 72 V.I. 1029 (V.I. 2020), that V.I.R. Civ. P. 8 requires affirmative defenses to be pled or else they are waived. As discussed herein, the Defendants did comply with this requirement by raising the Rule 12(b)(6) failure to state a cause of action as an affirmative defense. As both the gist of the action doctrine and the express language of 13 V.I.C. §1303 make it clear, these are rules of law which go to whether a cause of action exists in the Counts in question. Thus, these legal issues related to the adequacy of the pleadings, which can be raised at trial, were properly preserved and are properly before this Court on the Defendants' pending Rule 50 motion.

DATED: February 27, 2022

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 27th day of February, 2022 I caused a true and correct copy of foregoing to be served via the Court's ECF system on:

Lee Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Joel H. Holt

FILED

February 27, 2022 02:25 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

FRANK C. POLLARA and F. C.)	
POLLARA GROUP, LLC)	
)	CASE NO. SX-06-CV-423
Plaintiffs)	
v.)	
)	ACTION FOR DAMAGES
CHATEAU ST. CROIX, LLC and)	
ROBERT NEAL)	JURY TRIAL DEMANDED
)	
Defendants-)	
Counterclaimants)	
v.)	
)	
JETSTREAM FINANCE CORPORATION)	
and CHARLES M. BANACOS)	
)	
Third-Party)	
Defendants)	
)	
)	

ANSWER, COUNTERCLAIM and THIRD PARTY COMPLAINT

COMES NOW the Defendant, CHATEAU ST. CROIX, LLC, a U.S. Virgin Islands limited liability company, by and through counsel, The Law Office of K.A. Rames, P.C., and for its Answer to the Complaint of the Plaintiffs herein states as follows:

1. Defendant has insufficient information either to admit or to deny the allegations in Paragraph One of Plaintiffs' Complaint and therefore they are denied.
2. Defendant has insufficient information either to admit or to deny the allegations in Paragraph Two of Plaintiffs' Complaint and therefore they are denied.
3. The allegations in Paragraph Three of Plaintiffs' Complaint are admitted.
4. The allegations in Paragraph Four of Plaintiffs' Complaint are denied.
5. The allegations in Paragraph Five of Plaintiffs' Complaint are admitted.
6. The allegations in Paragraph Six of Plaintiffs' Complaint are admitted.

Exhibit No. 508	EXHIBIT
	JA ¹ - 292

7. The allegations in Paragraph Seven of Plaintiffs' Complaint are denied.
8. The allegations in Paragraph Eight of Plaintiffs' Complaint are admitted.
9. The allegations in Paragraph Nine of Plaintiffs' Complaint are admitted.
10. The allegations in Paragraph Ten of Plaintiffs' Complaint are admitted.
11. The allegations in Paragraph Eleven of Plaintiffs' Complaint are denied.
12. The allegations in Paragraph Twelve of Plaintiffs' Complaint are denied.
13. The allegations in Paragraph Thirteen of Plaintiffs' Complaint are denied.
14. The allegations in Paragraph Fourteen of Plaintiffs' Complaint are denied.
15. The allegations in Paragraph Fifteen of Plaintiffs' Complaint are admitted.
16. The allegations in Paragraph Sixteen of Plaintiffs' Complaint are denied.
17. The allegations in Paragraph Seventeen of Plaintiffs' Complaint are denied.
18. The allegations in Paragraph Eighteen of Plaintiffs' Complaint are denied.
19. The allegations in Paragraph Nineteen of Plaintiffs' Complaint are denied.
20. The allegations in Paragraph Twenty of Plaintiffs' Complaint are denied.
21. The allegations in Paragraph Twenty-One of Plaintiffs' Complaint are denied.

22. The allegations in Paragraph Twenty-Two of the Plaintiffs' Complaint as they relate to the conduct of the Defendant are denied. Defendant has insufficient information to either admit or deny the remaining allegations in Paragraph Twenty-Two of Plaintiffs' Complaint and they are therefore denied.

23. The allegations in Paragraph Twenty-Three of the Plaintiffs' Complaint as they relate to the conduct of the Defendant are denied. Defendant has insufficient information to either admit or deny the remaining allegations in Paragraph Twenty-Three of Plaintiffs' Complaint and they are therefore denied.

24. The allegations in Paragraph Twenty-Four of the Plaintiffs' Complaint as they relate to the conduct of the Defendant are denied. Defendant has insufficient information to either admit or deny the remaining allegations in Paragraph Twenty-Four of Plaintiffs' Complaint and they are therefore denied.

25. The allegations in Paragraph Twenty-Five of the Plaintiffs' Complaint as they relate to the conduct of the Defendant are denied. Defendant has insufficient information to either admit or deny the remaining allegations in Paragraph Twenty-Five of Plaintiffs' Complaint and they are therefore denied.

26. The allegations in Paragraph Twenty-Six of Plaintiffs' Complaint are denied.

27. The allegations in Paragraph Twenty-Seven of Plaintiffs' Complaint are denied.

28. Defendant reasserts and realleges each of the allegations in this Answer as though fully set forth herein.

29. The allegations in Paragraph Twenty-Nine of Plaintiffs' Complaint are denied.

30. The allegations in Paragraph Thirty of Plaintiffs' Complaint are denied.

31. The allegations in Paragraph Thirty-One of Plaintiffs' Complaint are denied.

32. The allegations in Paragraph Thirty-Two of Plaintiffs' Complaint are denied.

33. The allegations in Paragraph Thirty-Three of Plaintiffs' Complaint are denied.

34. Defendant reasserts and realleges each of the allegations in this Answer as though fully set forth herein.

35. The allegations in Paragraph Thirty-Fiver of Plaintiffs' Complaint are denied.

36. The allegations in Paragraph Thirty-Six of Plaintiffs' Complaint are denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claim fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Losses or damages sustained by Plaintiffs, if any, were caused by Plaintiffs' own gross acts or omissions and gross legal fault.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations and because it has not been timely filed.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the defense of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages and Plaintiffs' claims are therefore barred.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims sounding in contract are barred by a lack of consideration and privity.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims sounding in contract are barred by fraud in the inducement to contract.

COUNTERCLAIM AND THIRD-PARTY CLAIM

COMES NOW the Defendant-Counterclaimant, Chateau St. Croix, LLC, and for its Counterclaim against Frank C. Pollara and F.C. Pollara Group, LLC and its Third-Party Claim against Charles M. Banacos and Jetstream Finance Corporation states as follows:

1. Chateau St. Croix, LLC is a U.S. Virgin Islands limited liability company in good standing.
2. Counterclaim Defendant Frank C. Pollara (hereinafter "Pollara") is the member-manager of Counterclaim Defendant F.C. Pollara Group, LLC, a U.S. Virgin Islands limited liability company.
3. Third Party Defendant Charles M. Banacos (hereinafter "Banacos") is a principal of Third Party Defendant Jetstream Finance Group, a Florida corporation (hereinafter "Jetstream").
4. Chateau St. Croix, LLC is the owner of the former St. Croix by the Sea Hotel property at

Plot No. 111 of Estate La Grande Princesse, St. Croix, U.S. Virgin Islands and Plot No. 6 of Estate St. John, St. Croix, U.S. Virgin Islands as more fully shown on OLG Drawing No. 5039 dated August 6, 1994 and revised July 6, 1999 (hereinafter the "Property").

5. On March 1, 2006, Chateau St. Croix, LLC entered into a Contract for the Purchase and Sale of the Property to Pollara or his assigns, whereby Pollara was required to place a \$100,000.00 earnest money deposit into escrow with a mutually designated Escrow

Agent, Land America Lawyer's Title of Tampa, Florida. The deposit of the \$100,000.00 was required to be made within twenty-four hours of the execution of the Contract.

6. On or about March 6, 2006, Jetstream, by and through one Banacos, sent a \$100,000.00 check to the Escrow Agent, ostensibly in fulfillment of Pollara's down payment obligation under the Contract. Chateau St. Croix, LLC had no prior contractual or other business relationship with Jetstream or Banacos.

7. Consequent with the signing of the Contract, Chateau St. Croix, LLC entered into Exhibit A thereto with Pollara, which outlined certain criteria under which Chateau St. Croix, LLC would provide seller financing to Pollara. Under the Contract, as amended, the closing of the transaction was to be on March 28, 2006.

8. On or about April 6, 2006, the parties entered into Exhibit B to the Contract, which acknowledged that Pollara had placed a total of \$1.5 million in escrow with the Escrow Agent and, in consideration of such deposit, the closing date was extended to April 21, 2006. Exhibit B also eliminated seller financing as an aspect of the transaction.

9. The closing of the transaction did not occur on April 21, 2006 and neither party formally attempted to set a closing date until June 20, 2006, when Pollara demanded that the closing take place within 48 hours.

10. By mutual agreement, the closing date was extended until June 27, 2006. On June 23, 2006, Chateau St. Croix, LLC advised Pollara that it was ready, willing and able to close the transaction. This closing date was timely under the second paragraph of Exhibit B to the Contract, which provided that the transaction would close "as soon as possible" after all of the legal documents were in place.

11. Pollara failed or refused to respond to the June 23, 2006 email. ON July 5, 2006, Chateau St. Croix, LLC sent Pollara and F.C. Pollara Group a "time is of the essence" letter, demanding a closing by July 16, 2006, failing which the \$100,000.00 deposit would be forfeit to Chateau St. Croix, LLC.

12. On July 10, 2006, Chateau St. Croix, LLC was advised by the Escrow Agent that the \$100,000.00 earnest money deposit made by Jetstream was twice refused for insufficient funds.

13. On July 14, 2006, Pollara unaccountably informed Chateau St. Croix, LLC that it was in default under the Contract and that a lawsuit had been filed against Chateau St. Croix, LLC demanding an extension of the closing date and seller financing for the transaction in exchange for the voluntary dismissal of the lawsuit. Chateau St. Croix, LLC rejected that overture by Pollara's counsel, and demanded that the transaction close on or before July 16, 2006.

14. Chateau St. Croix, LLC was later advised that Jetstream and Pollara had filed two liens against the Property in the respective amounts of \$90,000.00 for Jetstream as a

"Finance and Consulting Fee" and \$60,000.00 for Pollara as a "Consulting Fee". The \$90,000.00 Lien for the benefit of Jetstream was filed on July 13, 2006 at P.C. 1040, Page 149, Document Number 2006003485. The \$60,000.00 Lien for the benefit of Pollara was filed on June 30, 2006 at P.C. 1038, Page 110 at Document Number 2006003223. Jetstream was never entitled to a Finance and Consulting Fee from Chateau St. Croix, LLC and Pollara was only entitled to a Consulting Fee upon the closing of the transaction, which never occurred.

COUNT I

15. Chateau St. Croix, LLC repeats and realleges the allegations made in Paragraphs 1 through 13 of this Counterclaim.

16. The failure of Pollara and F.C. Pollara Group, LLC to deposit the \$100,000.00 in earnest money with the Escrow Agent in conformity with the Contract constituted a breach of contract.

17. Chateau St. Croix, LLC is entitled to compensatory and consequential damages arising from the breach of contract by Pollara and F.C. Pollara Group, LLC

COUNT II

18. Chateau St. Croix, LLC repeats and realleges the allegations made in Paragraphs 1 through 16 of this Counterclaim.

19. The failure of Pollara and F.C. Pollara Group, LLC to close the transaction for the purchase of the Property on or before July 16, 2006, subjects Pollara and F.C. Pollara Group, LLC to the forfeiture of the \$100,000.00 earnest money deposit.

20. Chateau St. Croix, LLC is entitled to the payment of the \$100,000.00 earnest money due to the failure of Pollara and F.C. Pollara Group, LLC to close the transaction.

COUNT III

21. Chateau St. Croix, LLC repeats and realleges the allegations made in Paragraphs 1 through 19 of this Counterclaim.

22. The imposition of the Liens on the Property by Banacos and Jetstream and by Pollara and F.C. Pollara Group, LLC constitutes slander of title.

23. The filing of the Liens on the Property by Banacos and Jetstream and by Pollara and F.C. Pollara Group, LLC was willful, intentional and wrongful and entitles Chateau St. Croix, LLC to compensatory, consequential and punitive damages.

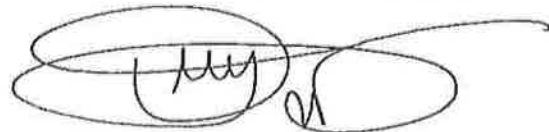
24. The maintenance of the Liens on the Property by Banacos and Jetstream and by Pollara and F.C. Pollara Group, LLC should be enjoined and those parties should be forthwith ordered to release the Liens of record.

WHEREFORE, Chateau St. Croix, LLC prays for the following relief:

1. For compensatory and consequential damages against Frank C. Pollara and F.C. Pollara Group, LLC due to their breach of the contract for the purchase of the Property or, in the alternative,
2. For the payment of the \$100,000.00 earnest money that Frank C. Pollara and F.C. Pollara Group, LLC was obliged to deposit with the Escrow Agent in connection with the purchase of the Property, which sum was properly to be forfeited to Chateau St. Croix, LLC due to the failure of Frank C. Pollara and F.C. Pollara Group, LLC to close the transaction.
3. For compensatory, consequential and punitive damages against Charles M. Banacos, Jetstream Finance Corporation, F.C. Pollara Group, LLC and Frank C. Pollara due to their wrongful filing of the Liens on the Property.
4. For injunctive relief enjoining Charles M. Banacos, Jetstream Finance Corporation, F.C. Pollara Group, LLC and Frank C. Pollara from maintaining their liens on the Property.
5. For the costs of this action, a reasonable attorney's fee, and such other and further relief as to this Court may seem proper.

A JURY TRIAL IS DEMANDED ON ALL ISSUES PROPERLY TRIABLE BEFORE A JURY.

Respectfully Submitted,
Law Offices of K. A. Rames, P.C.



Kevin A. Rames, Esq.
2111 Company Street, Suite 3
Christiansted, VI 00820
Telephone: (340) 773-7284
Facsimile: (340) 773-7282

Dated: October 4th, 2006

FILED

February 28, 2022 12:59 PM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

NOTICE OF FILING SUPPLEMENT TO DEFENDANTS' TRIAL BRIEF

The Defendants' hereby file the attached exhibit to further supplement their trial brief in support of their pending Rule 50 motion.

DATED: February 28, 2022

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 28th day of February, 2022 I caused a true and correct copy of foregoing to be served via the Court's ECF system on:

Lee Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Joel H. Holt

FILED

February 28, 2022 12:59 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ELSA GOODMAN,)
Plaintiff,)
v.)
CAROLE CHESTNUT)
Defendant.)

SX - 08 - Cv. 401

JURY TRIAL DEMAND

ANSWER

NOW COMES Defendant Carole Chestnut, by and through the undersigned counsel, and for her *answer* to Plaintiff's complaint correspondingly states:

1. Defendant admits that Plaintiff is an adult resident of Montgomery County, Maryland, but denies the remainder of the allegation for the reason the *Quitclaim Deed*, dated March 6, 2006, which conveys said property to Elsa Goodman and Carole C. Chestnut, as joint tenants with rights of survivorship, speaks for itself.

- 2. Admitted.
- 3. Admitted.
- 4. Admitted.
- 5. Denied.
- 6. Denied.
- 7. Admitted.
- 8. Admitted.
- 9. Denied.
- 10. Denied.
- 11. Denied.

12. Defendant admits that Plaintiff filed suit, *Elsa Goodman v. Carole Chestnut*, Civil No. 285343-V, in the Circuit Court for Montgomery County, Maryland, the remainder of the allegations are denied.

- 13. Admitted.

SUPERIOR COURT
JAN 28 2022
09 JAN 28 P1 43

EXHIBIT
1

14. Because the *judgment* referred to in ¶ 14 is not attached to *complaint*, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment contained therein.

15. Denied.

16. Denied.

17. Denied.

COUNT I: FRAUD

18. Defendant repeats and re-alleges the fore-going *answers* and incorporates the assertions contained in each herein by reference.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

COUNT II: BREACH OF CONTRACT

25. Defendant repeats and re-alleges the fore-going *answers* and incorporates the assertions contained in each herein by reference.

26. Denied.

27. Denied.

28. Denied.

COUNT III: NEGLIGENT MISREPRESENTATION

29. Defendant repeats and re-alleges the fore-going *answers* and incorporates the assertions contained in each herein by reference.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

COUNT IV: REFORMATION OF TITLE

35. Defendant repeats and re-alleges the fore-going *answers* and incorporates the assertions contained in each herein by reference.

36. Denied.

37. Denied.

38. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a claim upon which relief may be granted.

2. The underlying *Quitclaim Deed*, dated March 6, 2006, which conveys Plot 190, Estate Mary's Fancy to Elsa Goodman and Carole C. Chestnut, as joint tenants with rights of survivorship, constitutes an irrevocable gift, by operation of law.

3. Plaintiff's claims are barred by the statute of frauds.

4. Plaintiff's claims are barred by the *doctrine of estoppel*.

5. Defendant reserves the right to amend this pleading in accordance with *Rule 15, Fed. R. Civ. Pro.*

WHEREFORE, Defendant, respectfully requests that judgment as follows:

- a. Judgment in favor of Defendant and against Plaintiff, with prejudice'
- b. Legal cost and fees;
- c. Such other and further relief as is just and equitable in the premise.

COUNTERCLAIM

COMES NOW, Defendant/Counterclaimant, Carole Chestnut, pursuant to Rule 13(a), Fed. R. Civ. P. and for her compulsory *counterclaim* against Plaintiff states:

1. This Court has jurisdiction over the parties and the subject matter herein.
2. Defendant/Counterclaimant, Carole Chestnut maintains this action for declaratory judgment and accounting is brought pursuant to Titles 5 V.I.C. 1261, 28 V.I.C § 281, *et. seq.*, the *Restatements, Second, of Property and Restitution*.
3. Defendant/Counterclaimant is, and was at all times pertinent to this action, a resident of the State of Maryland.
4. Plaintiff is, and was at all times pertinent to this action, a resident of the Territory of the Virgin Islands and later the State of Maryland.
5. By Quitclaim Deed from *Quitclaim Deed*, dated March 6, 2006, recorded at Office of the Recorder of Deed, OLG, P.C. 1025 pg. 126 No. 1774, Elsa Goodman and Carole C. Chestnut, acquired all rights and title as *joint tenants with rights of survivorship* to of a certain improved real property described and situated in St. Croix, United States, Virgin Islands, as,
Plot # 190 Estate Mary's Fancy, Queen's Quarter, St. Croix, consisting of .524 acre, more or less, as more fully shown on PWD Drawing No. 2555, dated February 27, 1969.

A copy of said quitclaim deed marked **Exhibit "1"**, attached to the counterclaim, is incorporated herein by reference.

6. Since on or about January 2007, without the knowledge or informed consent of Defendant/Counterclaimant, Plaintiff has leased the jointly owned property, towit, Plot # 190 Estate Mary's Fancy to unknown third parties and continue do so to this day.
7. Since, on or about January 2007, Plaintiff has collected the rental income from the said jointly owned property and failed, refused and/or neglected to provide Defendant/Counterclaimant with an accounting of the net rental income, after expenses annually.
8. Defendant/Counterclaimant is, therefore, entitle to an accounting and restitution of her legal and/or equitable share of the net rental income, after expenses, as of January 2007.

WHEREFORE, *Defendant/Counterclaimant* prays for judgment against Plaintiff as follows:

- (a) An adjudication that the March 6, 2006 conveyance to Plot 190, Estate Mary's Fancy to Elsa Goodman and Carole C. Chestnut, as joint tenants with rights of survivorship;
- (b) For the *appointment of a receiver* and the escrowing of all future rentals collected from the demised premises until final adjudication of this matter;
- (c) For an *accounting* by Plaintiff, as of January 2007;
- (d) That Defendant/Counterclaimant be paid an amount equal to her share of the rents and profits found by said accounting to be due her as of January 2007;
- (e) For indemnification for cost and attorney's fees in accordance with *Title 5 V.I.C. §541, as amended*;
- (f) Such other and further relief as is deemed just and proper by this Court.

Dated: This 28th January 2009

JURY TRIAL DEMAND: DEFENDANT DEMAND A TRIAL BY JURY ON ALL TRIAL ISSUES IN ACCORDANCE WITH LRCi 38.1

MARK L. MILLIGAN, P.C



MARK L. MILLIGAN, ESQ.

Attorney for *Defendant/Counterclaimant*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY pursuant to Rule 5(b) and (d), Federal Rule of Civil Procedure, a true copy of the foregoing ANSWER/COUNTERCLAIM was mailed postage prepaid to:

Hera S. Walker-Bradley, Esq.,
Hamm & Barry
5030 Anchor Way
Christiansted, St. Croix
US Virgin Islands 00820

this 28th January 2009

EXHIBIT "1"

JA - 305

Atty Harmin
26168
3598617

601,605

QUIT CLAIM DEED

QUIT CLAIM DEED made this 6th day of March, 2006, by and between **ELSA GOODMAN**, Trustee of the Trust Agreement for the Elsa Goodman Revocable Trust dated February 2, 1998, of P.O. Box 7822, Sunny Isle, VI 00823 (hereinafter referred to as "GRANTOR") and **ELSA GOODMAN and CAROLE C. CHESTNUT**, of P.O. Box 7822, Sunny Isle, VI 00823 (hereinafter referred to as "GRANTEES");

NOW, THEREFORE, WITNESSETH, that in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration to it in hand paid, receipt of which is hereby acknowledged, GRANTOR does hereby grant, sell, and convey unto GRANTEES all of GRANTOR'S right, title and interest in and to the following-described real property ("Property") situate in St. Croix, U.S. Virgin Islands:

Plot No. 190 of Estate Mary's Fancy, Queen's Quarter, St. Croix, U.S. Virgin Islands, consisting of 0.524 U.S. acre, more or less, as shown on O.L.G. Drawing No. 2555, dated February 27, 1969;

TOGETHER WITH all the buildings, improvement, tenements, hereditaments and appurtenances thereunto belonging;

TO HAVE AND TO HOLD, the said described premises unto GRANTEES, as joint tenants with right of survivorship, their heirs, personal representatives and assigns in fee simple forever.

IN WITNESS WHEREOF, this deed has been duly executed as of the day and year first above written.

WITNESS:

Catherine M. Wayne
Juliet J. Hatley

Elsa Goodman
Elsa Goodman, as Trustee of the Trust Agreement for the Elsa Goodman Revocable Trust dated February 2, 1998

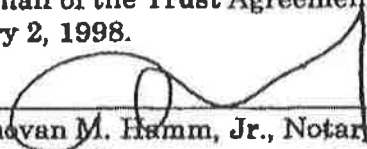
QUIT CLAIM DEED

ELSA GOODMAN to ELSA GOODMAN and CAROLE C. CHESTNUT

Page 2

TERRITORY OF THE VIRGIN ISLANDS
JUDICIAL DIVISION OF ST. CROIX


The foregoing instrument was acknowledged before me this 6th day of March, 2006, by Elsa Goodman, trustee, on behalf of the Trust Agreement for the Elsa Goodman Revocable Trust dated February 2, 1998.



Donovan M. Hamm, Jr., Notary Public
LNP 003-02
My commission expires: 10/16/05

CERTIFICATE OF VALUE

It is hereby certified that the value of the property described in the foregoing instrument for recording and transfer tax purposes does not exceed \$150,000.00. This deed is exempt from transfer taxes pursuant to 33 V.I.C. §128(a)(8) as an intra-family transfer. For transfer stamp tax purposes only, the assessed value of the subject property is \$234,027.00 (per the 2004 real property tax bill)



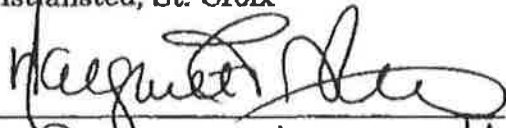
Donovan M. Hamm, Jr.

CERTIFICATE OF THE PUBLIC SURVEYOR

IT IS HEREBY CERTIFIED that the description of the property described in the foregoing instrument has not undergone any change in regard to boundary and area according to the records of the Office of the Public Surveyor.

Office of the Public Surveyor
Christiansted, St. Croix

By:


for: Bernadette C. Williams
Assistant Tax Assessor

DATED: APR 12 2006

FEE: 20.00

FEE \$ 246.00
FEE \$ 2.00
FEE \$ 2.50

Wheat
Recorder

06001774

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OF DEEDS

FILED

February 28, 2022 08:51 AM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFFS' BRIEF ON CERTAIN ISSUES RAISED BY DEFENDANTS' RULE 50(A)
MOTION**

Defendants raised the following issues in their V.I.R. Civ. P. 50(a) motion:

- (1) Counts 7, 8, and 9 are barred because of gist of the action.
- (2) Because Defendants Warren Mosler and Chris Hanley are members of Defendant Chrismos Cane Bay, LLC, Plaintiffs can only sue the LLC even for defamation; and
- (3) Defendants are not liable for defamation because Plaintiffs asserted themselves into the controversy such that they are public figures.

First, these issues appear nowhere in the Joint Final Pretrial Order and are therefore waived. Second, gist of the action is an affirmative defense that has never been asserted by the Defendants in their Answer or Amended Answer and is separately waived. Third, Mosler and Hanley can be held liable for any torts they personally commit. Fourth, the deadline for filing dispositive motions was May 15, 2020, and no such motions were filed.

And, finally, whether Plaintiffs are "public figures" is an issue on which Defendants bear the

burden of proof.

I. Defendants waived all issues not preserved in the Joint Final Pretrial Order.

Defendants identified the following in "**DEFENDANTS WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY'S STATEMENT OF LEGAL ISSUES PRESENTED:**"

Count 5-Breach of an agreement to enter into a lease- The Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 6-The plaintiffs claim the Chrismos parties defamed them- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort.

Count 7- Fraud related to the alleged failure to give the plaintiffs a lease- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 8- Misrepresentation related to the alleged failure to give the plaintiffs lease- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 9-Reckless infliction of emotional distress- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this

tort. In addition, only one plaintiff, Victoria Vooyo, submitted any evidence of any medical treatment, which was one visit to a dermatologist for acne.

Count 10-Violation of good faith and fair dealing- the Plaintiffs have failed to provide any evidence that would satisfy the elements of this tort. In addition, when Chrismos bought the property and became the landlord for the tenant, there was a month to month tenancy in place. Joe Gerace stated under oath in his deposition that the entity operating the premises was Barabus, Inc., who is not even a party to this litigation, so this Count fails as a matter of law, as the Plaintiffs were not the tenants.

Count 11-Claim for punitive damages against the Chrismos parties- Separate counts for punitive damages are barred, so this Count must be dismissed. Moreover, none of the Chrismos Parties ever engaged in any conduct that would warrant the imposition of punitive damages.

(Joint Final Pre-trial Order.)

The Third Circuit and other circuits have observed, “[i]t is, of course, established law that a pretrial order when entered limits the issues for trial and in substance takes the place of pleadings covered by the pretrial order.” See *Basista v. Weir*, 340 F.2d 74, 85 (3d Cir. 1965); see also *Petree v. Victor Fluid Power, Inc.*, 831 F.2d 1191, 1194 (3d Cir. 1987) (the pretrial order supersedes the pleadings). See also *Dinunno v. Lucky Fin Water Sports, LLC*, 837 F. Supp. 2d 419, 423 & n8 (D.N.J. 2011) (collecting cases) and citing: *United States v. 84,615 in United States Currency*, 379 F.3d 496, 499 (8th Cir. 2004) (“The Pretrial Order supersedes all previous pleadings and controls the subsequent course of action unless modified by a subsequent order. . . . A party may be barred from advancing theories that are not identified in the Pretrial Order.”) (internal citations and quotations omitted); *Rios v. Bigler*, 67 F.3d 1543, 1549 (10th Cir. 1995) (“The district court has discretion to exclude from trial issues and claims not set forth in the pretrial order.”); *Gorlikowski v. Tolbert*, 52 F.3d 1439, 1443-44 (7th Cir. 1995) (“Because the parties rely on the pretrial conference to

inform them precisely what is in controversy, the pretrial order is treated as superseding the pleadings and establishes the issues to be considered at trial.”) (internal citations and quotations omitted); *Canal Ins. Co. v. First Gen. Ins. Co.*, 889 F.2d 604, 609 (5th Cir. 1989) (“Pretrial orders control the course of actions and ‘shall be modified only to prevent manifest injustice.’ FED.R.CIV.P. 16(e). This court consistently enforces this rule. If a claim is omitted from the order, it is waived.”); *Pierce County Hotel Employees & Restaurant Employees Health Trust v. Elks Lodge, B.P.O.E. No. 1450*, 827 F.2d 1324, 1329 (9th Cir. 1987) (“Issues not preserved in the pretrial order are eliminated from the action.”); *Correa v. Hospital San Francisco*, 69 F.3d 1184, 1195 (1st Cir. 1995); *Morris v. Homco International, Inc.*, 853 F.2d 337, 343 (5th Cir. 1988); *U.S. v. Lummi Indian Tribe*, 841 F.2d 317, 320-321 (9th Cir. 1988); *Garcia-Guzman v. Ramirez de Arrellano de Villoldo*, 245 F.Supp. 2d 388, 392 (D.P.R. 2003)(pretrial order “narrows the scope of the trial. ...’orders entered following Rule 16 conferences are not lightly disturbed. Once entered, a Rule 16 order “controls the subsequent course of action.””)(internal citations and quotations omitted); Matters not preserved in the pretrial order are eliminated from the action. *Hullman v. Board of Trustees of Pratt Community College*, 950 F.2d 665, 668 (10th Cir. 1991); and *Ramirez Pomaes v. Becton Dickinson & Co., S.A.*, 839 F.2d 1, 3, (1st Cir. 1988).

The pretrial order is intended to shape the contours of the ensuing trial ...” by setting forth the subsequent course of action and narrowing the factual and legal theories and witnesses upon which the parties will be relying on at trial” *Correa*, 69 F.3d at 1195; and *Lummi Indian Tribe*, 841 F.2d at 320-321.

II. Waiver of Gist of the Action

“[T]he gist of the action doctrine precludes tort suits for the mere breach of contractual duties unless the plaintiff can point to separate or independent events giving rise to the tort” *Woodson v. Akal*, No. ST-16-CV-399, 2017 WL 3587370, at *3 (V.I. Super. Ct. Aug. 17, 2017). Nowhere in Defendants’ Answers or Amended Answers do they identify gist of the action as an affirmative defense. Additionally, defendants have never defended this matter on the ground of gist of the action and that defense appears nowhere in the Joint Final Pretrial Order and is waived. See, cases cited in Section I. The V.I. Supreme Court has characterized the gist of the action doctrine as an affirmative defense. See *Chestnut v. Goodman*, 59 V.I. 467, 478 n. 3 (2013) (“Additionally, because we hold that the Superior Court erred in denying Chestnut’s motion for judgment as a matter of law, **we do not reach Chestnut’s arguments concerning the affirmative defenses of the gist of the action doctrine** or the statute of limitations.”) (emphasis added). So have other jurisdictions. See, *Weed v. Ally Financial Inc.*, No. 11-2808, 2012 WL 2469544 (D. Penn. Jun. 28, 2012) (striking defendant’s affirmative defense of the gist of the action doctrine); *Fleming Steel Co., v. Jacobs Engineering Group, Inc.*, 373 F.Supp. 567, 598 (D. Penn. 2019) (providing that a defendant is not limited to selecting one of the two of affirmative defenses of gist of the action doctrine or the economic loss doctrine); *Environmental Tectonics Corp. v. Walt Disney World Co.*, No. 05-6412, 2008 WL 821065, *15 (D. Penn. Mar. 26, 2008) (declining to address defendants affirmative defense of the gist of the action doctrine); *FleetBoston Financial Corp. v. Advanta Corp.*, 2003 WL 240885, at *11 (Del.Ch.,2003)(“For this reason, the misrepresentation was not rooted solely

in the contract thereby rendering the gist of the action contractual.⁴⁸ Advanta's two doctrinal affirmative defenses are, therefore, rejected.”)(citing references omitted).

V.I.R. Civ. P. 8 (b) provides the rules that govern a party's response to a complaint and provides that “In responding to a complaint, counterclaim, crossclaim or third-party complaint, a party's answer must respond separately to the corresponding paragraphs of the pleading being answered” and “[a] denial must fairly respond to the substance of the allegation.” V.I.R. Civ. P. 8 (b). Rule 8 goes on to provide that in *addition* to the standards governing denials under Rule 8(b), “in response to a pleading, a party must affirmative state any avoidance or affirmative defense.” V.I.R. Civ. P. 8 (c).

What results from the failure to adhere to the requirement of V.I.R. Civ. P. 8 to affirmatively state any affirmative defense at the first opportunity, has been emphasized many times by this Court and the Virgin Islands Supreme Court: the unpled affirmative defenses are waived. *See Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 536 (V.I. 2015)(affirmative defenses must be raised at the earliest stage or else it is waived); *Edward v. GEC, LLC*, 67 V.I. 745, 757 (V.I. Aug. 1, 2017)(“Rather, this Court has emphasized that affirmative defenses are all those which must be proven by the defendant, and that affirmative defenses are waived unless pled in an answer.”); *Bryan v. Fawkes*, 61 V.I. 201, 221 (V.I. Aug. 28, 2014)(“[C]ourts have consistently held that an intervening defendant may not assert an affirmative defense that has been waived by the original defendant.”) *Coastal Air Transp. v. Royer*, 64 V.I. 645, 657–58 (V.I. June 3, 2016)(“Coastal Air failed to raise the affirmative defense of the Warsaw Convention in its first responsive pleading—and this alone is sufficient to constitute a waiver.”); *Espersen v. Sugar Bay Club & Resort*

Corp., 2018 WL 6177341, at *3 (V.I. Super. Nov. 21, 2018)(“Accordingly, a court ‘must not let the merits of the affirmative defense sway its decision’ when a defendant attempts to invoke the affirmative defense at the eleventh hour, without excuse and without adequate notice to the plaintiff” and court denied Defendants’ motion to amend answer to assert affirmative defenses years after litigation commenced”); *Martinez v. Hess Oil Virgin Islands Corp.*, 2018 WL 6504129, at *14 (V.I. Super. Dec. 7, 2018)(“Affirmative defenses must be raised at the earliest opportunity or they are deemed waived or forfeited” and precluding defendant from asserting statute of limitations when never preserved in an answer or pre-answer motion.).

III. Public Figure Waiver and Burden of Proof

Defendants have never alleged or defended against Plaintiffs ‘defamation claim asserting that Plaintiffs are public figures. Indeed, whether Plaintiffs are public figures is not identified in the Joint Final Pretrial Order as an issue for trial and therefore it is waived. See, cases cited in Section I. There is no exception to this rule for any particular issues and the general rule that issues not raised in the Pretrial Order are waived also applies to issues related to defamation. See *Ojeda-Rodriguez v. Zayas*, 666 F.Supp.2d 240, 250–51 (D.P.R. 2009); and *Marshall v. Planz*, 145 F.Supp.2d 1258, 1281-282 (M.D.Ala. 2001).

Even if not waived, because 5 V.I.C. §740 (5) mandates that a party cannot prove a negative, Plaintiffs are not required to prove that they are not public figures, and it is Defendants’ burden of proof as to a public figure issue. *Rennie v. Hess Oil Virgin Islands*

Corp., 62 V.I. 529, 544 (2015) (“As we have previously emphasized, ‘[u]nder Virgin Islands law, [a party] is not required to prove a negative.’”); 5 V.I.C. §740 (“In civil cases the affirmative of the issue shall be proved”).

There is no evidence that Plaintiffs are public figures for all purposes of limited public figures. The U.S. Supreme Court in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), defined public figures as “those who occupy positions of such persuasive power and influence that they are deemed public figures for all purposes” or “those who have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.” *Id.*

A public figure for all purposes is a person “of such persuasive power and influence,” *id.*, and of “such pervasive fame or notoriety,” *id.* at 351, 94 S.Ct. at 3013, that he has become a public figure in all situations. The United States Supreme Court noted that “(a)bsent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life.” *Id.* at 352, 94 S.Ct. at 3013. “The general public figure is a rare creature.” *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1292 (D.C. Cir. 1980) (“From analyzing *Gertz* and more recent defamation cases, we believe that a person can be a general public figure only if he is a “celebrity” his name a “household word” whose ideas and actions the public in fact follows with great interest.”)

A limited-purpose public figure is “an individual (who) voluntarily injects himself or is drawn into a particular public controversy and therefore becomes a public figure for a limited range of issues.” *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1292

(D.C. Cir. 1980). Under this category, “a person has become a public figure for limited purposes if he is attempting to have, or realistically can be expected to have, a *major impact on the resolution of a specific public dispute* that has foreseeable and substantial ramifications for persons beyond its immediate participants.” *Id.*

Even if Plaintiffs were public figures, which they are not, Defendants are not immune from liability such that they are entitled to judgment as a matter of law. The only difference a classification of public figure makes is that, as explained by the Virgin Islands Supreme Court, *Joseph v. Daily News Publ'g Co., Inc.*, 57 V.I. 566, 590 (2012), Plaintiffs must prove actual malice by clear and convincing evidence. “[A]n increased evidentiary burden applies only to the element of “actual malice” in the context of a defamation claim against a public official regarding matters of public concern; “proof by more than a preponderance of the evidence has not been specifically required for any other factual issue in a defamation action.”

IV. Hanley and Mosler’s Personal Liability

Defendants have never alleged or defended against Plaintiffs’ claim asserting that Hanley and Mosler are not personally liable. Indeed, whether Hanley and Mosler have personal liability is not identified in the Joint Final Pretrial Order as an issue for trial and therefore it is waived. See cases cited in Section I. Even if not waived, the general rule of officer, director, and shareholder liability is that an officer or director of a corporation who takes part in the commission of a tort by the corporation is personally liable for resulting injuries. See *United States v. USX Corp.*, 68 F.3d 811, 821 (3d Cir. 1995); *Al-Khazraji v. St. Francis College*, 784 F.2d 505, 518 (3d Cir. 1986) (citing *Zubik v. Zubik*, 384 F.2d 267,

275-76 (3d Cir. 1967) and the RESTATEMENT (SECOND) OF AGENCY § 343 (1957)), *aff'd* by *St. Francis College v. Al-Khazraji*, 481 U.S. 604 (1987); *Airlines Reporting Corp. v. Belfon*, No. 03-146, 2010 U.S. Dist. LEXIS 97349, at *157-59 (D.V.I. Sep. 15, 2010) (“as the Court now reiterates for the third time, the Virgin Islands has expressly adopted the theory that ‘a corporate agent may be personally liable in tort if, although acting on behalf of a corporate entity, he ‘directs’ or ‘participates in’ the tortious act.’”).

As the District noted in *Bethea v. Merchants Commercial Bank*, 2014 WL 4413045, at *17 (D.Virgin Islands, 2014)., “[T]he Virgin Islands has expressly adopted the theory that ‘a corporate agent may be personally liable in tort if, although acting on behalf of a corporate entity, he directs or participates in the tortious act.’ ” *Airlines Reporting Corp. v. Belfon*, Civ. Action No.2003/146, 2010 WL 3664065, at *39 (Sept. 16, 2010) (internal citation omitted). In order to prove liability, a plaintiff must prove that each defendant director or officer was “an active and knowing participant in the alleged tortious activity.” *Id.* (quoting *McCracken v. Daimler Chrysler Motors Co. LLC*, Civ. Action No. 07–2202, 2008 WL 920344 (E.D.Pa. Apr. 3, 2008)); *See Herzog v. Estate Davis Bay Resorts, LLC*, Civ. No. 10–CV–00029, 2010 WL 4323076, at *5 (D.Vi. Nov.2, 2010)(“Although Baird is correct that, under Virgin Islands law, he would not incur liability solely by reason of acting as a member of Pirate Duck, the law does not insulate him against any tortious conduct in which he personally participated on behalf of the company.”; *Addie v. Kjaer*, Civ. No.2004–35, 2009 WL 1140006, at *3 (D.Vi. Apr.28, 2009) (under Virgin Islands law, “a corporate agent may be personally liable in tort if, although acting on behalf of a corporate entity, he directs or participates in the tortious act” (citing Restatement (Third) Agency §

7.01)); *Airlines Reporting Corp. v. Belfon*, Civ. A. No.2003/146, 2010 WL 3664065 (D.Vi. Sept. 16, 2010) (distinguishing between mere nonfeasance and active participation in tortious activity by a corporate officer); *Stotesbury v. Pirate Duck Adventure, LLC*, 2011 WL 3843927, at *6 (D.Virgin Islands,2011) (denying dismissal of plaintiff's claims for gross negligence against the corporate officer individually where the corporate officer actively participated in the negligent activity).

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FILED

March 01, 2022 08:44 AM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

RESPONSE TO DEFENDANTS' BRIEF AND SUPPLEMENT TO BRIEF

A. Defendants cannot raise a waived affirmative defense in a Rule 12(b)(6) motion at trial.

Defendants admit that gist of the action is an affirmative defense but proceed to claim that "failure to state a claim" preserved this defense. This is false and directly contradicts the explicit language of V.I. R. Civ. P. 8 (c) and *Rennie v. Hess Oil Virgin Islands Corp.*, 62 V.I. 529 (2015). Permitting "failure to state a claim" in an Answer to preserve an affirmative defense would render V.I.R.Civ. P 8 (c) superfluous because a defendant would not be required to identify **any** affirmative defense because all affirmative defenses, if proven by the defendant, result in the plaintiff failing to state a claim. Rule 12(b)(6)'s "failure to state a claim" is a procedural vehicle for a defendant to move to dismiss a plaintiff's case based on an affirmative defense. It is not a substitute for the pleading requirements of Rule 8(c). Defendants' attempt to rely on pleadings in *Pollara* and *Goodman* is of no aid to Defendants and pre-date the *Rennie* decision. Defendants' citation

to a 2016 “Virgin Islands Supreme Court” decision in Pollara is incorrect. That was a Virgin Islands Superior Court decision.

Rule 8 explicitly provides that in *addition to* the standards governing denials under Rule 8(b), “in response to a pleading, a party **must affirmatively state** any avoidance or affirmative defense.” V.I.R. Civ. P. 8 (c).¹ Under the federal counterpart of Rule 8, a responsive pleading ‘must affirmatively state any avoidance or affirmative defense, including’ those appearing in a list of eighteen affirmative defenses.” See *Wright & Miller*, 5 Fed. Prac. & Proc. Civ. § 1270 Affirmative Defenses—In General, (3d ed.).

Rule 8(c) and its language regarding “avoidance” is recognized to be “a lineal descendent of the common law plea by way of ‘confession and avoidance,’ which permitted a defendant who was willing to admit that the plaintiff’s declaration demonstrated a prima facie case to then go on and allege additional new material that would defeat the plaintiff’s otherwise valid cause of action.” See 5 Fed. Prac. & Proc. Civ. § 1270. *Accord Williams v. Bellot*, No. SX-17-RV-001, 2019 WL 626177, at *4 (V.I. Super. Ct. Feb. 11, 2019)(quoting *Gibbins v. Berlin*, 162 S.W.3d 335, 340-341 (Tex. Ct. App. 2005)(recognizing that self-defense is a plea in confession and avoidance in civil law and, “consequently, an

¹ Fed.R.Civ.P. 8(c)’s language is identical to V.I. R.Civ.P. 8(c) and provides in relevant part that, “In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including: . . .” The V.I. Supreme Court has recognized that the Virgin Islands, along with many other jurisdictions “‘have adopted affirmative defense pleading rules that echo FED. R. CIV. P. 8(c)...’”, See *Powell v. FAM Protective Servs., Inc.*, 72 V.I. 1029, 2020 WL 1891166, *4 (V.I. April 16, 2020)(quoting *Whyte v. Bockino*, 69 V.I. 749, 754 (V.I. 2018)), and that Rule 8(c) of the V.I. Rules of Civil Procedure is “substantively identical in all relevant respects to [its] counterpart[t] in the Federal Rules.” *Id.* For these reasons, the V.I. Supreme Court have found it appropriate when interpreting issues arising under V.I. R.Civ.P. 8(c) - including waiver of affirmative defenses thereunder - to look to the federal courts’ “wealth of highly persuasive decisions” interpreting Fed.R.Civ.P. 8(c), and treatises such as *Wright & Miller’s Federal Practice and Procedure’s* interpretation of Fed.R.Civ.P. 8(c), for guidance.

affirmative defense, that ‘is considered as acknowledging the *existence* of prima facie liability but asserting a proposition which, if established, **avoids** such liability.’” (emphasis added and internal quotation marks and citation omitted)); and *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329–331 n.9 (V.I. 2007)(recognizing that the affirmative defenses under Fed.R.Civ.P. 8(c) derive from the common law plea by way of ‘confession and avoidance).

The list of the eighteen affirmative defenses explicitly set forth in V.I.R.Civ.P. 8(c)(1) is not intended to be an exhaustive list of affirmative defenses which must be asserted. See *Jones v. Bock*, 549 U.S. 199, 212 (2007)(Rule 8(c) identifies a nonexhaustive list of affirmative defenses that must be pleaded in response.); *Brennan v. Roman Cath. Diocese of Syracuse, N.Y.*, 965 F. Supp. 2d 234, 246 n. 7 (N.D.N.Y. 2013)(same); and *Wright & Miller*, 5 Fed. Prac. & Proc. Civ. § 1271 Affirmative Defenses—Defenses Not Mentioned in Rule 8(c), (3d ed.) (“The draftsmen of the original federal rules recognized that certain defenses other than those enumerated in Rule 8(c) should be set forth affirmatively by the defendant in order to provide the plaintiff and the district court with sufficient notice that the matter has been put in issue.”).

The language of Rule 8(c) “provides that any ‘avoidance or affirmative defense’ must be affirmatively asserted in the responsive pleading.” See 5 Fed. Prac. & Proc. Civ. § 1271 (quoting Fed.R.Civ.P. 8(c)(1)). A specific example of an avoidance or affirmative defense which a defendant is required to affirmatively assert in a responsive pleading are defenses under state or territorial law, such as “the existence of something in the nature of a limitation or bar to the action in state law...”. See 5 Fed. Prac. & Proc. Civ. § 1271, which

a defendant understands could enable it to avoid liability.

1. The defense has been waived.

Defendants' argument that V.I.R. Civ. P. 12(b)(6) permits them to raise the affirmative defense of gist of the action at trial is wrong and the V.I. Supreme Court in *Rennie v. Hess Oil Virgin Islands Corp.*, 62 V.I. 529, 536 (2015) specifically held to the contrary and an affirmative defense not plead at the first opportunity is waived and cannot be resurrected at trial under the guise of a Rule 12(b)(6) motion. In *Rennie*, the Virgin Islands Supreme Court rejected the legal proposition that a defendant can raise a waived affirmative defense in a Rule 12(b)(6) motion determining that:

However, HOVIC ignores that while some courts have, in the interests of judicial economy, permitted a defendant to raise a statute of limitations defense as part of a motion to dismiss for failure to state a claim, it is well established that the statute of limitations is an affirmative defense that must be specifically pleaded at the first opportunity or else is waived.

Rennie v. Hess Oil Virgin Islands Corp., 62 V.I. 529, 536 (2015). The Court went on to hold that:

To hold otherwise would, in effect, permit HOVIC to resurrect an affirmative defense that it has already waived. *Bryan v. Fawkes (Bryan I)*, S. Ct. Civ. No. 2014-0046, — V.I. —, 2014 V.I. Supreme LEXIS 42, at *28 & n.12, 2014 WL 4244046 (V.I. Aug. 28, 2014).

Rennie v. Hess Oil Virgin Islands Corp., 62 V.I. 529, 538 (2015).

2. Defendants never identified gist of the action as an issue for trial.

Plaintiffs cited several cases that hold that an issue not identified for trial in the Joint Final Pretrial Order is waived. See Section I of Plaintiffs' Brief. Defendants never identified gist of the action as an issue for trial and it is waived.

3. The Virgin Islands Supreme Court characterized gist of the action as an affirmative defense and Plaintiffs miscited nothing.

In a last-ditch effort to avoid waiver, Defendants claim that Plaintiffs miscited *Chestnut v. Goodman*, 59 V.I. 467, 478 n. 3 (2013). They did not Plaintiffs' Brief stated:

The V.I. Supreme Court has characterized the gist of the action doctrine as an affirmative defense. See *Chestnut v. Goodman*, 59 V.I. 467, 478 n. 3 (2013) ("Additionally, because we hold that the Superior Court erred in denying Chestnut's motion for judgment as a matter of law, **we do not reach Chestnut's arguments concerning the affirmative defenses of the gist of the action doctrine** or the statute of limitations.") (emphasis added).

Plaintiffs' Brief at p. 5. This was a direct quote from Footnote 3 of *Chestnut v. Goldman*. Plaintiffs also provided citations to two other jurisdictions within the Third Circuit—Pennsylvania and Delaware—where gist of the action has been held to be an affirmative defense. See, *Weed v. Ally Financial Inc.*, No. 11-2808, 2012 WL 2469544 (D. Penn. Jun. 28, 2012) (striking defendant's affirmative defense of the gist of the action doctrine); *Fleming Steel Co., v. Jacobs Engineering Group, Inc.*, 373 F.Supp. 567, 598 (D. Penn. 2019) (providing that a defendant is not limited to selecting one of the two of affirmative defenses of gist of the action doctrine or the economic loss doctrine); *Environmental Tectonics Corp. v. Walt Disney World Co.*, No. 05-6412, 2008 WL 821065, *15 (D. Penn. Mar. 26, 2008) (declining to address defendants affirmative defense of the gist of the action doctrine); *FleetBoston Financial Corp. v. Advanta Corp.*, 2003 WL 240885, at *11 (Del.Ch.,2003)("For this reason, the misrepresentation was not rooted solely in the contract thereby rendering the gist of the action contractual. Advanta's two doctrinal affirmative defenses are, therefore, rejected.")(citing references omitted).

Defendants filed their Notice of Filing Supplement to Defendants' Trial Brief which, without citation to any legal authority or argument, attached the Answer to the Complaint in *Goodman v. Chestnut*, SX-08-CV-401. Notably absent from the Answer are the affirmative defenses of statute of limitations and gist of the action. It can only be presumed from this supplement that Defendants believe that they have obtained a "gotcha" moment based upon the defendant in *Goodman* failing to identify the gist of the action doctrine as an affirmative defense. Defendants' attempt at a "gotcha" only reinforces Plaintiffs' point.

As can be seen from Defendants' filing, the Defendant in *Goodman* failed to plead gist of the action or statute of limitations as affirmative defenses. The plaintiff argued on appeal that appellate review of the gist of the action doctrine defense and the statute of limitations defense were both precluded because defendant waived these affirmative defenses them by failing to assert them in the Superior Court below. (See Appellees' Brief, **Exhibit 1** and Appellant's Reply Brief, **Exhibit 2**.) While the Supreme Court did not have to reach the merits of the issue because reversal was warranted on another ground, in doing so, the V.I. Supreme Court specifically stated, "we do not reach [plaintiff's] arguments concerning the **affirmative defenses of the gist of the action doctrine or the statute of limitations.**" *Goodman v. Chestnut*, 59 V.I. 467, 478 n. 3 (2013). The Virgin Islands Supreme Court clearly categorized the statute of limitations **and** the gist of the action as affirmative defenses thereby placing them on equal footing. It is undisputed that statute of limitations is an affirmative defense. *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 536 (2015) ("[I]t is well established that the statute of limitations is an affirmative defense that must be specifically pleaded at the first opportunity or else is waived."); *Gov't of V.I. v. United*

Industrial, 64 V.I. 312, 323 (2016) (“[I]t is equally well-established that the statute of limitations is an affirmative defense...”); e.g. *Ottley v. Estate of Bell*, 61 V.I. 480 (2014); *Allen v. Hovensa, L.L.C.*, 59 V.I. 430 (2013); *United Corp. v. Hamed*, 64 V.I. 297 (2016); *Edward v. GEC, LLC*, 67 V.I. 745 (2017); *In re Guardianship of Smith*, 54 V.I. 517 (2010); *Willis v. People*, 71 V.I. 789 (2019).

B. The limitations on suits against members of an LLC are related to suits “solely because” they are members.

Defendants’ citation to 13 V.I.C. §1303 is of no consequence. The statute specifically provides that “A member or manager is not personally liable for a debt, obligation, or liability of the company **solely by reason of being or acting as a member or manager**”. This, however, does not shield the member from torts he personally committed. For example, if Hanley and Mosler had punched Plaintiffs in the face instead of defamed Plaintiffs, the idea that they would not be personally liable for assault is absurd. As the District Court noted in *Bethea v. Merchants Commercial Bank*, 2014 WL 4413045, at *17 (D.Virgin Islands, 2014), “[T]he Virgin Islands has expressly adopted the theory that ‘a corporate agent may be personally liable in tort if, although acting on behalf of a corporate entity, he directs or participates in the tortious act.’ ” *Airlines Reporting Corp. v. Belfon*, Civ. Action No.2003/146, 2010 WL 3664065, at *39 (Sept. 16, 2010) (internal citation omitted). In order to prove liability, a plaintiff must prove that each defendant director or officer was “an active and knowing participant in the alleged tortious activity.” *Id.* (quoting *McCracken v. Daimler Chrysler Motors Co. LLC*, Civ. Action No. 07–2202, 2008 WL 920344 (E.D.Pa. Apr. 3, 2008)); See *Herzog v. Estate Davis Bay Resorts, LLC*, Civ. No. 10–CV–00029, 2010 WL

4323076, at *5 (D.Vi. Nov.2, 2010)(“Although Baird is correct that, under Virgin Islands law, he would not incur liability solely by reason of acting as a member of Pirate Duck, the law does not insulate him against any tortious conduct in which he personally participated on behalf of the company.”; *Addie v. Kjaer*, Civ. No.2004–35, 2009 WL 1140006, at *3 (D.Vi. Apr.28, 2009) (under Virgin Islands law, “a corporate agent may be personally liable in tort if, although acting on behalf of a corporate entity, he directs or participates in the tortious act” (citing Restatement (Third) Agency § 7.01)); *Airlines Reporting Corp. v. Belfon*, Civ. A. No.2003/146, 2010 WL 3664065 (D.Vi. Sept.16, 2010) (distinguishing between mere nonfeasance and active participation in tortious activity by a corporate officer); *Stotesbury v. Pirate Duck Adventure, LLC*, 2011 WL 3843927, at *6 (D.Virgin Islands,2011) (denying dismissal of plaintiff’s claims for gross negligence against the corporate officer individually where the corporate officer actively participated in the negligent activity).

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FILED

March 01, 2022 08:44 AM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

Case No. 2011-0082

THE SUPREME COURT OF THE VIRGIN ISLANDS

CAROLE CHESTNUT,

Appellant/Defendant,

v.

ELSA GOODMAN,

Appellee/Plaintiff.

**Superior Court Case
Case No. SX-08-CV-401**

**Appealed from
The Virgin Islands Superior Court, Division of St. Croix**

**BRIEF OF THE APPELLEE
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F.R.A.P. Rule 3(c)	14

BRIEF OF THE APPELLEE

COMES NOW the Appellee, Elsa Goodman, by and through counsel, The Hamm Law Firm, and files herewith her Brief of the Appellee before this honorable Court.

STATEMENT OF JURISDICTION

The Superior Court of the Virgin Islands (Division of St. Croix) had subject matter jurisdiction over this case pursuant to 4 V.I.C. §76, as this case involved an action seeking reformation of the deed to title for a real property owned by the Appellee and located on St. Croix.

After the Appellee's presentation of her case-in-chief, the Appellant made a motion for a judgment as a matter of law in favor of the Appellant, pursuant to Fed. R. Civ. P.50 (a). The trial court granted the motion as to the count alleging breach of contract but denied the motion as to the remaining three counts. The case was submitted to the jury and, after deliberation, on April 7, 2011, the jury entered a verdict in favor of the Appellee.

On April 13, 2011, the Appellant filed a Renewed Preverdict Motion for Judgment, pursuant to Fed. R. Civ. P.50 (b). On August 31, 2011, Judge of the Superior Court Harold W.L. Willocks issued an order denying the Appellant's Motion for Renewed Preverdict Motion for Judgment (the "Order"). The Order was entered on September 13, 2011.

In addition, on August 31, 2011, Judge of the Superior Court Harold W.L. Willocks issued a Judgment and Order (the "Judgment and Order") granting the Appellee's Motion for Entry of Judgment and Release of Security and ordering that the Appellant convey her right, title and interest in the St. Croix property to the Appellee, free from all liens, mortgages and other encumbrances within fifteen (15) days of the entry of the Judgment and Order. The Judgment and Order was entered on September 13, 2011.

A notice of appeal was filed by Appellant on September 16, 2011 (the "Notice of Appeal"), appealing "...the final Order and Judgment Order entered by the Superior Court herein on September 1, 2011." The Appellee assumes, for the purposes of responding to this appeal, that the Appellant intended to appeal (1) the Order and (2) the Judgment and Order, both of which were entered on September 13, 2011. Therefore, this Court has jurisdiction of this appeal pursuant to 4 V.I.C. §32(a).

STATEMENT OF ISSUES PRESENTED

Pursuant to Appellant's Notice of Appeal, the first issue presented on appeal is whether the Superior Court erred in denying the Appellant's Renewed Preverdict Motion for Judgment based upon the Superior Court's findings that: (1) given all the evidence and testimony offered in the matter, the record contained more than a scintilla of evidence from which a jury reasonably could find liability and (2) the Appellant failed to meet its burden of proof to succeed on a motion for judgment notwithstanding verdict. J. App. 258 (Memorandum Opinion).

Pursuant to Appellant's Notice of Appeal, the second issue presented on appeal is whether the Superior Court erred in granting the Appellee's Motion for Entry of Judgment and Release of Security, thereby allowing the jury's verdict on the evidence presented at trial to stand.

The Appellant's Notice of Appeal additionally stated that:

"The principal issues presented on appeal are: (a) whether the record below contains the minimum quantum of evidence from which a jury might reasonable [*sic*] find for the Plaintiff upon the theory of negligent misrepresentation, (b) whether in denying Defendant's preverdict motions, the trial court applied the proper standard of review, and (c) whether the evidence, as a whole, is legally sufficient to sustain the verdict of the jury."

However, in the Appellant's Brief, the issues presented on appeal are identified differently and include the following:

- “1. Whether the trial court erred in denying Appellant's motion for summary judgment on her claim that the March 6, 2006 conveyance of Plot 190 Mary's Fancy was an irrevocable *inter vivos* gift.
2. Whether the trial court erred in denying Appellant's *preverdict motions for direct verdict* on the negligent misrepresentation claim.
3. Whether the *gist of action doctrine* bars the negligent misrepresentation claim.
4. Whether the negligent misrepresentation claim is timed barred.”

Several of the appeal issues raised in Appellant's Brief are inconsistent with the Appellant's Notice of Appeal which appealed only the (1) Order and the (2) Judgment and Order. In addition, the appeal issues identified as issue number three and issue number four in Appellant's Brief were never raised by the Appellant prior to the filing of the Appellant's Brief. Notably, the statement of the issues presented for appeal set forth in Appellant's Brief failed to include a designation by reference to specific pages of the appendix or other specific documentation in the proceedings at which each such issue on appeal was raised, objected to, and ruled upon. *See* V.I.S.C.T. 22(a)(3).

This case or proceeding has not been before the Supreme Court previously and the Appellee is not aware of any other case or proceeding that is in any way related, completed, pending, or about to be presented before the Supreme Court, or any other court, state or Federal.

This Court exercises plenary review of a Superior Court's application of the law and the Superior Court's findings of fact are reviewed for clear error. Therefore, this Court must review the record and determine whether the Superior Court's finding of fact was clearly erroneous and whether the Superior Court improperly applied the law to this case.

STATEMENT OF THE CASE

On August 8, 2008, Appellee Goodman (hereinafter “Goodman”) filed her complaint (hereinafter the “Complaint”) in this matter seeking the return of the title to Plot No. 190, Estate Mary’s Fancy, St. Croix, Virgin Islands (hereinafter the “St. Croix Property”). The Complaint included claims for fraud, breach of contract, negligent misrepresentation and sought reformation of title to the St. Croix Property. J. App. 11-15. On January 28, 2009, Appellant Chestnut (hereinafter “Chestnut”) filed her Answer and Counterclaim seeking a share of any net rental income from the St. Croix Property. J. App. 16-19. In her Answer and Counterclaim, Chestnut did not assert the statute of limitations or the gist of the action doctrine as defenses. J. App. 17.

On December 20, 2010, Goodman filed a Motion for Summary Judgment seeking a judgment, as a matter of law, that Goodman was entitled to the reformation of title to the St. Croix Property. J. App. 28-38. On January 31, 2011, Chestnut filed Defendant’s Opposition to Plaintiff’s Motion for Summary Judgment and Cross Motion for Summary Judgment. J. App. 40-53. Chestnut’s Cross Motion for Summary Judgment sought adjudication, as a matter of law, that Goodman’s March 6, 2006, conveyance of the St. Croix Property to Goodman and Chestnut, as joint tenants with rights of survivorship, was an irrevocable inter vivos gift. J. App. 49. On February 16, 2011, Goodman filed an Opposition to Cross-Motion for Summary Judgment. J. App. 58-62. On February 10, 2011, Goodman filed Plaintiff’s Reply to Defendant’s Opposition to Motion for Summary Judgment. J. App. 54-57.

On March 10, 2011, Superior Court Judge Harold W.L. Willocks issued an order denying Goodman’s Motion for Summary Judgment and denying Chestnut’s Cross Motion for Summary Judgment (hereinafter the “Order Denying Summary Judgment”). J. App. 70. The Memorandum Opinion and Order Denying Summary Judgment were entered on March 11, 2011. J. App. 63.

The trial of this matter commenced on April 6, 2011. J. App. 72. On April 7, 2011, after Goodman's presentation of her case-in-chief, Chestnut made a motion for a judgment in her favor as a matter of law, pursuant to Fed. R. Civ. P.50 (a). J. App. 167-175. The trial court granted Chestnut's motion as to the claim for breach of contract but denied the motion as to the remaining three counts. J. App. 180-181. After Chestnut's presentation of her defense, the case was submitted to the jury. After deliberation, on April 7, 2011, the jury entered a verdict in favor of Goodman. The jury found, by clear and convincing evidence, that Chestnut had negligently misrepresented to Goodman and that such action had induced Goodman to convey a joint interest in the St. Croix Property to herself and Chestnut. J. App. 232. The jury also found, by clear and convincing evidence, that the deed to the St. Croix Property was signed by Goodman as a result of fraud and or negligent misrepresentation and or undue influence, and therefore there should be a reformation of the title to the St. Croix Property. J. App. 232.

On April 13, 2011, Chestnut filed Defendant's Renewed Preverdict Motion for Judgment, pursuant to Fed. R. Civ. P.50 (b). J. App. 234-239. On April 19, 2011, Goodman filed Plaintiff's Opposition to Defendant's Renewed Preverdict Motion for Judgment. J. App. 240-244. On April 26, 2011, Chestnut filed a Reply to Plaintiff's Response in Opposition to Defendant's Renewed Preverdict Motion for Judgment. J. App. 245-253.

On August 31, 2011, Judge of the Superior Court Harold W.L. Willocks issued an order denying Chestnut's Motion for Renewed Preverdict Motion for Judgment (previously defined herein as the "Order"). J. App. 260. The Memorandum Opinion and Order were entered on September 13, 2011. J. App. 259. Judge Willocks found that: (1) given all the evidence and testimony offered in the matter, the record contained more than a scintilla of evidence from which a jury reasonably could find liability and (2) Chestnut had failed to meet her burden of

proof to succeed on a motion for judgment notwithstanding verdict. *Keith v. Truck Stops Corp. of America*, 909 F.2d 743 (1990). J. App. 258.

On April 12, 2011, Goodman filed Plaintiff's Motion for Entry of Judgment and Release of Security. This pleading was not included in Appellant's Joint Appendix. On April 13, 2011, Chestnut filed Defendant's Opposition to Plaintiff's Motion for Judgment and Release of Security for Cost. This pleading was not included in Appellant's Joint Appendix.

On August 31, 2011, Judge of the Superior Court Harold W.L. Willocks issued a Judgment and Order (previously defined herein as the "Judgment and Order") granting Goodman's Motion for Entry of Judgment and Release of Security and ordering that Chestnut convey her right, title and interest in the St. Croix Property to Goodman, free from all liens, mortgages and other encumbrances within fifteen (15) days of the entry of the Judgment and Order. J. App. 261. The Judgment and Order was entered on September 13, 2011. J. App. 259.

Chestnut's Notice of Appeal was filed on September 16, 2011, appealing "...the final Order and Judgment Order entered by the Superior Court herein on September 1, 2011." J. App. 262. The Notice of Appeal made no mention of an appeal of the Order Denying Summary Judgment that had been entered by the Superior Court on March 11, 2011.

STATEMENT OF RELEVANT FACTS

In January 2006, Goodman was a seventy-nine (79) year-old widow and a resident of St. Croix, U.S. Virgin Islands, who, through her trust, named "Elsa Goodman Revocable Trust" (hereinafter the "Trust"), owned and controlled real property on the island of St. Croix more particularly described as

Plot No. 190 of Estate Mary's Fancy, Queen Quarter, St. Croix,
U.S. Virgin Islands, consisting of 0.524 U.S. acre, more or less, as
shown on OLG Drawing No. 2555, dated February 27, 1969;

(previously defined herein as the "St. Croix Property"). J. App. 28 (Memorandum of Law) and J. App. 142 (Trust Agreement). The Trust was set up to, *inter alia*, provide for the distribution, upon Goodman's death, of the St. Croix Property to Goodman's brother, Lawrence Mitchell. J. App. 147 (Trust Agreement) and J. App. 63 (Trial Transcript).

Chestnut is an adult resident of Prince Georges County, Maryland and niece of Goodman. Chestnut has never been a resident of the U.S. Virgin Islands. Until January 2006, Chestnut had not seen Goodman for approximately forty (40) years. J. App. 28 (Memorandum of Law) and J. App. 69-70 (Trial Transcript).

In a telephone conversation, Chestnut told Goodman that she would like to come down and see Goodman's home. J. App. 98 (Trial Transcript). From January 11 to January 18, 2006, Chestnut traveled to St. Croix to visit Goodman. The visit lasted seven (7) days. During the seven (7) day visit with Goodman in January 2006, Chestnut developed a closer personal relationship with Goodman. J. App. 99 (Trial Transcript). Chestnut thought that Goodman definitely trusted her. J. App. 29 (Memorandum of Law). In the first few days of the visit, Chestnut asked Goodman whether she owed any money on her house, J. App. 98-99 (Trial Transcript).

Chestnut has testified that, during the seven (7) day visit in January 2006, Goodman told Chestnut that she would rather give the St. Croix Property to Chestnut than have the Government take it. J. App. 29 (Memorandum of Law) and J. App. 219 (Trial Transcript). Chestnut stated that Goodman added Chestnut's name to the St. Croix Property because Goodman believed that, in the event of her death, the St. Croix Property might otherwise "go to the Government." J. App. 29 (Memorandum of Law).

Chestnut did not inform Goodman that, upon Goodman's death, the ownership of the St. Croix Property would transfer pursuant to the instructions Goodman had set forth in her Trust document and therefore, the St. Croix Property would not go to the Government. J. App. 29 (Memorandum of Law). Chestnut asserted at trial that Goodman had nobody else to whom she could leave her St. Croix Property and that Goodman didn't want it to be a problem when she died. J. App. 215 (Trial Transcript).

At trial, Goodman testified that, during Chestnut's visit, Chestnut told her that "...she and her husband would like to come down and live with me as a family." J. App. 101 (Trial Transcript). Chestnut also asked Goodman if she could put Chestnut's name on Goodman's checking account. J. App. 101 (Trial Transcript). Goodman felt that Chestnut really cared about her and that Chestnut really wanted be with the family. J. App. 102 (Trial Transcript). Chestnut told Goodman that if she came down and lived with Goodman, and Goodman got sick, anybody could come kick Chestnut out of Goodman's house. Chestnut told Goodman that nobody could touch Chestnut if Goodman put Chestnut's name on the house. J. App. 102 (Trial Transcript). It was Chestnut that first raised the idea of putting Chestnut's name on the deed. J. App. 103 (Trial Transcript). When Goodman informed Chestnut that she had a trust, Chestnut told Goodman that

she didn't want it like that and to just put her name on the house. J. App. 103-104 (Trial Transcript).

On March 6, 2006, Goodman, in her capacity as Trustee of her Trust, conveyed by Quit Claim Deed the St. Croix Property to herself and Chestnut as joint tenants with rights of survivorship. J. App. 162 (Quitclaim Deed). Chestnut did not pay anything for the interest she received in the St. Croix Property. J. App. 111 and 215 (Trial Transcript). At the time that Goodman signed the deed transferring a joint interest to Chestnut, Goodman thought that Chestnut would be living in the house with her. She also believed that Chestnut cared for her. J. App. 109-110 (Trial Transcript). Chestnut felt that Goodman trusted her at the time that Goodman signed the deed. J. App. 51 (Trial Transcript). Goodman didn't feel she needed to enter into a contract with Chestnut regarding Chestnut and her husband moving to St. Croix, living with her and caring for her. J. App. 109 (Trial Transcript). After Goodman signed the deed, Chestnut did not move to St. Croix. J. App. 111 and 215 (Trial Transcript).

At the time of conveyance of the St. Croix Property, Goodman was a resident of St. Croix. In January 2007, Goodman moved to Maryland. J. App. 112 (Trial Transcript). In connection with Goodman's move to Maryland, Chestnut was given a power of attorney by Goodman to "help out" with Goodman's purchase of a residence in Silver Spring, Maryland (the "Maryland Property"). J. App. 30 (Memorandum of Law).¹

The closing on the purchase of the Maryland Property occurred on November 10, 2006 in Maryland. Goodman was in St. Croix when the closing took place. Chestnut attended the closing. Without the knowledge or consent of Goodman, Chestnut's name was included on the

¹ The information concerning the Maryland Property and the Maryland Suit is included herein because the Appellant has appealed the trial court's Order Denying Summary Judgment. The record before the trial court, when it decided the summary judgment motion, included the information on the Maryland Property and the Maryland Suit. Prior to trial, the trial court issued an order prohibiting the Appellee from introducing any evidence regarding the Maryland Property or the Maryland Suit. Therefore, these facts were not presented to or considered by the jury.

title to the Maryland Property with Goodman as joint tenants with right of survivorship. Chestnut has testified that her name was included on the deed to the Maryland Property for the “same reason” Goodman put Chestnut’s name on the deed to the St. Croix Property. J. App. 30 (Memorandum of Law).

On April 14, 2007, Goodman decided to refinance the Maryland Property and she requested that Chestnut remove Chestnut’s name from the title to the Maryland Property. Chestnut refused to cooperate in removing her name from the title to the Maryland Property because Goodman had already put Chestnut’s name on the Maryland Property and that it was “too late.” J. App. 30-31 (Memorandum of Law). Chestnut also told Goodman that she was stupid, old and “didn’t know what you was doing” J. App. 116 (Trial Transcript). Goodman no longer trusted Chestnut and felt that Chestnut did not care for her. J. App. 115 (Trial Transcript).

In August 2007, Goodman filed suit, *Elsa Goodman v. Carole Chestnut*, Civil No. 285343-V, in the Circuit Court for Montgomery County, Maryland, for fraud, breach of fiduciary duty, negligent misrepresentation, conversion and reformation of title (the “Maryland Suit”). On April 24, 2008, a jury entered a verdict in the Maryland Suit, finding that the re-titling of the Maryland Property was for probate purposes only and not a gift to Chestnut. J. App. 31 (Memorandum of Law).

On May 23, 2008, the Circuit Court of Montgomery County, Maryland entered a Judgment and Imposition of Constructive Trust directing Chestnut, as Constructive Trustee, to convey her right, title, and interest in the Maryland Property to Goodman. On June 18, 2008, Chestnut conveyed her interest in the Maryland Property to Goodman. J. App. 31 (Memorandum of Law).

When the dispute arose over the title to the Maryland Property in April 2007, Goodman also requested that Chestnut remove Chestnut's name from the title to the St. Croix Property. Chestnut refused to cooperate in removing her name from the title to the St. Croix Property. J. App. 115-116 and 216 (Trial Transcript). Goodman testified that she never intended to make a gift of her St. Croix Property to Chestnut. J. App. 116 (Trial Transcript). Goodman believed that Chestnut had deceived her by pretending that Chestnut and her non-existent husband would move to St. Croix and live with her as family. J. App. 117 (Trial Transcript). If Goodman had known that Chestnut was not married and was not moving to St. Croix, Goodman would not have added Chestnut's name to her St. Croix Property. J. App. 117 (Trial Transcript).

On August 8, 2008, Goodman filed her Complaint in this matter seeking the return of the title to the St. Croix Property. J. App. 11-15. On January 28, 2009, Chestnut filed her Answer and Counterclaim seeking a share of any net rental income from the St. Croix Property. J. App. 16-15.

SUMMARY OF ARGUMENT

Chestnut has set forth four separate arguments in the Appellant's Brief.

Appellant's First Argument: Chestnut's first argument is that the trial court erred in denying Chestnut's Cross Motion for Summary Judgment on her claim that the March 6, 2006 conveyance of the St. Croix Property was an inter vivos gift.

Goodman argues that this matter was not included in the Notice of Appeal and therefore is not properly before this Court. In addition, Goodman argues that the trial court properly denied Chestnut's Cross Motion for Summary Judgment based upon the existing record and Chestnut's failure to meet her initial burden of showing that there were no genuine issues of

material facts in regard to Goodman's claim that the property transfer was not an inter vivos gift, but instead was a transfer caused by Chestnut's fraud or negligent misrepresentation.

Appellant's Second Argument: Chestnut's second argument relates to the appeal of the Order that denied Chestnut's Motion for Renewed Preverdict Motion for Judgment. Chestnut argues that the trial court erred, as a matter of law, in denying Chestnut's renewed preverdict motion for directed verdict on the negligent misrepresentation claim.

Goodman argues that the trial court properly applied the law to the evidence presented and found that the record contained more than a mere scintilla of evidence from which a jury reasonably could find liability and that Chestnut failed to meet her burden of proof to succeed on a motion for a judgment notwithstanding verdict.

Appellant's Third Argument: Chestnut's third argument is that the gist of the action doctrine bars Goodman's negligent misrepresentation claim.

Goodman argues that this defense was never raised by Chestnut in her Answer and Counterclaim or in any subsequent pleading and, therefore, the defense has been waived. In addition, the issue was not included in the Notice of Appeal and therefore it is not properly before this Court. Goodman also argues that the negligent misrepresentation claim is not barred by the gist of the action doctrine because it is a separate claim based upon Chestnut's tort of negligent misrepresentation which induced Goodman to transfer to Chestnut a joint interest in the St. Croix Property.

Appellant's Fourth Argument: Chestnut's fourth argument is that the negligent misrepresentation claim is time barred.

Goodman argues that this affirmative defense was never raised by Chestnut in her Answer and Counterclaim or in any subsequent pleading. Therefore, the defense has been

waived and must be excluded. In addition, the issue was not included in the Notice of Appeal and therefore it is not properly before this Court. Goodman also argues that the statute of limitations period did not commence until Goodman discovered that Chestnut had made negligent misrepresentations in order to induce Goodman to transfer the joint interest in the St. Croix Property.

ARGUMENT

1. CHESTNUT'S APPEAL OF THE DENIAL OF HER CROSS MOTION FOR SUMMARY JUDGMENT

a. Appellate Review of the Order is Precluded

On January 31, 2011, Chestnut filed Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment. Chestnut's Cross Motion for Summary Judgment sought adjudication, as a matter of law, that Goodman's March 6, 2006, conveyance of the St. Croix Property to Goodman and Chestnut, as joint tenants with rights of survivorship, was an irrevocable inter vivos gift.

On March 10, 2011, Superior Court Judge Harold W.L. Willocks issued an order denying Goodman's Motion for Summary Judgment and denying Chestnut's Cross Motion for Summary Judgment (previously defined herein as the "Order Denying Summary Judgment"). The Order Denying Summary Judgment also denied Chestnut's Motion in Limine or to Strike all references to the facts and circumstances surrounding the purchase of the Maryland Property made by Goodman in her Motion for Summary Judgment. J. App. 70 (Order).

The Notice of Appeal filed by Chestnut stated that she was appealing "...the final Order and Judgment Order entered by the Superior Court herein on September 1, 2011." The Notice of Appeal did not designate the March 10, 2011, Order Denying Summary Judgment as a judgment, order or part thereof subject to this appeal. In addition, the Notice of Appeal did not include the

trial court's denial of the summary judgment on the issue of the transfer being an inter vivos gift as an issue to be presented on appeal. J. App. 262 (Notice of Appeal).

V.I.S.C.T.R 4(c) provides that a notice of appeal shall designate the judgment, order, or part thereof appealed from and the reasons or issues to be presented on appeal. Chestnut's Notice of Appeal failed to comply with this requirement regarding her appeal of the March 11, 2011, Order Denying Summary Judgment. Due to the insufficiency in the Notice of Appeal, this Court is precluded from appellate review of the Order Denying Summary Judgment.

Federal Rule of Appellate Procedure 3(c) also states that the notice of appeal must "designate the judgment, order or part thereof appealed from". F.R.A.P. Rule 3(c). The United States Court of Appeals, Third Circuit has stated:

"Generally, we will review orders not specified in the notice of appeal where: (1) there is a connection between the specified and unspecified order, (2) the intention to appeal the unspecified order is apparent, and (3) the opposing party is not prejudiced and has a full opportunity to brief the issues." *See Cronin v. CitiFinancial Services, Inc.*, 352 Fed.Appx. 630, 633 (2009) citing *Pacitti v. Macy's*, 193 F.3d 766, 777 (3d Cir. 1999) and *Polonski v. Trump Taj Mahal Assocs.*, 137 F.3d 139, 144 (3d Cir. 1998).

There is no connection between the unspecified Order Denying Summary Judgment and either the Order or the Judgment Order which were specified in the Notice of Appeal. The September 1, 2011 Order concerned the denial of Chestnut's Renewed Preverdict Motion for Judgment, which motion did not mention nor seek any ruling or judgment regarding Chestnut's inter vivos gift claim. The September 1, 2011 Judgment Order concerned the order to convey Chestnut's right, title and interest in the St. Croix Property in accordance with the verdict of the jury. Chestnut's Opposition to Plaintiff's Motion for Judgment and Release of Security incorporated Chestnut's Renewed Preverdict Motion for Judgment as her argument. Therefore, the inter vivos gift issue was not presented to the trial court in any of these pleadings.

Accordingly, neither the Order nor the Judgment Order were connected to the denial of Chestnut's prior motion for summary judgment on her inter vivos gift claim.

Chestnut's intention to appeal the unspecified Order Denying Summary Judgment was not made apparent in the Notice of Appeal. The Notice of Appeal was very specific in its identification of the issues to be presented on appeal. The four issues identified were not in any way related to the inter vivos gift issue. Therefore, it was not apparent that Chestnut had any intention to appeal this issue.

Appellate review of the Order Denying Summary Judgment is precluded based upon (1) the failure of the Notice of Appeal to designate such order as a judgment or order appealed from and (2) the failure of the Notice of Appeal to identify or make apparent the intention to appeal such order.

b. Trial Court Properly Denied Chestnut's Cross Motion for Summary Judgment

Chestnut's Cross Motion for Summary Judgment failed to meet the movant's initial burden of demonstrating that the movant is entitled to judgment as a matter of law. The burden of persuasion rests with the party who files motion for summary judgment. *Deary v. Evans*, 19 V.I. 581, 570 F. Supp. 189, 1983 U.S. Dist. LEXIS 16464 (1983).

The trial court reviewed the existing record, in the light most favorable to the non-movant, and determined that a reasonable jury could find that Goodman did not transfer the joint interest in the St. Croix Property as a gift to Chestnut. The trial court determined that there existed genuine issues as to material facts and, therefore, Chestnut was not entitled to a judgment as a matter of law. J. App. 64-69 (Memorandum Opinion).

In Goodman's Opposition to Cross-Motion for Summary Judgment, Goodman identified the evidence in the record that established that there existed genuine issues of material facts

concerning Chestnut's claim that the transfer of the joint interest was an irrevocable inter vivos gift and her claim that the transfer was not induced by fraud, breach of contract or negligent misrepresentation. The evidence before the trial court included the deposition testimony of Goodman which clearly contradicted Chestnut's evidence. Goodman testified that Chestnut told her that she was thinking that she and her husband could come down to St. Croix and live with Goodman, take care of Goodman and live as a family. J. App. 58-59 (Opposition to Cross-Motion for Summary Judgment). Later, after Chestnut's name had been added to the deed on the St. Croix Property, Goodman learned that Chestnut had divorced her husband back in 1995. J. App. 59 (Opposition to Cross-Motion for Summary Judgment). This shows that Chestnut made assertions which were not true in her efforts to obtain access to and ownership of Goodman's property. This testimony established a genuine dispute as to a material fact regarding the alleged fraud and misrepresentation. Therefore, Chestnut had not met her burden of persuasion required to obtain summary judgment.

In her Cross Motion for Summary Judgment, Chestnut asserted without any factual support whatsoever, that "the evidence is clear" that Goodman's transfer of the ownership interest to Chestnut was an inter vivos gift. J. App. 60 (Opposition to Cross-Motion for Summary Judgment). However, Chestnut provided no evidence that Goodman intended to make a gift of her property to Chestnut. In addition, Chestnut failed to address the following undisputed facts, which were all part of the record and set forth in Goodman's Opposition to Cross-Motion for Summary Judgment:

- (a) Until January 2006, Chestnut had not seen Goodman for approximately forty (40) years. J. App. 60.

- (b) During the seven (7) day visit with Goodman in January 2006, Chestnut developed a closer personal relationship with Goodman. J. App. 60.
- (c) Chestnut thought that Goodman definitely trusted her. J. App. 60.
- (d) Chestnut had testified that, during the seven (7) day visit in January 2006, Goodman told Chestnut that she would rather give the St. Croix Property to Chestnut than have the Government take it. J. App. 60.
- (e) In her answers to interrogatories, Chestnut stated that Goodman added Chestnut's name to the St. Croix Property because Goodman believed that, in the event of her death, the St. Croix Property might otherwise "go to the Government." J. App. 60.
- (f) Chestnut did not inform Goodman that, upon Goodman's death, the ownership of the St. Croix Property would transfer pursuant to the instructions Goodman had set forth in her Trust document and therefore, the St. Croix Property would not go to the Government. J. App. 61.
- (g) Chestnut did not pay anything for the interest she received in the St. Croix Property. J. App. 61.
- (h) Chestnut had testified that her name was included on the deed to the Maryland Property for the "same reason" Goodman put her name on the deed to the St. Croix Property. J. App. 61.
- (i) Chestnut testified that Goodman told her that putting her name on the title to the property was done to avoid probate court. J. App. 61.
- (j) On April 24, 2008, a jury entered a verdict in the Maryland Suit, finding that the re-titling of the Maryland Property was for probate purposes only and not a gift to Chestnut. J. App. 61.

(k) On May 23, 2008, the Circuit Court of Montgomery County, Maryland entered a Judgment and Imposition of Constructive Trust directing Chestnut, as Constructive Trustee, to convey her right, title, and interest in the Maryland Property to Goodman. J. App. 61.

The trial court properly denied Chestnut's Cross Motion for Summary Judgment based upon the facts at issue.

2. TRIAL COURT'S DENIAL OF CHESTNUT'S PREVERDICT MOTION ON NEGLIGENT MISREPRESENTATION CLAIM

After consideration of all witness testimony and all exhibits admitted at trial, the jury unanimously found that Goodman had established, by clear and convincing evidence, that the deed to Goodman's St. Croix Property was signed by Goodman as a result of negligent misrepresentations made by Chestnut to Goodman. J. App. 232. The trial court provided the jury with special instructions regarding the tort of negligent misrepresentation. J. App. 225. These instructions were approved by counsel.

Based upon the jury's unanimous verdict, each juror found that Goodman had provided clear and convincing evidence that:

- One: There was a duty of care or a voluntary assumption of a duty of care on the part of Chestnut;
- Two: Chestnut made a representation of a fact;
- Three: The representation of that fact was untrue;
- Four: Goodman believed that fact to be true and relied upon that fact to Goodman's damage; and
- Five: Chestnut failed to use reasonable care in making the representation or in seeking to ascertain the fact.

In Appellant's Brief, Chestnut seeks to impose new elements and standards for the tort of negligent misrepresentation. Chestnut appears to be asserting that the Chestnut's negligent representations were not in the course of her business, profession or employment and therefore Chestnut cannot be held liable. However, this is not applicable. The evidence presented at trial demonstrated that (i) Chestnut had established a trusting and caring relationship with Goodman, (ii) Chestnut had engaged in a course of activity in furtherance of obtaining an ownership interest in the real property, (iii) Chestnut had made representations of fact that were untrue and (iv) Goodman believed that Chestnut's representations were true and relied upon them to her damage. J. App. 225 and 237. Clearly, Chestnut was engaged in a transaction in which she had a pecuniary interest and her misrepresentations resulted in a pecuniary loss to Goodman. This constitutes the tort of negligent misrepresentation.

Chestnut seeks to selectively re-argue the evidence provided to the jury in this case. However, the credibility and the weight of the evidence are not subject to review. This is the function of the jury.

Goodman testified that she relied upon the Chestnut's representations that Chestnut and her husband would move to St. Croix, live with Goodman as family and take care of Goodman. J. App. 101 (Trial Transcript). Because of these representations, Goodman complied with Chestnut's request that she add Chestnut's name to the deed on the St. Croix Property. J. App. 104 (Trial Transcript).

The testimony and evidence presented by Goodman at trial provided the jury with sufficient evidence from which the jury could find, by clear and convincing evidence, that (1) Chestnut had negligently misrepresented to Goodman and that such action induced Goodman to convey a joint interest in the St. Croix Property to herself and Chestnut and (2) the deed to the St.

Croix Property was signed by Goodman as a result of fraud and or negligent misrepresentation and or undue influence, and therefore there should be a reformation of the title to the St. Croix Property.

Goodman presented evidence from which the jury could reasonably find that Chestnut made a representation to Goodman that was false. J. App. 101 and 117 (Trial Transcript).

Goodman presented evidence from which the jury could reasonably find that Chestnut should have known that her representation was false. J. App. 117 (Trial Transcript).

Goodman presented evidence from which the jury could reasonably find the Goodman relied upon the false representation made to her by Chestnut. J. App. 117 (Trial Transcript).

Goodman presented evidence from which the jury could reasonably find that Goodman suffered a pecuniary loss due to her justifiable reliance on the false representation made to her by Chestnut. J. App. 110 (Trial Transcript).

Goodman presented evidence from which the jury could reasonably find that Chestnut failed to exercise reasonable care or competence in communicating the information contained in the false representation that she made to Goodman. J. App. 116-117 (Trial Transcript).

The trial court properly applied the law to the evidence presented and found that the record contained more than a mere scintilla of evidence from which a jury reasonably could find liability and that Chestnut failed to meet her burden of proof to succeed on a motion for a judgment notwithstanding verdict. *Keith*, 909 F.2d at 746.

3. GIST OF ACTION DOCTRINE ISSUE

a. Appellate Review is Precluded

V.I.S.C.T.R 4(c) requires that a notice of appeal shall state the reasons or issues to be presented on appeal. Chestnut's Notice of Appeal failed to state that one of the issues to be presented on appeal was her new defense that the negligent misrepresentation claim was barred by the gist of the action doctrine. Nor was it made apparent, in the Notice of Appeal, that it was the intention of Chestnut to present this new issue on appeal. Therefore, this new issue should be precluded from appellate review.

The gist of the action doctrine defense was never raised by Chestnut in her Answer and Counterclaim or in any subsequent pleading. Nor was this new defense raised by Chestnut at trial.

The United States Court of Appeals, Third Circuit, has consistently held that it will not consider issues that are raised for the first time on appeal. *Harris v. City of Philadelphia*, 35 F.3d 840, 845 (1994). Generally, "absent compelling circumstances an appellate court will not consider issues that are raised for the first time on appeal." *Patterson v. Cuyler*, 729 F.2d 925, 929 (3d Cir.1984), *overruled on other grounds recognized in Carter v. Rafferty*, 826 F.2d 1299 (3d Cir.1987) (citing *Singleton v. Wulff*, 428 U.S. 106, 120–21, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976)). In *Patterson*, the court explained:

This prudential policy seeks to insure that litigants have every opportunity to present their evidence in the forum designed to resolve factual disputes. By requiring parties to present all their legal issues to the district court as well, we preserve the hierarchical nature of the federal courts and encourage ultimate settlement before appeal. It also prevents surprise on appeal and gives the appellate court the benefit of the legal analysis of the trial court. It is however not a jurisdictional bar, and the statement of policy permits exceptions in appropriate cases. *Id.* (citations omitted).

See *Ross v. Hotel Employees & Rest. Employees Int'l Union*, 266 F.3d 236, 242-43 (3d Cir. 2001)

It is well established that failure to raise an issue in the district court constitutes a waiver of the argument.” *Medical Protective Co. v. Watkins*, 198 F.3d 100, 105-06 n. 3 (3d Cir.1999) (citation omitted); see also *Harris v. City of Philadelphia*, 35 F.3d 840, 845 (3d Cir.1994). This rule “applies with added force where the timely raising of the issue would have permitted the parties to develop a factual record.” *In re American Biomaterials Corp.*, 954 F.2d 919, 927-28 (3d Cir.1992). The Third Circuit will only depart from this rule when “manifest injustice would result” from a failure to consider a novel issue. *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110, 1115 (3d Cir.1993); see also *Newark Morning Ledger Co. v. United States*, 539 F.2d 929, 932 (3d Cir.1976) (citing *Hormel v. Helvering*, 312 U.S. 552, 61 S.Ct. 719, 85 L.Ed. 1037 (1941)). See *Gass v. Virgin Islands Tel. Corp.*, 311 F.3d 237, 246 (3d Cir. 2002).

There is no basis for this Court to depart from the waiver of the argument rule. The gist of the action doctrine should not be allowed as an issue for appellate review by this Court.

b. Gist of the Action Doctrine is Not Applicable

The important difference between contract and tort actions is that the latter lie from the breach of duties imposed as a matter of social policy while the former lie for the breach of duties imposed by mutual consensus. *Redevelopment Auth. of Cambria County v. International Ins. Co.*, 454 Pa.Super. 374, 685 A.2d 581, 590 (1996) (en banc) (quoting *Phico Ins. Co. v. Presbyterian Med. Servs. Corp.*, 444 Pa.Super. 221, 663 A.2d 753, 757 (1995)). In other words, a claim should be limited to a contract claim when “the parties' obligations are defined by the terms of the contracts, and not by the larger social policies embodied in the law of torts.” *Bash v. Bell Telephone Co.*, 411 Pa.Super. 347, 601 A.2d 825, 830 (1992).

See *Bohler-Uddeholm Am., Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 103-04 (3d Cir. 2001)

Goodman's claim of negligent misrepresentation was not based upon the breach of contract claim and did not duplicate the breach of contract claim. The breach of contract claim set forth in Goodman's Complaint was based upon the benefit Chestnut received and Chestnut's failure to fulfill her obligations as promised to Goodman. Goodman's Complaint contained an entirely separate count for negligent misrepresentation which was based upon the damages or loss incurred by Goodman as a result of her justifiable reliance on Chestnut's negligent misrepresentations. J. App. 11-15.

The negligent misrepresentation claim did not arise solely from a contract between Goodman and Chestnut. The negligent misrepresentation claim was a freestanding claim and was not an attempt to procure additional damages on the breach of contract claim. The negligent misrepresentation claim was based upon social policies embodied in the law of torts. Goodman's claim for reformation of title did not lie only in contract but was also based upon the separate claim of negligent misrepresentation.

Therefore, the gist of the action doctrine is applicable and does not bar Goodman's claim of negligent misrepresentation.

4. NEGLIGENT MISREPRESENTATION - STATUTE OF LIMITATIONS DEFENSE

a. Appellate Review is Precluded

V.I.S.C.T.R 4(c) requires that a notice of appeal shall state the reasons or issues to be presented on appeal. Chestnut's Notice of Appeal failed to state that one of the issues to be presented on appeal was a new affirmative defense that the negligent misrepresentation claim was barred by the statute of limitations. Nor was it made apparent in the Notice of Appeal that it

was the intention of Chestnut to present this new issue on appeal. Therefore, this issue should be precluded from appellate review.

The argument and citations of authority set forth in Section 3 (a) of this Brief are reasserted in connection with the waiver of argument rule.

b. Defense Has Been Waived

Statute of limitations is an affirmative defense that must be asserted in a party's responsive pleading at the earliest possible moment, and is waived if not pleaded. Fed. R. Civ. P.8 (c). The statute of limitations defense was never raised by Chestnut in her Answer and Counterclaim or in any subsequent pleading. Nor was this affirmative defense raised by Chestnut at trial. Failure to plead an affirmative defense results in the involuntary waiver of that defense and its exclusion from the case. *Ricter Nebgay Corp. v. Small Business Development Agency*, 17 V.I. 393, 1980 U.S. Dist. LEXIS 8928 (D.C.V.I. 1980).

Chestnut did not attempt to establish this affirmative defense before or at trial. It "would be grossly unfair to allow a plaintiff to go to the expense of trying a case only to be met by a new defense after trial." *Bradford-White Corp. v. Ernst & Whitney*, 872 F.2d 1153, 1161 (1989).

There is no basis for this Court to depart from rule of involuntary waiver and exclusion of this affirmative defense. The statute of limitations should not be allowed as an issue for appellate review by this Court.

c. Discovery Rule

As the Third Circuit Court of Appeals has established, the law of the Virgin Islands has in certain circumstances incorporated the discovery rule to delay the running of a statute of limitations. *See, e.g., Joseph v. Hess Oil*, 867 F.2d 179, 182 (3d Cir.1989). The discovery rule operates to prevent the relevant statute of limitations, here the two year statute of limitations,

from beginning to run. Under the rule, the statute of limitations will start to run at the time that two conditions are satisfied: (1) when the plaintiff knew or should have known that he had suffered a harm *and* (2) when the plaintiff knew or should have known the cause of his injury. Both of these determinations are made using an objective, reasonable person standard. *Joseph*, 867 F.2d at 184.

See In re Tutu Wells Contamination Litig., 909 F. Supp. 980, 984-85 (D.V.I. 1995)

The parties did not have an opportunity to develop a factual record on the statute of limitations issue because it was never raised by Chestnut. However, it is clear from the evidence on record that Goodman was not aware that she had suffered a harm caused by Chestnut's negligent misrepresentation until sometime in 2007. This is when the parties had a dispute and Chestnut informed Goodman that she was stupid, old and didn't know what she was doing. It is also when Goodman requested that Chestnut remove her name from the St. Croix Property and Chestnut refused the request. J. App. 91. The statute of limitations period on Goodman's claim did not commence on the date that Goodman signed the quit claim deed. Under the discovery rule, the limitations period would have commenced over one year later when Goodman became aware that she had been deceived and that Chestnut didn't care for her and couldn't be trusted. J. App. 90.

For the foregoing reasons, the negligent misrepresentation claim was not barred by the statute of limitations.

CONCLUSION

Based upon the foregoing reasons, this Court should deny the issues presented in Appellant's appeal and should affirm the trial court's Order and Judgment and Order.

Respectfully submitted this 3rd day of April, 2012.

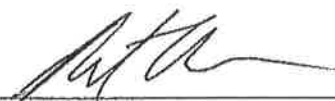


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CERTIFICATE OF MEMBERSHIP

The undersigned, counsel for Appellee herein, certifies that he is a member of the bar of the Supreme Court of the U.S. Virgin Islands.

Date: April 3, 2012




Robert A. Waldman
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2012, I electronically filed the foregoing Appellee's Brief with the Supreme Court of the Virgin Islands using VISCEFS, which will send a notification of such filing (NEF) to the following:

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Robert A. Waldman

04/17/2012

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

FILED

March 01, 2022 08:44 AM

SX-2005-CV-00368

TAMARA CHARLES

CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

S. Ct. Civ. App. No. 2011- 0082

[Super Ct. Civ. No. SX- 08 - Cv. 401]

CAROLE CHESTNUT,

APPELLANT,

v.

ELSA GOODMAN,

APPELLEE.

**On Appeal from a
Final Order of the Superior Court of the Virgin Islands**

APPELLANT'S REPLY BRIEF

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EXHIBIT

2

JA - 361

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I. THIS COURT IS NOT PRECLUDED FROM REVIEWING THE FINAL ORDER WHICH EMBODIES THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR SUMMARY JUDGMENT.

A. Procedural Grounds

At pages 13 – 15 Goodman argues that this Court is precluded from considering the issue relating to the March 10, 2011 denial of Chestnut's cross motion for summary judgment because that issue was not listed in the notice of appeal.

A final order embodies all orders entered by the lower court.

Here, when Chestnut appealed the final order Goodman was served with notice that all orders entered by the lower court were subject to review.

Moreover, Goodman's argument is flawed because it is not accompanied by any statutory provision, court rule or case law which tends to support her claim of preclusion.

Accordingly, procedurally Goodman's preclusion argument is without merit.

B. The Merits

The only rational basis for denying Chestnut's cross-motion for summary judgment is if Goodman had raised genuine issues of material fact with competent proof that the March 6, 2006 conveyance of #190 Mary's Fancy was anything other than that of an *inter vivos gift*.

A review of the material facts presented, inclusive of the deed and the circumstances leading up to its execution, demonstrates that Chestnut was entitled to judgment, as a matter of law, as early as at the summary judgment stage of the proceedings.

At no stage in the proceedings before the trial court was there a time when there exist genuine issues of material facts on the issue of *inter vivos gift*. The evidence relied upon by Goodman is a sham----it has been the same at every stage of the proceedings. Just as the trial court dismiss the contract claim, and the jury found no fraud, so too it should negligent misrepresentation claim been dismissed at the summary judgment stage. Goodman never presented a viable case for negligent misrepresentation or undue influence at any stage. Had the trial judge performed the proper analysis at the summary judgment stage, it would have determined that all of Goodman's claims lack merit and dismissed them , as a matter of law.

II. AS A MATTER OF LAW , THE VERDICT IS NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL.

In the Memorandum Opinion which allowed the verdict of the jury to stand, the lower court summarily found that “given all the evidence and testimony offered in this matter, the record contains more than a mere scintilla of evidence from which a jury reasonably could find liability.” [J.App. 258] The lower court did not make any references to the record, nor did it provide a reasoned analysis of the evidence presented.

Likewise, in her Brief, Goodman failed to make verbatim references to the evidence. All her assertions are conclusive statements and summary arguments, unsupported by the record.

Chestnut, on the other hand, has reproduced verbatim excerpts from the evidence presented by Goodman at trial.

In pertinent part, the factual scenario presented by Goodman involved three (3) separate verbal exchanges between the parties:

First, that in January 2011, shortly after her arrived on St. Croix, Chestnut allegedly remarked that “she and her husband would like to come down and live with [Goodman] as a family” and take care of her. (J.App. 101). Skeptical of that remark, Goodman asked Chestnut whether she could make arrangements for her husband. Chestnut replied, “[i]f he have to come he have to come.” Without any further discussion, Goodman decided to “just let that [remark] go.” (J. App. 101) [emphasis added]

Second, during her stay, Chestnut later asked Goodman to “put her name on [Goodman’s] checking account...so that when she come down and if [Goodman is] sick she can go to the bank and withdraw money and shop for [Goodman]”. [J. App. 101] Goodman agreed and added Chestnut’s name to the checking account. [J. App. 101-102] [Emphasis added]

Third, Goodman testified that Chestnut suggested that her name be added to the title documents of her home at 190 Mary’s Fancy, St. Croix, when she said:

Aunty, you know I was thinking, if I was to come down and live with you as a family and in the house and (if) you got sick...anybody could come and kick me out of the house. But if put my name on it nobody could touch me. [J. App. 102] [emphasis added]

Goodman agreed. [J. App. 103]

After Chestnut returned to Maryland, Goodman retained Donovan Hamm, Jr. Esq., of The Hamm Law Firm, and requested that he prepared a *Quit Claim Deed* conveying Plot 190 Mary's Fancy from *Elsa Goodman, Trustee of the Trust Agreement for the Elsa Goodman Revocable Trust*, dated February 2, 1998, to herself, Elsa Goodman, personally and Chestnut, as joint tenants with rights of survivorship. On February 27, 2006, Goodman obtained the necessary "tax clearance letter", and on March 6, 2006, she executed the deed which was later recorded at the Recorder of Deed on April 18, 2006 at P.C. 1025, page 126, Doc. No. 2006001774. (J. App 105 – 106, 163 - 164)

In January 2007 Goodman changed her residence from St. Croix to Maryland. (J. App. 112)

Eight (8) months after Goodman moved to Maryland, there was a "disagreement between her and Chestnut", and their relationship became strained. As a result of this breakdown in the relationship, Goodman no longer trusted Chestnut, and she no longer felt that Chestnut cared for her. (J. App. 112, 113, 115) Goodman, therefore, requested that Chestnut "remove her name" from the deed of Plot 190 Mary's Fancy, and Chestnut refused. [J. App. 115-116]

On August 6, 2008, Goodman instituted this action against Chestnut. [See: Record of Proceedings, J. App. 9]

Goodman testified that as a result of the disagreement she felt deceived by Chestnut. She pointed to the fact that Chestnut was not married in January of 2006 when she remarked that she wished to come to St. Croix with her husband to live with Goodman and care for her. In retrospect, Goodman testified that had she known that Chestnut was not married, she would not have added her name to the deed for # 190 Mary's Fancy to Chestnut. (J. App. 116-117)

Based on this factual scenario, Goodman asserts that the verdict in her favor, finding that Chestnut is liable to her upon on the theory of negligent misrepresentation, must stand.

In Chestnut's view, in order for the verdict of the jury to stand, this Court must find that the evidence adduced at trial was, as a matter of law, sufficient to sustain the verdict. It was not.

The pivotal question, therefore, is ***whether the evidence presented to the jury by Goodman sufficiently proved negligent misrepresentation, as defined by RESTATEMENT (SECOND) OF TORTS § 552***. For all the reasons stated in Chestnut's opening brief, in Chestnut's view, it does not.

Notably, Goodman does not dispute that the tort of *negligent misrepresentation*, as defined at § 552, is the applicable law. This rule is designed to provide limited protection in cases involving the reasonable expectation of the users of information that is supplied in connection with commercial transactions. *In re Tutu Water Wells Contamination Litig.*, 40 V.I. 279, 32 F. Supp. 2d 800, 807 (D.V.I. 1998) (citing RESTATEMENT (SECOND) OF TORTS § 552 (1977) our Court set forth the elements of this tort when it wrote:

Under Virgin Islands law, to state a claim for negligent misrepresentation, a plaintiff must allege that: (1) the defendant made a representation that was false; (2) the defendant should have known that the representation was false; (3) the plaintiff relied on the representation; (4) the plaintiff suffered pecuniary loss due to its justifiable reliance on the representation; and (5) the defendant failed to exercise reasonable care or competence in obtaining or communicating the information contained in the representation.

Here, for all the reasons stated in Chestnut's opening brief, the evidence relied upon by Goodman in her Brief, are factually insufficient to satisfy the legal requirements of § 552.

Summarily, nothing in the fore-going factual scenario remotely suggest that Chestnut made a single material promise or representation of fact to Goodman. At best, the statements relied upon by Goodman are nothing more than Chestnut expressing a casual interest in coming to St. Croix to live with her aunt and to care for her. Contrary to the claims made by Goodman, the fact that Chestnut was not married at the time certain statements were allegedly made was not material to this case. There was no attempt by Chestnut to enter into any form of commitment on behalf of herself or her ex-husband. Absent a commitment by Chestnut, Goodman cannot be deemed to have justifiably relied on anything said by Chestnut.

There is no evidence that Chestnut falsely represented her interest in moving St. Croix to live with her aunt.

It is undisputed that Goodman was never in need of care, never demanded care from Chestnut and by moving to Maryland in January 2007, had voluntarily abandoned any idea of having her niece relocate to St. Croix to live and care for her.

While there is ample evidence in the record that Goodman may have changed her mind regarding the *inter vivos gift* conveyance of Plot 190 Mary's Fancy, she is, otherwise, without a remedy in law.

Goodman was required to produce evidence, (a) that at the time Chestnut uttered the above-mentioned statements, she was engaged in the course of an activity involving her business, profession or employment, and (b) in the course of such activity she failed to exercise reasonable care or competence in communicating the information to Goodman. The record is void of such proof.

Goodman was required to produce evidence that at the time of the utterances, Chestnut was engaged in a transaction in which she had a pecuniary interest, that she [Goodman] suffered a "pecuniary loss. The record is void of such proof and in her Brief Goodman avoided a discussion of that issue. Goodman's title to the demised premises was that of a *joint tenant*, in fee simple "absolute". The underlying deed of conveyance read:

TO HAVE AND TO HOLD, the above-described premises unto GRANTEES, as joint tenants with rights of survivorship, their heirs, personal representative and assigns in fee simple forever. [J. App Vol 2, 162-164A]

Besides, the evidence is that she always had sole and exclusive physical possession of the premises. Therefore, Goodman suffered no pecuniary or monetary loss.

Based on the fore-going, the trial judge, as a matter of law, erred in denying Chestnut's preverdict motions for judgment, both at the close of Chestnut's case-in-chief and at the close of all the evidence.

III. THIS COURT IS NOT PRECLUDED FROM CONSIDERING THE APPLICATION OF THE GIST OF ACTION DOCTRINE.

Goodman contends that the gist of action doctrine is precluded or inapplicable. It is not.

First, while Goodman maintains that the issue concerning gist of action doctrine is procedurally precluded, she has failed to set forth a rule of law which supports her claim, therefore, a reply is not warranted.

Second, while Goodman claims that her negligent misrepresentation claim is distinct from her contract claim, here the record is replete with her continued reliance on the same evidence and identical arguments to prove either theory. If the evidence is insufficient to prove breach of contract, it is equally insufficient, as a matter of law, to prove negligent misrepresentation.

Finally, an analysis of the record, based on the gist of the action theory, does not require the development of a separate factual predicate. Application of this doctrine is a mere legal endeavor consequential or derivative to the trial court dismissal of the contract claim.

Goodman's preclusion argument, or claim of inapplicability, is, therefore, without merit.

IV. CHESTNUT'S STATUTE OF LIMITATION ARGUMENT IS NOT PRECLUDED.

The procedural posture involving the contents of complaint filed by Goodman of this case is novel.

In her complaint, involving the St. Croix Property: 190 Mary's Fancy, Goodman improperly re-alleged a series of events relevant only to a 2007 Maryland lawsuit in which she prevailed against Chestnut upon a theory of *constructive trust* [See: Complaint ¶¶ 10, 11, 12, 13, 14, 21, and 23, J. App. 12-13] and attempted to present those facts, as if they were part of a common scheme and plan together with the St. Croix, lawsuit.

Before filing an answer to the complaint, Chestnut filed a motion to strike all references in the complaint, including *Exhibits "A" and "B"* to the 2007 Maryland Lawsuit and the jury verdict, as immaterial, impertinent and superfluous to Goodman's claim for reformation of title to the St. Croix property located at Plot 190 Mary's Fancy. [J. App. 9] That motion was denied.

As part of Chestnut's cross-motion for summary judgment, she again sought to have the trial court strike all references made by Goodman in her motion for summary judgment regarding the Maryland Property and exclude those matters from its consideration of this matter. [J. App. 49] The trial judge recognized the allegations regarding the Maryland Lawsuit [J. App. 65-66] but, by separate Order, denied Chestnut's request. [J. App. 70]

Prior to trial, Chestnut again filed a *motion in limine* which sought to limit the introduction of all reference to the 2007 Maryland Lawsuit, pursuant to Fed. R. Evid. 403. This motion was finally granted by the trial judge. [J. App. 71] Consequently, all references to the Maryland Property and the Lawsuit were barred from the case and consideration by the jury.

Because the *Order* barring Goodman from making any references to the Maryland Lawsuit was entered on the morning of the trial, the parties were not afforded an opportunity to file amended pleading, e.g. an amended complaint, or an amended answer. The factual scenario, as it unfolded live before the jury is what the parties were left to evaluate.

It was not until Chestnut performed her post-trial time-line analysis of the trial transcript did she uncover that the evidence, as presented in its limited form, failed to comport with the 2 year statute of limitation. Consequently, in her Brief, Chestnut timely and properly addressed that issue for the first time.

Therefore, the raising of the statute of limitation by Chestnut, post-trial, is timely.

CONCLUSION

Based on the foregoing, Chestnut request that this Court remand this matter to the lower court with instructions to vacate the judgment below, for dismissal of Goodman's claim of negligent misrepresentation, and for entry of judgment in her favor.

Dated this 17th day of April 2012

/s/ Mark L. Milligan, Esq.

CERTIFICATION

The undersigned counsel for Chestnut, herein, pursuant to *with Rule 22(l), V.I.S.C.T. R.*, hereby certifies that he is a member in good standing of the Virgin Islands Bar Association, Integrated, the Supreme Court of the Virgin Islands, and the Court of Appeals for the Third Circuit.

/s/ Mark L. Milligan, Esq.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on I electronically filed the copies of the foregoing *Appellant's Reply Brief* with the Supreme Court of the Virgin Islands using VISCEFS, both of which will send Notices of Electronic Filing to:

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This 17th day of April 2012

/s/ Mark L. Milligan, Esq.

FILED

March 22, 2022 03:15 PM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

DEFENDANTS' POST-TRIAL RULE 50(b) AND RULE 59(a) MOTION

The Defendants move for post-trial relief pursuant to Rule 50(b), seeking to vacate the jury's entire verdict. Alternatively, a new trial is sought pursuant to Rule 59(a)(1)(A)(vi) based on the individual and cumulative improper closing arguments of Plaintiffs' counsel.

The Defendants also renew their prior Rule 50 motions made at trial (TT Vol IV, at pp. 549-596 and Vol. VI, at pp.773-794), which are incorporated herein by reference. However, the Defendants submit that the following key arguments support rejecting the jury's verdict, mooting the need to address any other issues:

- The jury award of \$100,000 for the three "contract" claims (Counts V, VIII and IX) was not supported by any evidence of an actual economic loss suffered by either Plaintiff, as required by the Court's instructions;
- The jury award of \$120,000 for the defamations claims (Count VI) was not supported by any evidence of any false statements as to either Plaintiff, as the Plaintiffs conceded the truth of each alleged defamatory statement;
- The \$100,000 punitive damage award was not supported by clear and convincing evidence that the conduct of the Defendants constituted "malicious wrongdoing" that showed "reckless indifference" to the Plaintiffs.

Rule 50(b)(3) expressly states that this Court "may direct the entry of judgment as a matter of law" on any aspect of the jury's verdict it finds appropriate. The applicable Rule 50 standard was set forth by the V.I. Supreme Court in *Antilles Sch., Inc. v. Lembach*, 64 V.I. 400, 409 (2016):

A party is entitled to judgment as a matter of law when, in considering all of the evidence, accepting the nonmoving party's evidence as true, and drawing all reasonable inferences in favor of the nonmoving party, the court concludes that a reasonable jury could only enter judgment in favor of the moving party. "In performing this narrow inquiry, [trial courts and appellate courts] must refrain from weighing the evidence, determining the credibility of witnesses, or substituting [their] own version of the facts for that of the jury." (Citations Omitted)

For the reasons set forth herein, it is respectfully submitted that judgment as a matter of law should be entered on all counts based on the applicable law. The issues will be discussed herein in the order presented on the verdict form.¹

I. RULE 50 RELIEF AS TO COUNTS V, VIII and IX (The "contract" claims)

The jury verdict form included three similar counts—one for breach of contract, one for intentional misrepresentation and one for breach of the duty of good faith and fair dealing (**hereinafter collectively referred to as the "contract" claims**). At the end of the trial, the Plaintiffs conceded that the jury could only make one award of damages for all three counts, which it did, awarding a single award of \$100,000 for these three counts.²

The Defendants argued at trial that each of these counts should be dismissed for multiple reasons, based on the lack of any credible evidence to support them (TT Vol IV, pp. 549-596, Vol. VI, at pp.773-94), which are incorporated herein by reference.

¹ References herein will be to the trial transcript (TT Vol. __, p. __), the jury instructions (J.I., p.__), the Plaintiffs' trial exhibits (PEx__), the Defendants' trial exhibits (DEx__) and the James Jordan trial deposition (JJ, p. __). Certain key exhibits are attached to this motion.

² At the outset, the Defendants again urge this Court to grant their Rule 12(b)(6) motion to merge these three counts pursuant to the gist of the action doctrine. That issue was fully briefed in the Defendants' February 28th submission, which arguments are incorporated herein by reference. Two supplemental points are in order. First, the Plaintiffs agreed that the damages for all three counts were identical, conceding they are all the same. Second, even if the gist of the action should have been a specific affirmative defense, as opposed to a 12(b)(6) defense (that was raised), that point is moot since the damages were presented to the jury as one claim. Thus, this Court can allow the answer to be amended after the trial pursuant to Rule 15 (b)(2) which permits amendments to the pleadings "to conform them to the evidence and to raise an unpled issue."

However, there is one issue that the Defendants will focus on at the outset of this motion, as it warrants vacating the \$100,000 jury verdict for these three counts without having to address the other Rule 50 issues regarding Counts V, VIII and IX, although the other issues will be addressed herein if this first argument is rejected by this Court.

A. There was no credible evidence of any damages for these three counts.

While the jury awarded \$100,000 in damages for the first three counts, the trial evidence fails to support that specific award. In this regard, the Court instructed the jury regarding the damages for each of these three counts as follows:

- Count V-The Court instructed the jury that it had to find that the Plaintiffs “**suffered specific economic losses**” for the breach of contract claim. (J.I., p. 9);
- Count VIII-The Court instructed the jury that it had to find the Plaintiffs “**suffered a pecuniary loss**” for the intentional misrepresentation claim. (J.I., p. 30); and
- Count XI-The Court instructed the jury that it had to find the Plaintiffs “**suffered economic damages**” for the “Bad Faith BOC” claim (J.I., p. 31).

In short, each of these three counts required proof of specific economic losses, but where is there any evidence in the trial record to support an award of \$100,000 for this claim?

In this regard, Plaintiffs' counsel made this assertion as to these damages in her closing argument (TT Vol VII, p. 1032):

I submit that the evidence supports the damages of \$30,000 for improvements and repairs, the \$20,000 for rebuilding the kitchen, the blood, sweat and tears and that comes out at \$55,000 for rent, the \$41,000 they borrowed, money for bands and specials of \$100,000. And then had they had a lease, had there been a promise for that maintained, we know from Miss Alex Myers, they could have sold that lease, like Mr. Jordan did, for \$125,000. So the failure to give them that lease that was promised, they lost the ability to sell that lease.

Thus, the Plaintiffs put their allege damages in three buckets—expenses incurred in running the restaurant, loans from family members and damages from not being able to sell a lease. Once analyzed, it is clear the Plaintiffs suffered no such economic losses.

1. Expenses incurred in running the restaurant and bar

In this regard, the first amount sought for the improvements and rent were expenses incurred by Barabus, Inc., not the Plaintiffs, as Vooyo conceded at trial (TT Vol. II, p. 296). As this Court will recall, in response to the Defendants still pending Rule 50(a) motion, the Court suggested that such expenses by a third party might support the “reliance” element of a contract claim based on a promise of a lease if Chrisomos’ property was improved (TT Vol. IV, pp. 551-552).³ However, even **IF** such third party expenditures could satisfy the “reliance” element of these three “contract” counts, the same sum does not support a claim **for actual economic losses suffered by the Plaintiffs.**

In this regard, Barabus sold food and drinks, which it then used to pay for its own operating expenses, such as the repairs and rent, as noted by its tax returns (DEx 15, 16 and 17). In short, Barabus’ expenses were not affected by whether or not it had a lease, as these sums were spent by Barabus to simply operate its business each day out of its own revenues. Thus, Barabus’ ordinary business expenses cannot also be claimed by the Plaintiffs as separate “pecuniary losses” incurred by them, as they did not incur them--Barabus did.

2. Loans from family members

The “\$41,000 they borrowed” also does not support a finding that these loans constitute an economic loss for the Plaintiffs. First, and perhaps most importantly, there is absolutely no testimony that they ever paid their relatives back for these loans, so clearly these loans cannot support a claim for damages suffered by the Plaintiffs.

³ The Defendants will address this “reliance” argument later in this motion, which will become moot if the current argument—that the sums expended by Barabus, Inc. cannot constitute actual economic losses of the Plaintiffs—is accepted by this Court.

Second, Vooy's testified at trial they borrowed funds from relatives "to live on" after they bought the business, although she could not remember when they did so (TT Vol. II, pp. 250-251). However, even if true, borrowing funds from relatives "to live on" does not constitute "economic losses" suffered by the Plaintiffs due to the Defendants' conduct. Had the Plaintiffs invested those borrowed funds into the business operated by Barabus, but did not receive them back from Barabus, then those sums may have constituted "economic losses" caused by the Defendants' conduct, but they did not do so.

In short, these "borrowed funds" cannot constitute economic losses for the Plaintiffs since they never paid the loans back, nor did they invest them in the business.

3. Damages from not being able to sell a lease

The assertion that they could have sold their lease for a profit requires Rule 702 expert testimony as to this alleged loss or the loss of any profits, as the Defendants noted at trial (TT Vol. II p. 227), but no such expert testified. Moreover, the fact that Alex Meyers paid Jim Jordan \$125,000 for his lease is irrelevant to the Plaintiffs' damage claim, as that figure was permitted for impeachment purposes only and not as substantive evidence, as the Court held before Meyers testified (TT Vol VI, pp. 748-49):

Attorney Holt: If she's going to testify what she paid for it, then I should be able to ask her, is that how much money he made on it. What you pay for something and what you make are two different things, and I don't want -- well, let me put it like this. If it goes in for impeachment, it's one thing. If it goes in for the truth of the matter, then I should be able to explore it and show that the profit wasn't -- there wasn't a profit made. That's why I wanted to ask Mr. Mosler that question.

The Court: Well, and I agree with you. I'm saying I thought I limited it, or I thought I said that it would go towards impeachment only as to what -- not the profit part.

Thus, what Meyers paid Jordan should never have been considered as part of the Plaintiffs' economic losses, as this figure was allowed for impeachment purposes only and not as substantive evidence.⁴

4. Summary of the lack of evidence of any economic losses

In short, there was no evidence introduced at trial that would support the jury's award of \$100,000 for the Plaintiffs' alleged economic losses as to the three "contract" claims. Aside from the fact that no experts were called to establish this economic loss, the Plaintiffs failed to provide any evidence that they incurred any economic losses as a result of the Defendants' conduct, as required. At best, they showed that Barabus spent funds, which are its ordinary business expenses, and not the Plaintiffs' losses. Finally, the Plaintiffs cannot rely upon impeachment testimony to establish their actual losses.

B. The Defendants' Other Rule 50 Arguments Re The "Contract" Claims

The Defendants made other arguments at trial in support of their Rule 50 motion as to the "contract" counts, which are incorporated by reference in this Rule 50 post-trial motion. The key ones will be briefly discussed, but are moot if The Court accepts the argument that the Plaintiffs failed to prove any economic losses for these "contract" claims.

1. There is no evidence that a binding agreement was ever reached.

There is no credible evidence that the Defendants ever made a binding promise to give the Plaintiffs a specific lease of any kind, much less one for 7 years. Indeed, the evidence showed the contrary:

- The April 20, 2005 letter from Plaintiffs' counsel (PEX 14, attached to this motion) prior to litigation referenced a two year lease.
- The Complaint only references a 7 year lease in conjunction with the Defendants assisting the Plaintiffs in selling their lease (§ 27), which happened.

⁴ A new trial is also being sought based on this improper closing argument in Section IV.

- Both Plaintiffs answered interrogatories identifying the promises to give them a lease, stating they would “get a lease” if improvements were made, **with neither mentioning a specific 7 year lease in those responses** (DEx 43 and 44), a fact each Plaintiff conceded at trial (TT Vol II, pp. 265-267; Vol III, pp. 464-465).

However, since Vooy's acknowledged that they received a two year lease (Vol II, p. 184), they had to change their story at trial. However, that testimony still did not reflect the creation of a binding agreement, as Vooy's and Gerace testified there were multiple lease terms they wanted—the right to assign the lease, certain repairs to be made by the landlord, late fees, etc. (TT Vol II, pp. 186-187; Vol III, pp. 446-457, 465-466), none of which was ever discussed in conjunction with what would be the final terms of the alleged 7 year lease. Thus, the evidence presented in support of this alleged promise for 7 year lease was not sufficient to create a binding contract, as these were just discussions, a point Vooy's conceded at trial (Vol II, p. 175):

Q. Now, when you discussed the seven-year lease, what was the response of Mr. Hanley and Mr. Mosler?

A. They said that that seemed, like, reasonable. We would work on that and we'd get one, you know. **We'd talk more about it.** (Emphasis added).

In short, there was insufficient evidence at trial to support the jury's finding that such a binding promise for a lease was ever made.

2. Evidence of intent not to keep any promises when made is missing.

Even if such a promise had been made, there is no credible evidence to support a finding **that the Defendants knew those promises were false when made**, a finding that **MUST** be made to support Count VIII (Intentional Misrepresentation), as required by the Jury Instructions (J.I., 30). Thus, at the very least, the jury's finding as to Count VIII should be vacated, as the record is devoid of any evidence from which a jury could infer that the Defendants never intended to provide them a lease. Indeed, the Plaintiffs admit they received a lease, they just did not like its terms (TT Vol II, 186-187, 268-270).

3. There is no evidence that the Plaintiffs relied on the Defendants' promises

The Plaintiffs failed to offer any proof that they made expenditures in reliance on the Defendants' alleged promises, as the \$20,000 spent for repairs were made by Barabus, Inc. (PEX 30 and 48, DEX 15, 16 and 17), as Vooy's conceded (TT Vol II, p. 296). Barabus, Inc. is not a party to the litigation and was simply making ordinary repairs to their leased premises, as opposed to capital improvements, from the income it generated from its sales.⁵ Thus, as argued during the Defendants' Rule 50 motion (TT Vol IV, pp. 550-556), which is incorporated herein by reference, these expenditures by Barabus, Inc. do not support the Plaintiffs' "contract" claims that they relied on the Defendants' alleged promises to their detriment.

4. There is no evidence of fraudulent or deceitful conduct

Even if the Defendants breached their contract with the Plaintiffs, there was no credible evidence presented at trial of any conduct by either Defendant "that was fraudulent, deceitful, or otherwise inconsistent with the purpose of the agreement" required to prove a breach of good faith, as required by the Jury Instructions (J.I., p. 31). Thus, the jury's verdict as to Count IX should be vacated as well.

C. Summary

In summary, any one of the foregoing arguments supports **completely** vacating the \$100,000 award for the first three counts, in addition to the argument in Section A.

⁵ Moreover, a review of this list of "improvements" (PEX 30 and 48) shows that no expenses were for any capital improvements, as the list included items like "locks, toilet float, cobra coils, cleaning, bulbs, platter, chairs, etc." which are routine restaurant needs. Indeed, they also included multiple items with no explanations as can be seen from PEX 30 that is attached to this motion, as well as quotations (not invoices) for other items, as Vooy's conceded at trial (TT Vol. II, pp. 279-280).

Alternatively, as already noted, if the verdict is not completely vacated, the award on these three "contract" claims should be limited to the only breach of contract claim pursuant to the gist of the action doctrine. Likewise, this award on the "contract" claims should only be entered against Chrismos LLC, and not against Mosler or Hanley, pursuant to 13 V.I.C. §1303 that protects them from personal liability for acts done on behalf of Chrismos LLC, as set forth in the Defendants' February 28th submission, .

II. RULE 50 RELIEF AS TO COUNT VI (The Defamation Claim)

Victoria Vooyo was the only Plaintiff who testified about any defamatory statements being made, **as Joe Gerace was not asked a single question about his defamation claim.** (TT Vol. III, pp. 437-494) Vooyo claimed that Mosler said on a taped television interview that she saw that (1) "we didn't know what we were doing, we were always late in rent, we were behind in rent, and we didn't know how to run a restaurant" and that (2) "we borrowed \$150,000 from our family." (TT Vol II, pp. 208-211) Vooyo testified that Mosler's defamatory statements were all made in April of 2005, resulting in the clientele at the restaurant dropping.⁶ (TT Vol, pp. 208, 211-212, 227)

As the transcript confirms, **neither Vooyo nor Gerace claimed that Hanley made any defamatory statements about them.** (TT Vol II, pp. 208-227; Vol III, pp. 437-494)

The Plaintiffs' other witnesses did not help support the defamation claim either:

- Gary Anthony testified he was a regular patron of the Plaintiffs' business, but he was not asked any questions about the defamation claim. (TT Vol II, pp. 152-165)
- John Woodson testified he was a regular patron of the Plaintiffs' business, but while he said he called into the Roger Morgan show to support Reggae, **he never heard either Mosler or Hanley on the radio.** (TT Vol III, pp, 386-90, 392, 395)

⁶ Vooyo also claimed that Mosler said the restaurant was dirty, with dogs allowed inside, but she never claimed that those statements were made to anyone other than herself and Gerace. (TT Vol II, pp. 204-205). Thus, those statements cannot support a claim for defamation, which requires publication to a third party.

- Mike Belcheff met the Plaintiffs when they took over the bar. He testified that he only heard Mosler (not Hanley) on the radio stating that rent was late, **but that was all he could recall.** (TT Vol III, p. 400-404, 406-407)
- Donna Christiansen testified she was an occasional patron of the bar, but she was not asked any questions about the defamation claim. (TT Vol III, pp. 409-412)
- Ed Gerace, Joe Gerace's brother, came to St. Croix with his brother and worked at the business until the Plaintiffs left, but he was not asked any questions about the defamation claim. (TT Vol III, pp. 415-434)
- John Reid, the bartender, testified that he heard Mosler (not Hanley) on the radio saying the Plaintiffs did not pay rent and had loud parties, along with other negative things, that was devastating to the Plaintiffs as the statements were untrue, **but he could not tell if it affected the clientele.** (TT Vol IV, pp. 505, 520-521, 535)

Based on this record, the jury awarded **each** Plaintiff \$30,000 against Mosler (\$60,000 total) and **each** Plaintiff \$30,000 against Hanley (\$60,000 total). These awards should be set due to the lack of any evidence to support them.

First, as to Hanley, there was no testimony that he made any defamatory statements about either Plaintiff, so that award against him should be completely set aside.⁷

Second, as to Mosler's alleged defamatory statements, it was undisputed that:

- The rent was constantly paid late from the outset of their tenancy, as the rent checks confirmed (See DEX 14), which Vooy's conceded (TT Vol II pp. 195-201).
- The Plaintiffs admitted they borrowed money from their family, although they did not know exactly when or how much.⁸ (TT Vol II, pp. 250-251)

⁷ Chris Hanley did testify that he called the radio on April 14, 2005 to defend himself, stating that the Plaintiffs' rent was often in arrears (Vol IV, pp. 623-624), which is true, as it is undisputed that virtually every rent check was paid months after it was due. See DEX 14. Indeed, Hanley pointed out that the rent for April had still not paid, *id.*, which he confirmed by showing that the April rent check was dated April 14th, with a notation made by his office showing the check was delivered at 12:45 pm, just after he got off the Roger Morgan show (Vol IV, p. 635, DEX 14), which the Plaintiffs never refuted.

⁸ Saying the Plaintiffs borrowed money from their family is not even defamatory. Likewise, saying they borrowed more than they actually did is not defamatory either. Indeed, a business borrowing money is a normal event.

- Finally, the Plaintiffs' **own admissions at trial** demonstrated that they "did not know how to run" their business:
 - (1) They admitted they had never run a restaurant before as they had just graduated from a six month culinary program, with Vooy's being only 30 years old, while Gerace was 25 (Vol II, pp. 168, 177, Vol III, p. 439).
 - (2) They admitted they bought the business without a lease or an assignable tradename, which they only discovered after they had arrived on St. Croix (Vol II, p. 172, 261, 309; Vol III, pp. 368, 457, 459, 461).
 - (3) They constantly paid rent late, going five months at one point without paying rent, which Vooy's admitted (See DEx 14, TT Vol II pp. 195-201).
 - (4) They paid \$4500 in back rent in February by check, which bounced, as Vooy's admitted (TT Vol II pp. 195-201).
 - (5) Their business in fact lost money every year according to their own tax returns (DEx 15, 16, 17).
 - (6) Vooy's thought a 7 years lease was better than a 5 year lease with a 5 year option (totaling 10 years) (Vol II, p. 235).
 - (7) Vooy's claimed that she did not keep all of the receipts for the business (Vol. II, pp. 293-94, 353, 358-359, 363, 369-370, 373).
 - (8) They did not pay any withholding or Social Security taxes because "no one told us to" and they "didn't know how to do business taxes" (Vol III, pp. 334, 336-337), nor did they pay any gross receipt taxes while they ran the business because they "never had the money" to pay them (Vol II, pp. 228-29, 287).
 - (9) They admitted that they never got a business license (Vol II, pp. 304-05).

Vooy's in fact admitted they did not know how to run a business until about March of 2005, responding to her counsel's question about the March 31st meeting (Vol. II, p.206):

- Q. So, Miss Vooy's, did you know how to run a restaurant?
A. We finally figured it out. Yes.

In short, it is true the Plaintiffs were constantly late in paying their rent, did not know how to run their business and did borrow money from their family.

Equally important, Mosler's words that the Plaintiffs "didn't know how to run a restaurant" are at best his "opinion" based on items (1) through (5) above that he clearly

knew about. In this regard, statements which are opinions are not actionable. As noted in *Simpson v. Andrew L. Capdeville, P.C.*, 64 V.I. 477, 488 (V.I. 2016):

Capdeville further cited approximately 12 statements he claims were published on one or more websites owned and controlled by Simpson. These statements ranged from accusing Capdeville of being a "liar" who has "proven himself to be dishonest," to statements referring to Capdeville as a "disgrace," a "danger," and insisting that his conduct "was so terrible" that it "should be used ... as an example of what Lawyers should not do." But "hyperbole and expressions of opinion" are typically "not provable as false," and are therefore not actionable.

See also, *Kendall v. Daily News Pub. Co.*, 55 V.I. 781, 788 (Sup. Ct. Sept. 21, 2011), *aff'd*, 716 F.3d 82 (3d Cir. 2013) ("only statements that are "provable as false" are actionable; hyperbole and expressions of opinion not provable as false are constitutionally protected).

Finally, the Plaintiffs failed to show how the claimed defamatory statements made by Mosler caused any harm to the Plaintiffs. In this regard, the Court instructed the jury on defamation damages as follows (J.I., p. 34):

"That there is either accountability of the statement irrespective of special harm or the existence of special harm caused by the publication."

Since the only defamatory statements the Plaintiffs identified (allegedly made by Mosler) were all based on facts which the Plaintiffs admitted were true, what is the factual basis for awarding \$30,000 to each Defendant for defamation? Moreover, the Court defined "specific harm" caused by defamation (J.I., p. 36):

"The definition of special harm is the loss of something having economic or pecuniary value caused by the defamation. It is an element of defamation and it must be established by preponderance of the evidence. Only after that liability does the assessment of actual damages becomes relevant."

However, there was no evidence offered of any economic or pecuniary value that would support an award of \$30,000 in damages against Mosler (or Hanley) for Vooyoys **and another \$30,000 in separate damages for Gerace** against Mosler (or Hanley).

Indeed, notwithstanding the Defendants' objections, this Court separated the damages on the verdict form as to each Plaintiff's respective defamation claims, even though there was no factual basis for awarding separate, distinct damages to Vooy and Gerace, as at best the alleged defamatory statements caused one set of damages to the Plaintiffs as a whole. To put it another way, while each Plaintiff sought damages for defamation, neither stated that Mosler's alleged defamation caused any distinct damages that differed as to each Plaintiff. Thus, while separating the liability aspect of the defamation claims made sense, as the jury had to decide if any Defendant defamed either Plaintiff, the damages for any such defamation should have been one line, not two, on the verdict form, as neither Plaintiff articulated any separate type of harm caused Mosler's alleged defamatory statements.

Likewise, the same analysis applies to Hanley (if in fact he defamed either Plaintiff, which neither Plaintiff asserted at trial). Indeed, there is certainly no separate and distinct set of damages caused by Hanley and Mosler, as at best, each is accused of making similar statements that caused one harm, not four separate "harms" of \$30,000 each, as the alleged defamatory statements were about the business operations and not each Plaintiff individually..

As such, based on the trial record, it is respectfully submitted that this Court should vacate the damage award against Hanley and Mosler for defamation.

III. THE RULE 50 MOTION AS TO THE PUNITIVE DAMAGE AWARD

It is respectfully submitted that this Court should completely set aside the jury's punitive damage award of \$100,000 (\$50,000 as to Mosler and another \$50,000 as to Hanley). In this regard, the Court instructed the jury that punitive damages can only be awarded if the jury finds by clear and convincing evidence that the conduct of the

Defendants constituted “malicious wrongdoing” that showed “reckless indifference” to the Plaintiffs (J.I., p. 41). *See also, Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 824 (2017)(“Punitive damages are “damages awarded in cases of serious or malicious wrongdoing to punish or deter the wrongdoer or deter others from behaving similarly. . .”)

The trial evidence was contested in many respects, but it is respectfully submitted that the evidence was insufficient as a matter of law to support a finding of malicious wrongdoing on the part of either Mosler or Hanley that showed reckless indifference to the Plaintiffs by clear and convincing evidence. Indeed, it is undisputed that the Defendants could have simply given the Plaintiffs a 30 day notice to vacate the premises since they were month to month tenants, which was never done.

Equally important, despite the characterization of Plaintiffs’ counsel that the April 12th letter (PEX 10, copy attached) was an “illegal eviction letter,” it was not. To the contrary, once the Defendants received that letter answering their question as to whether the Plaintiffs were vacating the premises, they took no further action to remove the Plaintiffs from the premises. In fact, the Defendants assisted the Plaintiffs in selling their business, and leaving the premises on their own accord, by giving their buyer a lease at the Plaintiffs’ request, something they had no obligation to do.

Alternatively, if this Court rejects the foregoing argument, it is respectfully submitted that the punitive damage award must still be set aside as for the foregoing reason:

- As discussed above, Counts VIII and Count IX merged in the breach of contract claim pursuant to the “gist of the action”, making them contract claims, not tort claims, so that punitive damages could not be awarded for these counts;⁹

⁹ As those “merger” issues are already addressed above, they will not be repeated again here, but are incorporated herein by reference. Indeed, as noted, any award based on a breach of contract claim must be limited to Christmas in any event under 13 V.I.C. §1303.

- Alternatively, the jury should never have considered awarding punitive damages for Count IX (bad faith breach of contract), as that is a contract claim, not a tort claim. Indeed, the instructions noted this fact. (J.I., p. 31)

In short, as these two claims are contract claims, not tort claims, punitive damages are not permitted as to these counts. However, as the jury considered these “contract” claims in making its award of punitive damages, a new trial is warranted if this Court does not completely toss the punitive damage award based on the first argument in this section.

IV. THE RULE 59(A) MOTION RE THE PLAINTIFFS' CLOSING ARGUMENTS

Rule 59(a)(1)(A)(vi) permits this Court to order a new trial where the closing argument of counsel is so inflammatory as to undermine the fairness of the trial. As noted by the V.I. Supreme Court in *Frett v. People*, 66 V.I. 399, 424 (V.I. 2017);

A trial court possesses broad discretionary power over the scope of counsel's closing arguments. . . . “[T]he cardinal rule of closing argument [is] that counsel must confine comments to evidence in the record and to reasonable inferences from that evidence.” (Citations Omitted).

It is respectfully submitted that the closing argument of Plaintiffs' counsel, Lee Rohn, were not confined to the evidence, but in fact contained multiple misstatements of the facts, warranting a new trial in this case.¹⁰

¹⁰ Indeed, at one point in her closing, counsel actually testified improperly as a fact witness about a key sentence in the April 20th letter (PEX 14):

It is their position that there was a promise made to them to enter into a two-year lease---**that's my mistake.' I misunderstood because I had seen one of the leases** . . (Emphasis added).

See, *Karriker v. Sigmon*, 43 N.C. App. 224, 225–26, 258 S.E.2d 473, 474 (1979)(“The general rule is that counsel . . . may not ‘travel outside of the record’ and inject into his argument facts of his own knowledge or other facts not included in the evidence,” granting a new trial due to counsel's violation of this rule in closing argument)

In this case, the Defendants first objected to Rohn's initial closing arguments after she asked the jury to award damages based in evidence that was only submitted for impeachment, not substantive purposes, stating (TT Vol VI, p. 1041):

Your Honor, we move for a mistrial. You indicated that she could ask questions of the rebuttal witness for impeachment only, that she was not allowed to use that as proof of damages, and that's exactly what she did in her closing argument. She took the question that was strictly for rebuttal only with no verification of the woman knowing actually what it was or what the facts were or the existence of the restaurant and turned it into evidence and asked the jurors to award that. And that's outside the evidence and we ask the Court to declare a mistrial.¹¹

This Court immediately responded, stating (TT Vol VII, p. 1042):

THE COURT: Attorney Rohn, my specific--I made it specific, that you were not to mention a number. So the impeachment could not have been where you mentioned or I allowed you to say \$125,000. That was not my ruling.

The Court ultimately denied the motion, but gave this admonition (TT Vol VII, p. 1108):

THE COURT: In reference to the motion to declare a mistrial, the Court finds that if it --though the Court has not looked at the transcript, if that was mentioned, the Court finds that it is not so egregious to declare a mistrial, but the final instruction would show and explain that argument by counsel is not evidence and that they must rely upon their memory as to the facts of this case. But I will issue a cautionary or a mistrial could be cumulative. So like I said, I did not have the opportunity to review the record but I will issue a cautionary. **If there is another instance like that, I will review the record and if I find it is cumulative, the Court will find it's egregious and I will declare a mistrial.** (Emphasis added)

Counsel for the Defendants then closed, focusing on multiple credibility issues raised in the Plaintiffs' case as the cornerstone of the defense in this case.

When Attorney Rohn then made her reply closing, she completely ignored the Court's prior admonition and made numerous misrepresentations of the record, resulting in a second motion for a mistrial by defense counsel (TT Vol VII, pp. 1132-33). This Court then engaged in an exchange with Attorney Rohn, who tried to justify her remarks by

¹¹ This is the same issue discussed in Section I regarding the use of impeachment evidence as substantive evidence.

claiming she can make any statement based on her recollection of the record, which this Court soundly rejected (Vol VII, pp. 1134-35):

THE COURT: It cannot be -- one cannot use "that is my recollection" and simply gloss it over. Your recollection has to be accurate as to the evidence that has been put forth in this courtroom.

.....
I'm telling you, your recollection must be and comport with the evidence. You can't simply be "well, that's my recollection" and that's it. You are in front of a jury.

The Court then took the mistrial motion under advisement (TT Vol VII, p. 1140).

In this regard, a new trial is warranted if the Rule 50 motion is not granted, based on these misrepresentations of Attorney Rohn in her rebuttal argument:

- TT Vol VII, pp. 1112-1113-Attorney Rohn claimed that Vooyo added the statement to the \$2,000 rent check because Joe Gerace wrote it and "forgot to make that notation." Attorney Rohn did so in order to try to negate the fact that Vooyo altered this check, tampering with the evidence. However, Vooyo never said at trial that Joe Gerace "forgot to add the notation" when asked about this added notation **on the check she signed** (Vol III, pp. 355-357, 361-362, 369-370, 377-78), making Rohn's representation that Gerace "forgot to make the notation" totally misleading.
- TT Vol VII, pp. 1114-1115-Attorney Rohn said her clients were intending to leave after they arrived since they did not have a lease, but stayed because they were told they would get a lease. Again, Attorney Rohn made this assertion to try to bolster her argument that specific promises were made, and relied upon, since the evidence on this point was extremely thin. However, neither Vooyo nor Gerace ever testified at trial that they were planning on leaving before they changed their mind due to being promised a lease. Indeed, Vooyo specifically said they decided to take a "leap of faith and continue" even after learning they had no lease, a decision that was made before they had even met Mosler or Hanley (Vol II, pp. 172-173). Thus, Rohn's argument on this point was totally misleading.
- TT Vol VII, pp. 1123-1124-Attorney Rohn said Mr. Reid testified that the restaurant was open in June, a key credibility issue as Vooyo had testified that they were open in June. Indeed, the Defendants hammered Vooyo's lack of credibility on this point—whether the business was open in June. In this regard, Mr. Reid testified that he came to the restaurant at the end of May and it was closed, with everybody gone (Vol IV, p. 532). Thus, Rohn's representation to the contrary in her rebuttal argument was totally false regarding this key credibility issue, again unduly prejudicing the Defendants' credibility arguments.

- TT Vol VII, p 1125-Attorney Rohn claimed the April 12th letter (PEX 10) was illegal:

So the idea that they -- that they didn't give them a notice to quit, that letter -- when you serve someone with a letter and tell them that you've got -- on April 12th, which you got it April 18th, and they tell you you have to get out or we're going to take your stuff and throw it away by April 30th, that's illegal. You can't do that. **So what they actually tried to do is to evict my clients without a notice to quit and without obeying the law.** That's what they actually did. **So yes, that's illegal activity.** (Emphasis added)

As the Court noted in discussing this exhibit, Rohn's characterization of this letter and the applicable law is totally wrong, as the letter only sought to confirm they were leaving and asked to be corrected if they were not doing so. (TT Vol VII, pp. 1139-1140). Thus, this rebuttal argument was totally improper, misstating the law and the contents of this letter, again unduly prejudicing the defense.

- TT Vol VII, p. 1127-Attorney Rohn says "So -- and if indeed they wanted to prove that they didn't say those things on Mr. Morgan's show, it would be they who would bring Mr. Morgan and they did not." However, it is improper to assert this is the Defendants' burden to show they did not say something, as that is the Plaintiffs burden, resulting in clear prejudice to the defendants who did not get to respond.
- TT Vol VII, pp. 1127-1128-Attorney Rohn stated that John Woodson heard Mosler and Hanley defame her clients, saying:

And the statement that says Mr. Woodson didn't say that he heard bad things on -- being said by Hanley and Mosler. His testimony was, I called up the show to -- let me see if I got it. I called up the show to support it -- to support them. Well, you wouldn't call up the show to support Vicki --Vic and Joe if people weren't saying bad things about them. So of course he heard people saying bad things about them. That's the reason he called to support them.

However, Rohn's characterization of John Woodson's testimony is completely wrong, as Woodson only testified that he called in to support Reggae, **expressly stating that he never heard either Mosler or Hanley say anything on the radio.** (TT Vol III, pp, 386-90, 392, 395).

In summary, these rebuttal arguments are not based on any reasonable inferences that can be drawn from the evidence, but on clear fabrications of the facts in evidence. More importantly, it is the cumulative effect of all of these blatant mischaracterizations of the record that makes this conduct so egregious, as they were designed to undermine the key issues raised by defense counsel in his closing, knowing he could not respond.

These improper statements are particularly egregious since the Court had already admonished Attorney Rohn after using impeachment testimony as substantive evidence in her first closing argument. Indeed, that misuse of trial evidence warrants a new trial by itself, as the Court had told Attorney Rohn it was only allowing this testimony for impeachment use only.

As such, if the Rule 50 motion is not granted, it is respectfully submitted that a new trial is warranted based on the improper closing arguments of Plaintiffs' counsel.

V. CONCLUSION

As set forth herein, it is respectfully submitted that judgment should be entered for the Defendants on all counts pursuant to Rule 50(b). Alternatively, a new trial is warranted pursuant to Rule 59(a)(1)(A)(vi) due the improper closing argument of Plaintiffs' counsel.

DATED: March 22, 2022

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF PAGE LIMITATION AND SERVICE

I hereby certify that this document complies with the page limitation set forth in Rule 6-1(e), and was served this 22nd day of March, 2022, by email:

Lee Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Joel H. Holt

FILED

March 22, 2022 03:15 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

ATTORNEYS AT LAW
NICHOLS NEWMAN LOGAN & D'ERAMO, P.C.

April 12, 2005

Via Hand Delivery

Joe Gerace
Vic
Cane Bay Beach Bar
St. Croix, USVI

Re: Cane Bay Beach Bar

Dear Joe and Vic:

This law firm represents Chrismos Cane Bay LLC, the owner of the Cane Bay Beach Bar and surrounding property. This letter is written on its behalf.


This letter is to confirm the conversations and agreements between you and the owner (through the owner's representatives Warren Mosler and Chris Hanley) that your rights to occupy and use the Cane Bay Beach Bar shall terminate effective April 30, 2005 and you have agreed to vacate the premises no later than that date. Landlord accepted this agreement.

Please have all personal property owned by you removed from the premises no later than April 30, 2005. Any personal property remaining on the premises after that date shall be deemed to have been abandoned by you and the Landlord will make arrangements to have it removed and disposed of.

If any statement in this letter is inaccurate, please notify me immediately.

Very truly yours,

NICHOLS NEWMAN LOGAN
& D'ERAMO, P.C.


G. Hunter Logan, Jr.

GHL/slp
cc: Warren B. Mosler
Chris Hanley



J60001

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Law Offices Of

Rohn and Cameron, LLC

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April 20, 2005

VIA HAND DELIVERY

Hunter G. Logan, Esquire
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
St. Croix, VI 00820-4971

RE: Cane Bay Beach Bar v. Chrismos Cane Bay, LLC.

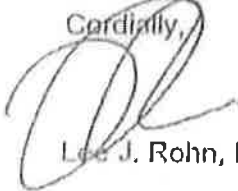
Dear Attorney Logan:

I represent the tenants of the Cane Bay Beach Bar, Joe Gerace and Victoria Vooyo. This is in response to your letter dated April 12, 2005 and received some days thereafter.

My clients have never agreed to vacate the premises on April 30, 2005 and will not do so. It is their position that there was a promise made to them to enter into a two (2) year lease with them and they relied on that promise in expending funds to improve the premises.

As you are well aware, self help is not allowed in this jurisdiction and if you attempt to come in and take my client's property I will ask for sanctions. My clients, in keeping with the promises of a long term lease, have bookings through May they have to honor. Further, they intend to continue paying rent and occupying the premises.

Further, any attempt to evict them will be met with a law suit for refusal to provide a lease, slander, defamation, and fraud. See enclosed letter.

Cardially,

Lee J. Rohn, Esquire

LJR/jb
cc: Joseph Gerace
Victoria Vooyo



JG000402

Name	Date	Bates No.	Hours	Rate	Amount	Description
AA Lock and Key	10/16/2003	ig000667			\$70.00	Locks
Princesse Hardware	11/20/2003	ig000563			\$9.33	Toilet Float, Cobra Coils
Barsotti Refrigeration	2/4/2004	ig000646			\$75.00	Work on Ice machine
Barsotti Refrigeration	2/9/2004	ig000647			\$67.50	Clean ice machine
Gallows Bay Hardware	2/22/2004	ig000582			\$362.88	Round Padlock
Mikes Electronics	4/8/2004	ig000569			\$24.95	RF MOD RCA
Home Depot	5/6/2004	ig000559			\$38.00	
Standard Equip. Co	5/7/2004	ig000620			\$63.72	Restaurant Equipment
Standard Equip. Co	5/7/2004	ig000619			\$96.51	Platter
Rob Schmauder	5/15/2004	ig000641			\$174.00	Flo Air Vent
Tropical Shipping	5/20/2004	ig000642			\$259.00	Verdelation Fan
American Metal	6/4/2004	ig000638			\$1,650.00	Installation of Hood
Tropical Shipping	6/14/2004	ig000633			\$433.70	
Tropical Shipping	6/15/2004	ig000634			\$269.70	
Tropical Shipping	6/15/2004	ig000635			\$164.00	
Dealers Industrial Equip	6/17/2004	ig000631/32			\$75.00	3/4 HP 1800 RPM Marathon
Paint Locker	6/17/2004	ig000605			\$42.62	Paint***
Princesse Hardware	6/17/2004	ig000564			\$16.40	Toilet supplies
Dealers Industrial Equip	6/18/2004	ig000640			\$75.00	
UDL Lumber	6/18/2004	ig000575			\$15.30	Red Bricks
Princesse Hardware	7/2/2004	ig000567			\$41.20	Faucet
Princesse Hardware	7/2/2004	ig000566			\$49.50	Saw Blade
Tropical Supply	7/2/2004	ig000544			\$7.65	Brass Coupling
Browne's Maintenance	7/7/2004	ig000622			\$70.00	Repairs
Browne's Maintenance	7/7/2004	ig000623			\$90.00	Repairs
Gallows Bay Hardware	8/13/2004	ig000552			\$80.47	
Gallows Bay Hardware	8/14/2004	ig000583			\$111.80	Bulbs
Receipt-backward	8/14/2004	ig000624			\$375.00	*****
Kmart	8/15/2004	ig000550			\$12.00	General Merchandise
Princesse Hardware	8/16/2004	ig000565			\$30.00	Locks



Quality Electric	8/17/2004	jg000599		\$183.20	PVC supplies
Paint Locker	8/17/2004	jg000606		\$64.21	Stripper
Gallows Bay Hardware	8/17/2004	jg000584		\$75.98	Lampholder and supplies
Gallows Bay Hardware	8/17/2004	jg000585		\$47.45	Floor Leveler, Rubber float
Paint Locker	8/19/2004	jg000607		\$166.10	latex and chipper brush
Gallows Bay Hardware	8/20/2004	jg000586		\$15.98	Lawnmower parts
Princesse Hardware	8/20/2004	jg000568		\$7.50	Wire
UDL Lumber	8/20/2004	jg000574		\$11.34	2x4 Lumber
Gallows Bay Hardware	8/21/2004	jg000587		\$232.16	Tires and supplies
Gallows Bay Hardware	8/21/2004	jg000588		\$12.92	Brass nipple
Caribe Home Center	8/22/2004	jg000604		\$213.15	Paint
Caribe Home Center	8/22/2004	jg000602		\$254.36	Multi purpose Hardware and Electrical
Gallows Bay Hardware	8/23/2004	jg000589		\$67.36	Photocell, screws
Paint Locker	8/24/2004	jg000610		\$32.90	Gloss and Tray Liners
Gallows Bay Hardware	8/24/2004	jg000590		\$126.83	Pedestal Fan and accessories
Paint Locker	8/25/2004	jg000608		\$353.42	Base and supplies
UDL Lumber	8/25/2004	jg000573		\$161.06	Lumber (Various)
Reliable Rental	8/25/2004	jg000150		\$75.00	Airless Paint Sprayer
Paint Locker	8/26/2004	jg000611		\$12.15	Tray Liners
Paint Locker	8/26/2004	jg000612		\$109.50	Clear Base
Paint Locker	8/26/2004	jg000609		\$71.25	Wood Finish
Gallows Bay Hardware	8/26/2004	jg000591		\$55.12	Screws, Grit Pak
UDL Lumber	8/27/2004	jg000572		\$157.95	Lumber (Various)
Gallows Bay Hardware	8/28/2004	jg000592		\$22.93	Screws, bolts,
Caribe Home Center	8/28/2004	jg000603		\$59.78	Electrical Floodlights
Gallows Bay Hardware	8/28/2004	jg000557		\$12.99	
Gallows Bay Hardware	8/29/2004	jg000593		\$86.04	Nuts and Bolts
St. Croix Trading	8/31/2004	jg000600		\$126.00	Lumber
Paint Locker	9/2/2004	jg000613		\$20.40	Wood Finish
Gallows Bay Hardware	9/3/2004	jg000594		\$422.36	Black Grill
UDL Lumber	9/4/2004	jg000580		\$137.29	Lumber (Various)
Gallows Bay Hardware	9/6/2004	jg000554		\$10.47	Utility Hinge
Gallows Bay Hardware	9/12/2004	jg000651		\$46.20	Screws
UDL Lumber	9/14/2004	jg000579		\$178.93	Lumber (Various)
Gallows Bay Hardware	9/15/2004	jg000652		\$33.04	Screws
Hand Written Note	9/1/2004	jg000617		\$287.00	New Register & Sharpening Stone

Cost U Less	9/16/2004	jg000617			\$659.99	Generator
UDL Lumber	9/19/2004	jg000578			\$167.80	Lumber - T - 111
Express Builders Supply	9/10/2004	jg000545			\$191.80	Plywood
Caribe Home Center	9/14/2004	jg000601			\$74.10	Hardware, Bolts and Moulding
Dave Holcome	9/16/2011	jg000548			\$375.00	Redid Bar Top
Tool Box	9/11/2004	jg000546			\$16.05	Supplies
Walsh Metal Works	9/18/2004	jg000570			\$60.00	Metal
Ferrel Trucking	9/20/2004	jg000629/645			\$125.00	2 Appliances
Tropical Shipping	9/20/2004	jg000630			\$573.20	
Excise Tax	9/20/2004	jg000636			\$88.82	
Ventilation Direc	9/20/2004	jg000637			\$2,465.56	Exhaust Hood & Accessories
Paint Locker	9/20/2004	jg000614			\$27.90	Primer
Paint Locker	9/20/2004	jg000615			\$183.68	Paint
Paint Locker	9/21/2004	jg000616			\$17.11	Brushes
Raycon Mechanical	9/22/2004	jg000649			\$4,325.00	Quote Exhaust fan- Paid\$2500
Gallows Bay Hardware	9/22/2004	jg000596			\$77.21	Galvanize, Candelabra Base
Caribe Home Center	9/23/2004	jg000655			\$15.00	Round Moulding
Raycon Mechanical	9/23/2004	jg000648			\$936.55	
Walsh Metal Works	9/24/2004	jg000571			\$46.00	Epoxy
Gallows Bay Hardware	9/28/2004	jg000595			\$66.76	Nuts and Bolts
Tool Box	9/29/2004	jg000546			\$7.80	T - Rods
Tropical Supply	9/24/2004	jg000125			\$8.05	Drain Opener
Gallows Bay Hardware	9/25/2004	jg00054			\$49.95	
UDL Lumber	9/27/2004	jg000577			\$35.00	Lumber
Airs R Us	10/2/2004	jg000644			\$385.00	Unit
Gallows Bay Hardware	10/10/2004	jg000553			\$51.02	Nuts and Bolts
UDL Lumber	10/16/2004	jg000576			\$79.00	Cement & Putty Knife
Tropical Supply	10/2/2004	jg000124			\$40.50	Gas Flex Connector
Gallows Bay Hardware	11/8/2004	jg000598			\$43.12	Screws, bolts, and padlock
Gallows Bay Hardware	11/21/2004	jg000597			\$29.49	Cleaner, and PVC cement
Mike Belchauff	11/29/2004	jg000560			\$265.00	Security Brackets
Byassee Equip	12/8/2004	jg000643			\$166.18	Thermostat
The Tool Box	1/7/2005	jg000650			\$17.50	Bath Lockset

Hood Cleaning	1/15/2005	jg000624		\$225.00	
Budget Rest. Supply	1/12/2005	jg000625		\$903.00	Charbroiler
Tropical Supply	1/19/2005	jg000626/627		\$96.60	
Excise Tax	1/19/2005	jg000628		\$36.40	Gas Grill
Tool Box	1/21/2005	jg000547		\$18.00	Supplies
Mike Belchauff	1/23/2005	jg000665/666		\$1,515.42	Pd. \$1000
Gallows Bay Hardware	1/30/2005	jg000618		\$79.96	Trash Can
Gallows Bay Hardware	2/2/2005	jg000558		\$25.77	Shelves, Adapter, & Cable
Princesse Hardware	2/10/2005	jg000659		\$25.65	PVC supplies and Valves
Tropical Supply	2/11/2005	jg000663		\$112.18	Faucet
Tropical Supply	2/11/2005	jg000661		\$35.19	PVC supplies
Tropical Supply	2/12/2005	jg000662		\$2.78	Nipples
Caribe Home Center	2/12/2005	jg000561		\$6.60	Washers
Hood Cleaning	2/13/2005	jg000624		\$155.00	
Cost U Less	2/13/2005	jg000617		\$249.75	Chairs
Cost U Less	no date	jg000617		\$79.50	Chairs
Gallows Bay Hardware	2/18/2005	jg000653		\$18.63	
UDL Lumber	2/19/2005	jg000657		\$187.23	Lumber
Gallows Bay Hardware	2/21/2005	jg000654		\$38.98	
Walsh Metal Works	2/21/2005	jg000565		\$33.00	Metals and Piping
Gallows Bay Hardware	2/21/2005	jg000551		\$146.30	Shingles and Screws
Kmart	no date	jg000555		\$25.62	
Gallows Bay Hardware	no date	jg000556		\$46.90	
UDL Lumber	2/25/2005	jg000658		\$23.97	Lumber
Gallows Bay Hardware	2/23/2005	jg000664		\$50.00	Locksmith Labor
Hood Cleaning	3/12/2005	jg000624		\$80.00	
Hood Cleaning	4/1/2005	jg000624		\$75.00	
Tropical Shipping	4/18/2005	jg000639		\$36.00	
Hood Cleaning	5/1/2005	jg000624		\$75.00	
Princesse Hardware	6/4/2005	jg000660		\$34.95	Locks

Hand Written Note

no date

jg000624

\$12,279.00 Unknown

FILED

April 27, 2022 02:44 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GRACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

PLAINTIFFS' STATEMENT OF FACTS IN EVIDENCE¹

A. Plaintiffs purchased the Cane Bay Beach Bar/Restaurant

In 2003, Plaintiffs, Joseph Gerace and Victoria Vooy, d/b/a Cane Bay Beach Bar, were twenty-five (Joe) and thirty years of age (Victoria), and recent culinary school graduates whose dream was to open a restaurant together. (Trial Transcript ("Tr."), Vol II, Vooy, p 168). They came across Cane Bay Beach Bar on St. Croix for sale on the internet. (*Id.*, Vooy, pp. 168-169). Joe Gerace went down in June 2003 to check out the restaurant. (*Id.*, Vooy, p. 169). They decided that the Cane Bay restaurant in the Caribbean seemed like a perfect place to start their restaurant business, so they packed up their belongings, drove from Arizona to Florida, shipped their belongings from Florida, including a Jeep, and then flew to St. Croix. (*Id.* Vooy, pp. 169, 172). Ms. Vooy sold her condo in Arizona and sold some of her stock to pay the down payment of \$45,000 on the restaurant. (*Id.*, Vooy, pp. 169-170).

¹ The jury received these facts and exhibits in evidence during the trial. The testimony is cited to the Trial Transcripts as Tr., Vol __, p. __).

The young couple had been dreaming of how they would create a life around the restaurant before moving all their belongings to St. Croix to pursue their dream. (*Id.*, Vooy's p. 172). They found out that the restaurant had no lease, and that the landlord was selling the property, after they had already sold the condo and were in the process of moving to St. Croix. (*Id.*, Vooy's, pp. 172-173). They decided to continue with their dream and negotiate a lease with the new owners of the property, Warren Mosler and Chris Hanley. (*Id.*). The day Plaintiffs closed on buying the restaurant in August 2003, they began working to open the restaurant as soon as possible. (*Id.*, Vooy's, p. 173).

B. Oral Agreements with Defendants Mosler and Hanley for 7-year Lease

A few weeks after closing on their restaurant deal, Defendants, Mr. Mosler and Mr. Hanley came by and introduced themselves as the new landlords. (*Id.*, Vooy's, p. 173). At that first meeting, Plaintiffs told Defendants they needed a lease and talked about the rent, and how to get the rent payment to Defendants. (*Id.*). Plaintiffs told Defendants they wanted a seven-year lease because they had learned in school that a seven-year lease was best for a new restaurant as in the first three years, a restaurant usually does not make a profit. (*Id.*, Vooy's, pp. 174, 235). Defendants told them it sounded reasonable, and they would give a seven-year lease if the Plaintiffs completed repairs and improvements to the premises. (*Id.*, Vooy's, pp. 175, 261; Vol. III, Joe Gerace, p. 463).

Plaintiffs were paying \$1500 in rent for the restaurant. (*Id.*, Vooy's, p. 174). The prior tenant who sold it them had been paying \$1500 for the restaurant plus a cottage, but Plaintiffs were only leasing the restaurant and did not get a cottage. (*Id.*). Plaintiffs discussed this rental amount with Defendants and were told that Defendant Chris Hanley would pick up the rent payments. (*Id.*, Vooy's, p. 175).

Defendants promised the Plaintiffs a seven-year lease once the Plaintiffs got the restaurant up and running. Defendant said they wanted Plaintiffs to make some improvements to the restaurant, do a general clean up, complete some repairs, paint the restaurant, which Plaintiffs thought were the landlord's job but because they did not have much leverage, they agreed to meet Defendants' requests in order to get the seven-year lease. (*Id.*, Vooyo, pp. 175-176).

C. Plaintiffs' Reliance on Defendants' promise of a 7-year Lease

In reliance on Defendants' promise to grant them a seven-year lease, Joe Gerace and Victoria Vooyo "replaced screens and plywood and the outside of the kitchen." (Tr. Vol. II, Vooyo, p. 176). They also resurfaced the bar, power washed, did general cleaning, replaced sinks in the bathroom, and re-painted the premises. (*Id.*, Vooyo, p. 176). Plaintiffs committed to these repairs and overall clean up based on Defendants' promises to grant them a lease for seven years. (*Id.*, Vooyo, pp. 176-177). Plaintiffs even hired a local artist to paint a mural in the women's bathroom to improve the aesthetics of the establishment. (*Id.*, Vooyo, p. 176).

Mike Belcher testified that he witnessed Plaintiffs Joe and Vic "go crazy making all kinds of improvements. Making the place better, just, you know, working their butts off." (Vol. III, Belcher, p. 401). He further testified that "they were constantly painting. They were constantly sanding things down. They were, ... redoing the bar surface. They were re-planking the wooden deck. They were, ... installing a sound system; a projector for, ... showing movies and, ... football games; and, ... rope lighting everywhere and just, ... really rolling their sleeves up and going crazy fixing the place up." (*Id.*). Mr. Belcher spent a lot of time at the restaurant and helped them make repairs. (*Id.*). Plaintiffs adhered to a strict cleaning regime throughout but especially in the bathrooms and kitchen. (*Id.*, Vooyo, pp. 176-177). The repairs took about six months during which time they continued to run the

PLAINTIFFS' STATEMENT OF FACTS IN EVIDENCE

Page 4

restaurant. (*Id.*, Vooy's, pp. 177). During that time, Defendants visited the restaurant about once a month. (Tr. Vol II, Vooy's, p. 177).

Joe Gerace's brother, Edward Gerace, came down to St. Croix to work with Joe and Vic on their new restaurant. (Vol. III, Edward Gerace, p. 415). He testified at trial as to all the repairs and improvements they did to get the restaurant up and running and how the clientele increased dramatically under Joe and Vic's ownership. (Vol. III, Edward Gerace, pp. 418-419, 421). Edward Gerace worked on the grease trap, including locating it, removing the rusty bolts, cleaning out all the old sludge, and keeping it clean because the grease trap was old and undersized. (*Id.*, Edward Gerace, pp. 422-424). Mr. Gerace testified he has no recollection of Mosler and Hanley as landlords ever replacing the grease trap. (*Id.*). In addition to helping Plaintiffs with repairs and improvements, Edward Gerace testified that the Plaintiffs cleaned the restaurant twice per day on a daily basis. (*Id.*, Edward Gerace, p. 424).

Plaintiff's restaurant shared a meter box and cistern with the Cane Bay Dive Shop located next door to them and Plaintiffs were told by the owner of the dive shop that they had to pay two-thirds of the electricity bill and they would split the water bill. (Tr. Vol II, Vooy's, pp. 177-178). Plaintiffs were unsure if that was fair and did not want any disagreements with their neighbor, so they asked Defendants as the landlords about separating the meters *several* times. (Tr. Vol II, Vooy's, p. 179, 181). Defendants said they would work on it as it would be best for both tenants. (*Id.*, Vooy's, p. 179). The shared meter was causing tensions between the restaurant and the dive shop owners. (*Id.*, Vooy's, p. 182). Plaintiffs could not separate the meters themselves as they did not own the property, Defendants did. (*Id.*, Vooy's, p. 181).

Aside from needing separate meters, the roof was in terrible condition, with rain falling through the roof into the kitchen and into the connecting dive shop. Plaintiffs raised these concerns often with Defendants. (*Id.*, Vooy's, pp. 182-183). Even as Plaintiffs complained of these critical issues with the physical property, Defendants, as landlords, did nothing. Instead, Defendants promised the 7-year lease if Plaintiffs made repairs and Plaintiffs on reliance of these promises, made the repairs. (Tr. Vol. II, Vooy's, pp. 274-275).

D. Defendants breached the agreements to give Plaintiffs a 7-year lease

On March 1, 2004, Plaintiffs got a lease from Defendants. (Tr. Vol. II, Vooy's, p. 184). The lease was not for the promised seven years but only for two and a half years, less than the minimum three years needed to even make a profit on a new restaurant. (*Id.*, Vooy's, p. 186-187; Vol. IV, Hanley, pp. 657-658). In addition, the lease terms prohibited Plaintiffs from assigning the lease to any buyers if they wanted to sell the restaurant. (Vol. II, Vooy's, p. 187). The lease also required Plaintiffs to pay any late fees, penalties, and attorney fees. (*Id.*). The lease denied Plaintiffs a right to a jury trial if there was a conflict. Also, the lease stated that the landlord Defendants were not obligated to make any repairs on the building as they had promised to do. (*Id.*). Further, rent was going to go up from \$1500 to \$2000 per month. (*Id.*). Hanley admitted to these facts. (Vol. IV, Hanley, pp. 657-658). Plaintiffs told Defendant Hanley it was a terrible lease and he agreed and said he would work on a new one. (Vol. II, Vooy's, p. 187).

In November 2004, Defendants gave them another lease that also breached Defendants' promise of a 7-year lease as that lease was essentially the same as the March 4, 2004, lease with minor changes. (*See Section F* below).

E. Defendants acted in bad faith by making misrepresentations to induce Plaintiffs to make expensive repairs to the restaurant in return for a lease they never intended to give Plaintiffs

In addition to the previous inducements of a 7-year lease if Plaintiffs made improvements to the restaurant, which Defendants had no intention of providing, Defendants made other misrepresentations to induce Plaintiffs to incur expenses in fixing up the restaurant after a fire. (Tr. Vol. II, Vooy's, pp. 187-192).

In August 2004, Plaintiffs suffered a fire in their kitchen from a too-small sized hood for the kitchen, which was there when they got the restaurant. (Tr. Vol. II, Vooy's, p. 190). They were forced to close for two months in August and September 2004, and they struggled to pay their rent and WAPA bills to keep electricity on. (*Id.*, Vooy's, pp. 183, 187, 189). Plaintiffs asked Defendants if they were going to give Plaintiffs a seven-year lease before Plaintiffs put a lot of work into repairing and fixing the restaurant. (*Id.*, Vooy's, p. 187). In the fire, the hood was destroyed along with the exhaust fan and roof and the backsplash behind the stove and part of the wall and the electrical. (*Id.*, Vooy's, p. 190).

Plaintiffs had to order and install a new larger hood, exhaust fan, fire suppression system, backsplash and fix the electrical issues. (*Id.*, Vooy's, pp. 190-191). Plaintiffs asked Defendants to come see the damage and Plaintiffs asked for assistance with repairing the damage. (*Id.*, Vooy's, p. 191). Defendants told Plaintiffs they had to fix and pay for all the repairs themselves. (*Id.*). Plaintiffs asked for the lease first before they put all that money and work into the restaurant and **Mosler promised again that Defendants would give Plaintiffs the seven-year lease once they completed the repairs and improvements.** (*Id.*, Vooy's, pp. 191-192).

Plaintiffs completed the repairs, which cost them between \$15,000 to \$20,000. (Tr. Vol. II, Vooyo, p. 192). Also, while they were closed for two months as they waited for items to be shipped from the U.S., they did another full cleaning and repainting of the premises as they had done one year prior in 2003 when Defendants asked them to do those things to get a seven-year lease. (*Id.*, Vooyo, p. 192). However, by repeatedly promising over and over and still not producing the 7-year lease, the jury received evidence that the Defendants had no intention of doing as they represented and was making these misrepresentations to get Plaintiffs to fix up the premises at Plaintiffs' cost. (Tr. Vol. II, Vooyo, pp. 263-264; *see also* Sections D and F).

F. Defendants breached their promise of a 7-year lease repeatedly.

In November 2004, after Plaintiffs had repaired and fixed and repainted and improved the premises at their own cost and sweat equity, Defendants still refused to give them the promised seven-year lease. (*Id.*, Vooyo, pp. 187-188, 192). The only change Defendants made to this new lease was to change the tenants' name to the name of Plaintiffs' corporation. They also increased the rent, from \$2000 to \$2500 after a set time. (*Id.*, Vooyo, p. 188). Plaintiffs did not sign the lease, but took that lease to Attorney Groner, who had set up their corporation to ask for his advice. (*Id.*, Vooyo, p. 188). Their attorney misplaced the lease and Plaintiffs never got it back. (*Id.*, Vooyo, p. 188).

Plaintiffs continued trying to get Defendants to give them the seven-year lease and Defendants continued to promise them they would get it if they made improvements and repairs to the restaurant, which Plaintiffs had made before *and* after the fire. (*Id.*, Vooyo, p. 189, Vol III, Vooyo, p. 371). Defendants promised Joe and Victoria a 7-year lease in August/September 2003;

another time in 2004; and another time in 2005, all of which they breached. (*Id.*, Vooyoys, pp. 261, 263-264; Vol. III, Vooyoys, p. 371).

G. Plaintiffs paid their rent; this was not a legal basis for an eviction.

Mosler and Hanley told the Plaintiffs that they could pay their rent at any time and that it was not required to pay at the beginning of each month if they paid it. (Tr. Vol II, Vooyoys, p. 193). They told the Plaintiffs to focus on the repairs. (*Id.*, Vooyoys, p. 193). Plaintiffs paid the rent every month even if it was not paid on the first of the month. (Tr. Vol. II, Vooyoys, pp. 190-191, 199, 201; Plaintiffs' Trial Exhibit 47, Checks showing rent paid every month). Plaintiffs did not owe the Defendants any rent as Hanley admitted at trial. (Hanley, Tr. Vol. IV., p. 675, 677.) Defendants never complained to Plaintiffs that they had not paid rent or that they were behind on paying rent. (*Id.*, Vooyoys, pp. 195-201). It was not until March 2005, when Mosler came to the restaurant and created reasons to evict the Plaintiffs, that Defendants suddenly and falsely claimed the Plaintiffs were behind on rent, which they were not. (*Id.*, Vooyoys, pp. 201-205; (Hanley, Tr. Vol. IV., p. 675, 677.)

H. Defendants recklessly disregarded Plaintiffs' rights: took actions to evict them to make restaurant a white, middle-class establishment

Instead of providing Plaintiffs with the promised seven-year lease, Defendants began taking action to summarily evict Plaintiffs from their restaurant in March-April 2005. (Tr. Vol. II, Vooyoys, pp. 201- 205). After completing the repairs and improvements, investing time and money into the restaurant and building a clientele and good will, in March 2005, Mosler came personally to the restaurant and told Plaintiffs they were not going to get the seven-year-lease. (*Id.*, Vooyoys, p. 204; Tr. Vol. III, Joe Gerace, p. 462.). Then, on March 31, 2005, both Mosler and Hanley came for a sit-

down meeting with the Plaintiffs at the restaurant and told them they had to leave. (Tr.Vol. II, Vooy's, pp. 202-204; Hanley, Tr.Vol. IV, p. 669). Victoria Vooy's testified, Mosler "told us that he did not like the direction we were taking the bar and restaurant. He had issues with the full moon parties and the crowds and element that the parties brought. He wanted to turn it into a white, middle-class restaurant and he had somebody in place to take over from us and we needed to make this transaction within a month." (Tr.Vol. II, Vooy's, pp. 201-202). Plaintiffs' restaurant mostly had conscious, easy-listening reggae. (Tr., Vol III, John Woodson III, p. 388). Mr. Woodson went to most of the full moon parties at the restaurant and went to the restaurant often, especially on weekends. (*Id.*) He testified that mostly locals attended the reggae full moon parties. (*Id.*, Woodson, pp. 391-392). Mike Belcher testified that the parties had a mix, but mostly islanders. (Vol. III, Belcher, p. 403).

Mosler also told the Plaintiffs that he did not like the way the way they were running the restaurant. He said it was dirty. He claimed there were too many dogs around. He claimed that the Plaintiffs did not know what they were doing, all of which was false. (*Id.*, Vooy's, pp. 204-205). The real reason he wanted to evict the Plaintiffs was as Victoria Vooy's testified. "He reiterated that he didn't like the direction we were going and the clientele we were bringing in and he wanted to be able to bring his clients to have meetings, more like a white, middle-class restaurant, and we needed to come up with an exit strategy." (*Id.*, Vooy's, p. 204). Mosler wanted them out by the end of the month. (*Id.*). He claimed they were behind on the rent, which was also false. (*Id.*, Vooy's, p. 204). Hanley admitted at trial that the Plaintiffs were up to date on their rent when they were told to leave and that the prior representations that they were late in rent were false. (Hanley, Tr. Vol. IV., p. 675, 677.)

I. Plaintiffs were upset, distraught and overwhelmed at Defendants' news that they were being evicted for false reasons.

Plaintiffs were shocked and confused at Mosler's demands as they were getting on track with the restaurant. (Tr. Vol. II, Vooy's, pp. 202-203). Victoria Vooy's testified that they didn't want to sell because they were just barely starting to make a profit. "We just - just got back, like, on our feet and we were about to start to take off from there." (*Id.*). Victoria Vooy's was so distraught she had to run out of the meeting because she was crying so hard. (*Id.*, Vooy's, pp. 205-206). She was crying so loudly she was sure everyone could hear her, and she was too embarrassed to cry in front of Mosler and the guests at the restaurant. (*Id.*). Joe was in shock. (*Id.*). To add insult to injury Defendants told Joe and Victoria that they were finally going to give them a 7-year lease but only so that they could sell the restaurant to a guy they found named Jim Jordan, so that he would buy the restaurant from them. (*Id.*, Vooy's, pp. 206-207). Defendants told Plaintiffs to tell them what their exit strategy was. (*Id.*, Vooy's, pp. 307-308).

There was ample evidence that Plaintiffs' restaurant and its bathrooms were very clean. (*Id.*, Vooy's, pp. 206-207). Plaintiffs adhered to a strict cleaning regime throughout but especially in the bathrooms and kitchen. (*Id.*, Vooy's, pp. 176-177). In fact, the jury received evidence from witnesses at the trial who were patrons familiar with the Plaintiffs' restaurant and bathrooms and who all testified the place was clean, and not dirty. (Tr., Vol III, John Woodson III, p. 390). Mr. Woodson testified he never smelled sewage; never saw dogs running around, and the place was clean, or he would not have eaten there. (Vol. III, Woodson, p. 391). Michael Belcheff, a patron who voluntarily helped the Plaintiffs with repairs to the restaurant, and who spent a lot of his time at the restaurant, testified that the restaurant was very clean, and that Vic and employees stayed on top of that. (Vol.

III., Michael Belcheff, pp. 401- 403). Donna Christensen, who has been a family physician in St. Croix for over twenty-one years, and was a V.I, delegate to Congress for eighteen years, also testified that she visited the restaurant and found it clean and nothing out of the ordinary at the restaurant or in the bathrooms. (Tr. Vol. III, Christensen, pp. 411-412).

J. Defendants further breached their promises and acted maliciously by serving Plaintiffs with an improper eviction notice on April 12, 2005

On April 12, 2005, Mosler and Hanley had their attorney write a letter to Plaintiffs and served upon them by a marshal. (Vol. II, Vooyoys, pp. 212-213; Vol. III, Joe Gerace, pp. 440-441; Plaintiffs' Trial Exhibit 10)². The letter stated that it was confirming the conversations and agreements between Plaintiffs and the owners of the property, Mosler and Hanley, that the Plaintiffs "rights to occupy and use the Cane Bay Beach Bar shall terminate effective April 30, 2005, and you have agreed to vacate the premises no later than that date." (Plaintiffs' Trial Exhibit 10). The letter further threatened that if the Plaintiffs did not have their personal property removed from the premises by April 30, 2005, the personal property "shall be deemed to have been abandoned," and "the Landlord will make arrangements to have it removed and disposed of." (Plaintiffs' Trial Exhibit 10).

The jury did not receive any evidence that the Plaintiffs had agreed to the flagrant misrepresentations by Defendants' counsel in the April 12, 2005, eviction letter served upon them. To the contrary, Joe Gerace testified that he loved the restaurant as it gave him an opportunity to do what he loves doing. (Vol. III, Joe Gerace, p. 441). Plaintiffs testified they had never agreed to what

² The jury was instructed that in the Virgin Islands, "a month-to-month lease can only be terminated upon the service of a 30-day notice to terminate," which "shall be in writing." (Jury Instructions, pp. 23-24).

the letter stated, they had never agreed to vacate the premises and leave the restaurant on April 30, 2005. (Vol. II, Vooyoys, p. 214; Vol. III, Joe Gerace pp. 440-441). They believed that Defendants were planning to confiscate their personal property, which would include all of their restaurant equipment, if they did not leave by April 30, 2005. (Vol. II, Vooyoys, p. 214).

The eviction letter was the first time Plaintiffs had heard that Mosler and Hanley had formed a company, Chrismos, LLC, that owned the property at Cane Bay Beach Bar. (Vol. II, Vooyoys, p. 258). Plaintiffs had to hire Attorney Lee Rohn, to write back and inform the Defendants that there was no such agreement, and they would not be vacating the premises by April 30, 2005. (Vol. II, Vooyoys, p. 215; Plaintiffs' Trial Exhibit 14). Ms. Vooyoys and Mr. Joe Gerace both testified that Attorney Rohn's April 20, 2005, letter had an inaccuracy in it. The Plaintiffs had been promised a 7-year lease, not a 2-year lease, but Defendants kept breaching their promise and trying to get Plaintiffs to accept a two-year lease. (Vol. II, Vooyoys, p. 215; Vol. III, Joe Gerace, pp. 479-480; Plaintiffs' Trial Exhibit 14).

On the same day that Attorney Rohn sent the letter informing Defendants that there was no agreement to leave and that the Plaintiffs were not vacating on April 30, 2005, Defendant Chris Hanley called and was aggressive, nasty and threatening towards the Plaintiffs. (Vol. II, Vooyoys, p. 218; Vol. III, Joe Gerace, pp. 479-480). Attorney Rohn had to send another letter that same day instructing Defendants that threatening the Plaintiffs to move out by April 30, 2005, was illegal self-help in the Virgin Islands, and further actions to do so would result in criminal charges against Defendants. (Plaintiffs' Trial Exhibit 15).

K. Defendants defamed the Plaintiffs regarding their business and profession

Victoria Vooyo testified that Mosler, representing Chrismos, the landlord, which is both Mosler and Hanley, started a smear campaign on why they were getting rid of the Plaintiffs on the radio and TV. (Vol. II, Vooyo, p. 208). It happened frequently. "He was on the radio, or he read things on – things were read on the radio, and he was on the radio and TV and newspaper." (*Id.*). Ms. Vooyo saw a tape of Mosler on the TV. (*Id.*). She testified that Mosler said, "he was getting rid of us because we didn't know what we were doing, we were always late on rent, we were behind on rent, we didn't know how to run a restaurant." (Vol. II, Vooyo, pp. 210-211, Vol. III, Vooyo, pp. 339, 374-375). Hanley admitted that he made statements on the Roger Morgan show about Plaintiffs not being current on their rent and that they were late a lot. (Hanley, Vol. I, pp. 624-625). He admitted he told Plaintiffs that Defendants were flexible on the rent payments and Plaintiffs could be late with it if it was paid. (*Id.*, Hanley, p. 650). Hanley further admitted that the disparaging claim that the rents were late is false. (*Id.*, Hanley, p. 654).

The rent was paid so that claim was false. (*See* Section G). Further the Defendants had told Plaintiffs they did not have to pay rent on the first of the month because of the repairs and improvements they were making, as long as they paid the rent, which they did. (*See* Section G). Also, the rent payment made for April 2004, was reduced by the cost of the plumber service, which Plaintiffs had been told by Hanley that they could deduct as it was a landlord expense. (Vol. III, Vooyo, p. 351). Hanley admitted it was true that Plaintiffs were allowed to reduce the rent by cost they paid for the plumber service. (Vol. IV, Hanley, pp. 644-647).

"Mosler claimed we borrowed 150,000 from family," which was not true. (Vol. II, Vooyo, 210-211). Mosler "told everybody he reduced our rent," which was false as the rent was the same

since the first day. (*Id.*, Vooyoys, p. 211). Victoria Vooyoys testified she heard the April 12, 2005, eviction letter read aloud on the radio on the Roger Morgan show. (Vol. III, Vooyoys, p. 340). The Roger Morgan show called Plaintiffs at their bar to ask them about what Mosler was saying. (Vol. III, Vooyoys, p. 341). The Avis newspaper picked up the story. (Vol. II, Vooyoys, pp. 212-214). They heard all the media that Mosler, on behalf of the landlord, himself, and Hanley, was slinging at Plaintiffs, and they came and asked Plaintiffs if they wanted a rebuttal. (Vol. II, Vooyoys, pp. 211-212). The Avis put an article in the newspaper addressing Defendants' claims that they were asking Plaintiffs to leave. (Vol. II, Vooyoys, pp. 211-212, Vol. III, Vooyoys, pp. 341-342). Plaintiff Vooyoys was forced to go on the Roger Morgan show to defend her and Joe as Chris Hanley was on the show talking about them. (Vol. III, Vooyoys, pp. 342-343).

After Mosler and Hanley went on the radio and TV declaring the Plaintiffs to be deadbeats, clientele for the restaurant began to die off in April. (Vol. II, Vooyoys, p. 227). Even after the Plaintiffs were forced to sell the restaurant (*see* Section L below), and after they went back to the States for a little while and returned to St. Croix, there was still a lot of talk on the island, a lot of "noise" about them wherever they went. (Vol. II, Vooyoys, pp. 230-231). Plaintiffs were unable to go back to the North Shore where the restaurant had been because it was too emotional, too painful, and too embarrassing. (*Id.*, Vooyoys, pp. 230-231).

The mudslinging by Defendants, the loss of their restaurant and the unfairness of the entire experience took a toll on the Plaintiffs' relationship, as they were blaming each other for things. (*Id.*).

L. Defendants maliciously forced Plaintiffs to sell their restaurant to Defendant's buyer, Jim Jordan, and gave Jordan the 7-year lease denied to Plaintiffs

After Mosler and Hanley refused to give Plaintiffs a lease and told them they did not want the Plaintiffs there at the restaurant, the Plaintiffs were forced to sell because "we did not have a leg to stand on at that point." (Vol. II, Vooy's, p. 207-208). Mosler admitted that he met with James Jordan through Green Cay Marina where Jordan had a boat and which Mosler partially owned, and that Jordan told Mosler he was interested in the Cane Bay Bar, all prior to Mosler and Hanley meeting with Plaintiffs in the end of March meeting. (Vol. V, Mosler, p. 732). Jordan admitted he contacted Defendant Mosler, as the landlord, and informed Mosler he needed a lease to "offer the current owners a buyout" and that he offered them \$50,000 "to leave quietly." (Jordan Trial Depo, p. 11-14). Jordan needed a lease to complete the sale. (*Id.*, p. 27).

Mosler agreed to let Jordan draft his own proposed lease. (Vol. V, Mosler, p. 735). Mosler offered Jordan a seven-year lease with a rent abatement for the time the restaurant would be closed for repairs, which Mosler and Hanley had specifically denied the Plaintiffs. (Jordan Depo. pp. 33-34). Defendants agreed in Jordan's lease to put in new electrical and roofing, (*Id.*, pp. 33-34). Defendants had specifically refused to fix the roof or electrical and told Plaintiffs they had to do their own repairs *and* had to pay the rent while doing so. (*See* Sections E, G, above). Mosler agreed to Jordan's lease on June 29, 2005. (Jordan Depo. pp. 30-31).

Plaintiffs and Jordan initially entered into an Asset Purchase Agreement for \$50,000 for Jordan to buy the restaurant. (Vol. II, Vooy's, pp. 218-219; Plaintiffs' Trial Exhibit 17). The agreement had originally been for \$80,000 but dropped to \$50,000 because Plaintiffs did not own the trade name. (Vol. II, Vooy's, p. 309; Vol. III, Joe Gerace, p. 460). Before they finished their deal with

Jordan for \$50,000, Plaintiffs got a letter falsely accusing them of abandoning their restaurant and taking their equipment. (*Id.*, Vooyo, p. 220). Plaintiffs were only closed for one day but their tables and chairs, bar equipment and their freezer cooler were all visible on the deck. (*Id.*). Plaintiffs' counsel wrote back to Mr. Hunt Logan, Defendants' lawyers and informed them that the accusations were further slander and defamation and to desist that illegal behavior. (Vol. II, Vooyo, p. 221; Plaintiffs' Trial Exhibit 20).

Jordan's offer dropped to \$30,000 after Defendants' smear campaign of the Plaintiffs in the media and false accusations of abandoning the restaurant and taking their equipment. (Vol. II, Vooyo, pp. 221-222; Plaintiffs' Trial Exhibit 21, Revised Asset Purchase Agreement; *see also* Jordan Depo., pp. 24-25). Plaintiffs had no choice but to agree. They signed the assets over to Jim Jordan on July 1, 2005. They did not leave any unpaid WAPA bills and did not owe any debts to the dive shop next door. (Vol. II, Vooyo, pp. 220-221). At the closing, on July 1, 2005, Plaintiffs assigned the verbal lease from Defendants and all equipment and furnishings to Jim Jordan and were paid only \$27,000 because they were forced to leave \$3,000 in escrow for any outstanding bills, of which there were none. (Vol. II, Vooyo, pp. 222-223; Vol. III, Vooyo, p. 376). The Plaintiffs got back their \$3,000 held in escrow in October 2005 and the Defendants did not make any claims of past due rent against the amount, despite claiming the Plaintiffs owed them rent. (Vol. II, Vooyo, pp. 223-224).

Joe Gerace was able to compare the lease given to Jim Jordan to the lease that was offered to him and Vic. (Vol. III, Joe Gerace, pp. 444-446). The differences were that: 1) lease for Jim Jordan "term was seven years with a three-year option" while lease offered to Plaintiffs was two and a half years; 2) Jordan's lease did not require him to do any repairs or upgrades to the building; while the lease offered to Plaintiffs did require them to do all repairs; 3) Defendants' proposed lease took away

Plaintiffs' ability to have any sort of trial if there were any issues and was not assignable, but Jordan's was assignable and had no waiver of jury trial clause. (Vol. VIII, Joe Gerace, pp. 444-446).

After Jordan took over the restaurant, he continued to have full moon parties as late as the ones Plaintiffs had, and played reggae music, the same things Mosler alleged had been a problem with Plaintiffs. (Jordan Depo. pp. 39, 71). Jordan also testified that Mosler and Hanley fixed the roof and electrical for Jordan. (*Id.*). Jordan eventually sold his lease, inventory, and furnishings for the restaurant for \$175,000.00. (Vol. V, Alexandria Meyers, pp. 762-763).

M. Plaintiffs suffered specific economic losses

The jury received evidence of the monetary amounts and receipts that Plaintiffs expended on repairs and improvements of the restaurant between 2003 and 2005. (Vol. II, Vooy's, pp. 225-226; Plaintiffs' Trial Exhibit 30). Plaintiffs spent over **\$40,000** in repairs; over **\$20,000** in new restaurant equipment; and over **\$50,000** in advertising, promotions and to build good will. (Vol. VII., Vooy's, pp. 226-227). Plaintiffs submitted Plaintiffs' Trial Exhibit 48 to the jury, which was a compilation of receipts for money spent on equipment, tools, repairs, services, and hardware to improve and clean and care for the restaurant/bar. (Vol. II, Vooy's, p. 228; Plaintiffs' Trial Exhibit 48). Some things like service repairs were paid for in cash and there is no record of them. (Vol. VIII, Vooy's, pp. 352-353). Plaintiffs also had to take out a family loan from Victoria Vooy's father for **\$45,000** for living expenses while getting the Cane Bay Beach Bar operational and running. (Vol. II, Vooy's, pp. 249-250).

The jury also received evidence of Plaintiffs' sweat equity. The jury heard that Plaintiffs had lost everything they had worked so hard for. Victoria Vooy's testified, "And it's not just money, it's energy. You know, we were there like ten, 12 hours a day, every day. You put a lot of passion into it.

We loved that place and the people that - that became our patrons and it just stunk. It was - it was an overwhelming feeling” to lose it all. (Vol. II, Vooy's, pp. 205-206).

Adding up the numbers the jury received in evidence for: 1) repairs at \$40,000; 2) new restaurant equipment at \$20,000; 3) promotions and advertising at \$50,000; and 4) money in the form of a family loan to live off while they repaired and improved the premises to open at \$45,000, the evidence was that Plaintiffs incurred *at least \$155,000* in economic damages, *not counting damages for sweat equity*, in reliance on Defendants' false promises to give them a lease of seven years.

N. No specific value evidence needed for emotional damages

The Court instructed the jury that Plaintiffs' intangible damages, such as pain and suffering, mental anguish, and loss of enjoyment of life did not require proof of any specific value to support them. (Jury Instructions, p. 29). The jury was instructed that they could “fairly compensate” Plaintiffs for these injuries. (Jury Instructions, p. 29). The jury heard evidence that after being forced to sell to Jim Jordan, the Plaintiffs left the island feeling “like total failures.” They were “mentally exhausted,” “totally depleted,” and “wanted to hide in a hole.” (Vol. II, Vooy's, pp. 222, 229).

O. Plaintiffs suffered special harm for defamation

Although Defendants' disparaging remarks about Plaintiffs' business and profession fall under defamation per se, **for which no special harm needs to be proven**, (*see* Jury Instructions, p. 24), the jury nonetheless received evidence that after Defendants started their smear campaign on the radio and TV, **the clientele at the restaurant declined a lot**, which equates with a significant decrease in revenue. (Vol. II, Vooy's, p. 227). Further, the Plaintiffs lost their entire business due to

PLAINTIFFS' STATEMENT OF FACTS IN EVIDENCE

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Mosler's and Hanley's disparaging remarks as they were forced to sell to Defendants' buyer, Jim Jordan.

The jury received evidence that Jordan admitted he reduced the offer price for the bar from \$50,000 to \$30,000 because he heard Defendants' accusation that Plaintiffs had closed the bar and taken the furniture and equipment with them. (Jordan Depo. pp. 24-25). But this accusation was false as the Plaintiffs had only closed the bar for one day and their equipment and furniture were visible on the deck. (Vol. VII, Vooy's, p. 220). Jordan admitted that the Bill of Sale stated, "What's being sold is all the furniture, furnishings, equipment, inventory, goodwill and other personal property." (Jordan Depo. pp. 49-50). The jury received evidence that Plaintiffs lost **\$30,000** on the sale of their restaurant based on false statements made about them.

After a seven-day trial, the Court sent the following claims to the jury: 1) breach of contract; 2) intentional misrepresentation; 3) breach of duty of good faith and fair dealing; 4) defamation; and 5) a request for punitive damages. (Jury Verdict Form).

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
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DATED: April 27, 2022

BY: /s/ Lee J. Rohn

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on April 27, 2022, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

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APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME II

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Deposition of James Jordan 1992

Trial Transcript Jury Instructions and Verdict Form 2079

FILED

April 27, 2022 02:24 PM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GRACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

OPPOSITION TO DEFENDANTS' RULE 50(B) MOTION

Defendants argue that they are entitled to the extraordinary remedy of vacatur of the jury's verdict entered in their favor under V.I.R. Civ. P. 50(b). Defendants are not entitled to any post-judgment¹ relief. There was more than sufficient evidence presented to the jury to support liability and damages on all of Plaintiffs' claims, including the request for punitive damages, therefore the Rule 50(b) motion must be **DENIED**.

STATEMENT OF FACTS IN EVIDENCE

Plaintiffs fully incorporate their separately filed statement of the facts in evidence that support the jury's verdict in this case.

¹ To date, this Court has not entered judgment. See V.I.R. Civ. P. 58 (b)(requiring the prompt entry of judgment).

ARGUMENTS AND AUTHORITIES

I. Rule 50(b) – motion for judgment as a matter of law

A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. *See* V.I. R. Civ. P. 50(a) (2).² The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment before the case is submitted to assure the responding party has an opportunity to cure any deficiency in that party's proof that may have been overlooked until called to the party's attention by a motion for judgment. *See* FED. R. CIV. P. 50 advisory committee's note (1991 amendment); *Williams v. Runyon*, 130 F.3d 568, 572 (3d Cir. 1997) (blanket statements that "there is no legally sufficient evidentiary basis for a reasonable jury to find for the Plaintiff or any of the issues that counsel have set forth in this case" are "obviously insufficient" to meet the specificity requirement); *see also Perdoni Bros., Inc. v. Concrete Sys., Inc.*, 35 F.3d 1, 3 (1st Cir. 1994) (A Rule 50(a) motion cannot consist merely of "[s]weeping invocations of conclusory theories or abstract principles" to preserve an issue for a Rule 50(b) motion); *Correa v. Hosp. San Francisco*, 69 F.3d 1184, 1196 (1st Cir. 1995) ("The movant cannot use [Rule 50(b)] as a vehicle to introduce a legal theory not distinctly articulated in its close-of-evidence motion for a directed verdict.

Rule 50 sets forth the procedural requirements for challenging the sufficiency of the evidence in a civil jury trial and establishes two stages for such challenges—prior to submission of the case to the jury, and after the verdict and entry of judgment. *See Unitherm Food Sys. V. Swift-Eckrich, Inc.*, 546 U.S. 394, 399 (2006). Because granting a judgment as a matter of law implicates Seventh

² V.I. R. Civ. P. 50 is patterned after its federal counterpart and, therefore, caselaw from the Third Circuit—as well as other jurisdictions—interpreting Fed. R. Civ. P. 50 will be cited as persuasive authority in support of Plaintiffs' arguments.

Amendment concerns, the Rule 50 movant must strictly comply with its requirements. *See id.* at 402. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. *See V.I. R. Civ. P. 50(b)*. Because the Rule 50(b) motion is only a renewal of the pre-verdict motion, it can be granted only on grounds advanced in the pre-verdict motion. *See id.*

Entry of judgment as a matter of law is a remedy invoked “sparingly” and “granted only if, viewing the evidence in the light most favorable to the non-movant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability.” *Chestnut v. Goodman*, 59 V.I. 467, 474-475 (V.I. 2013) (citing cases). This narrow inquiry precludes the court from weighing the evidence, determining the credibility of witnesses, or substituting its own version of the facts for that of the jury. *See Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1166 (3d Cir. 1993). Further, a court “**must disregard all evidence favorable to the moving party that the jury is not required to believe,**” *Springer v. Henry*, 435 F.3d 268, 281 (3d Cir. 2006), and “give credence to the evidence favoring the non-movant as well as that evidence supporting the moving party that is un-contradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.” *See Steward v. Sears Roebuck & Co.*, No. 06-3360, 231 Fed. Appx. 201, 207, 2007 U.S. App. LEXIS 19365, at *17 (3d Cir. Aug. 14, 2007). Therefore, if satisfaction of an essential element of a claim for relief is at issue, the jury is the proper trier of contested facts. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006).

The Virgin Islands Supreme Court has repeatedly reinforced the basic principle that trial judges should not weigh the evidence, make credibility determinations, or draw legitimate inferences

from the facts because these are the functions of the jury. *Williams v. United Corp.*, 50 V.I. 191, 197 (V.I. 2008). *Accord Anthony v. FirstBank Virgin Islands*, 2013 WL 211707, at *6 (V.I. Jan. 17, 2013). The Virgin Islands Supreme Court has cautioned that, “Importantly, when reviewing the sufficiency of the evidence, we do not serve as usurpers of the role of the jury by engaging in second-guessing the evidence presented at trial, nor do we re-weigh the credibility of witnesses.” *Morton v. People*, 2013 WL 5191709, at *5 (V.I. Sept. 13, 2013); and *Corriette v. Morales*, No. 2007-075, 2008 WL 2998725, at *2 (V.I. July 14, 2008)(“In performing this narrow inquiry, [trial courts and appellate courts] must refrain from weighing the evidence, determining the credibility of witnesses, or substituting [their] own version of the facts for that of the jury.”), quoting *Marra v. Phila. Hous. Auth.*, 497 F.3d 286, 300 (3d Cir. 2007). The Third Circuit Court of Appeals, which remains persuasive authority, has admonished that a Rule 50 motion “should only be granted if the record is **critically deficient** of that minimum quantity of evidence from which a jury might reasonably afford relief,” *Raiczuk v. Ocean County Veterinary Hosp.*, 377 F.3d 266, 269 (3d Cir. 2004) (internal quotation marks and citation omitted).

II. The jury had sufficient evidence to award \$100,000 in damages for breach of contract, and/or intentional misrepresentation and/or breach of duty of good faith and fair dealing

The Court in this case instructed the jury:

Compensatory damages are sums of money awarded to an injured party to compensate his or her loss. . . . Computing damages may be difficult but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require plaintiff to prove the amount of his or her losses with mathematical precision but only as much definiteness and accuracy as the circumstances permit.

(Jury Instructions, p. 27).

Defendants claim in their Rule 50(b) motion that the jury's award of \$100,000 was not supported by evidence of an actual economic loss. However, as shown above, the jury had ample evidence of actual economic losses to award the Plaintiffs \$100,000 or even more on these three claims. (*See* Facts in Evidence, Sections B, C, D, E, F, J and M)³. Specifically, the evidence heard was that Plaintiffs incurred at least **\$155,000** in specific economic damages in reliance on Defendants' false promises to give them a lease of seven years. (*See* Section M, above).

Moreover, the jury was entitled to award damages related to Plaintiffs' time, effort, and physical blood, sweat and tears, expended in reliance on Defendants' promise of a lease. The Plaintiffs testified that they worked up to 12 hours a day, from 2003-2005. (Vol. II, Vooy's, pp. 205-206); (Vol. II, Vooy's, pp. 225-226; Plaintiffs' Trial Exhibit 30). Even taking a conservative look at the evidence, if the jury awarded the Plaintiffs for only 12 months and 4 hours per day of sweat equity, \$100,000 translates to an award of \$11.41 per Plaintiff for sweat equity. ***In other words, the entire \$100,000 award is supported solely by sweat equity.*** This does not shock the conscience in any way. The loss of the sweat equity is recoverable as a part of reliance damages. *See Entergy Arkansas, Inc. v. Nebraska*, 226 F.Supp.2d 1047, 1152 (D.Neb.,2002). The District Court of Nebraska held that "the purpose of this alternative remedy is to reimburse the injured party 'for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made.'" *Id.* (citing *Restatement* § 344(b) (emphasis added)). Therefore, reliance "loss" is not solely measured by "expenditures," and the loss of "sweat equity is properly recoverable as a component of reliance damages." *Entergy Arkansas*, 226 F.Supp.2d at 1152.;

³ Plaintiffs have detailed the trial record in their separately filed "Statement of Facts in Evidence" and fully incorporates these facts as if cited herein. Plaintiffs specifically identify the sections that contain the facts to support the arguments made herein.

Accord *Lutz v. Sortwell*, No. D055792, 2011 WL 3241626 (Cal. Dist. Ct. App. July 29, 2011) (unpublished) (Appellate Court upheld jury award for property manager based upon “sweat equity” damages after property owners breached property management agreement). *Black v. Redmond*, 709 Fed.Appx. 766 (5th Cir. 2017)(affirming jury award in the amount of \$200,000 based in part upon plaintiff’s sweat equity contributed to partnership for which he never received compensation); *Brown v. AXA RE*, No. 02 Civ. 10138 (LTS) AJ, 2004 WL 941959 (D.N.Y. May 3, 2004)(denying motion to dismiss plaintiff’s complaint alleging tortious interference of contract based upon sweat equity damages put into making a movie which defendant insurance company reneged on commitment to insure); *Thayer v. Dial Indus. Sales, Inc.*, 189 F.Supp.2d 81 (S.D.N.Y. 2002) (denying former employees request for contract damages against employer only because already compensated for his sweat equity).

The Virgin Islands Superior Court in, *WILLIAM CHERUBIN, Plaintiff, v. LIAT (1974), LTD., Defendant.*, 2019 VI SUPER 67, 2019 WL 2108105 (V.I. Super. May 13, 2019), relying on well-recognized legal principles, denied the defendant’s post-trial motions seeking judgment as matter of law and a new trial after a jury award of \$82,000 in economic damages and \$1,468,320 for pain and suffering for a case brought under the Virgin Islands Civil Rights Act. In denying the defendant’s motion the Court in *Cherubin* noted:

A damages award is considered inviolate unless the award is so excessive as to shock the judicial conscience and to raise an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial. In reviewing a damages award for excessiveness, the Court is guided by the principle that it is within the virtually exclusive purview of the jury to evaluate credibility and fix damages.

Cherubin v. LIAT (1974), Ltd., 2019 VI SUPER 67, 2019 WL 2108105, at *6 (V.I. Super. May 13, 2019)(internal quotations and citations omitted). Here, Defendants have not demonstrated that the

jury's \$100,000 award raises "an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial." *Id.*

Instead, Defendants' claim Plaintiffs did not suffer any actual economic loss, because Plaintiffs' corporate identity, Barabus Inc., expended the funds for the restaurant improvements, and not Plaintiffs' themselves.⁴ This argument is absurd. First, Defendants never made this argument in their Rule 50(a) motion. *See Coastal Air Transport v. Royer*, 64 V.I. 645, 658–59, 2016 WL 3188935, at *6 (V.I., 2016). Therefore, they have waived this argument for the Rule 50(b) motion. Second, Plaintiffs testified that Barabus was wholly owned by them and, therefore, Plaintiffs were free to borrow Barabus, Inc. funds to make the improvements. (TT, Vol. III at 367.) Whether Plaintiffs must pay the money back to Barabus, Inc. is of no concern to Defendants.

Even if not waived, the Court asked Defendants where in the agreement to grant a lease upon the completion of repairs and improvements was there a condition that Plaintiffs expend their "personal" funds to improve the property, and Defendants could not point to any such evidence. (TT, Vol. IV at 559-563). Defendants admitted that the improvements were completed even if the money used to improve the property came from the Barabus corporation. (TT, Vol. IV at 552-553, 559, 561). Therefore, the issue of whether improvements were made, *i.e.*, whether Plaintiffs detrimentally relied on the promise of a lease by performing their part of the contract, has been waived. Defendants could not point to any evidence that supported a condition of the contract that Plaintiffs were allegedly required to expend their own personal funds to perform, even after the Court asked them to do so. (TT, Vol. IV at 559-563).

⁴ Plaintiffs created Barabus, Inc., as a corporation in the beginning of operating the restaurant. (TT, Vol. II, Vooy's, p. 253).

Defendants also argue the family loan of \$45,000 that kept the Plaintiffs afloat while repairing the restaurant and while it was closed after the fire (see Vol. II, Vooy's, p. 251), cannot be calculated as part of their economic damages, but Defendants never made this argument in its Rule 50(a) motion. See *Coastal Air Transport v. Royer*, 64 V.I. 645, 658–59, 2016 WL 3188935, at *6 (V.I., 2016). Therefore, they have waived this argument for the Rule 50(b) motion. Moreover, Defendants **did not cite to any law** disallowing a loan as a concrete economic loss. The evidence revealed that Vooy's had to “borrow” \$45,000 loan to help Plaintiffs during the repair and improvement of the restaurant in reliance on Defendants’ promise to give them a 7-year lease, during which time they would be able to earn a profit after three years. (Vol. II, Vooy's, pp. 249-250). By breaching the promise, denying them the lease, and pushing the Plaintiffs out, Plaintiffs lost the value of their \$45,000 loan.

Defendants argue that the jury should not have considered Plaintiffs’ counsel closing remarks about the \$125,000 Jim Jordan got for selling his lease to Alexandria Meyers. But the judge repeatedly informed the jury not to consider counsels’ opening and closing arguments as actual evidence, therefore this argument lacks merit. (Tr. Vol. II, pp. 61-63, 68-69; Jury Instructions, pp. 10-11). Furthermore, there is no showing that the impeachment evidence, even if it was used improperly, affected the jury award as the damages awarded was less than \$125,000.

In sum, the \$100,000 jury award for breach of contract, intentional misrepresentation, and breach of duty of good faith and fair dealing is fully supported by the evidence. See *Coastal Air Transport v. Royer*, 64 V.I. 645, 659, 2016 WL 3188935, at *7 (V.I., 2016) (holding that a jury's verdict may be “altered by a judge only if it is not supported by sufficient evidence in the record, or if a reduction is compelled under the United States Constitution.”)(citations omitted).

III. The jury had sufficient evidence to find Defendants liable for breach of contract; intentional misrepresentation, breach of duty of good faith and fair dealing ⁵

A. Breach of Contract

The Court instructed the jury that Plaintiffs had to prove by a preponderance of the evidence that 1) Chrismos made a promise to the Plaintiffs; 2) the Plaintiffs relied upon the promise to their detriment; 3) Chrismos failed to keep its promise to the plaintiffs; and 4) Plaintiffs suffered specific economic loss. (Jury Instructions, p. 21).

1. The jury received sufficient evidence that Chrismos made a promise to the Plaintiffs:

- Defendant Chrismos, LLC, which consists of members Mosler and Hanley, verbally promised Plaintiffs repeatedly that they would give them a seven-year lease if they performed repairs and improvements to the property. (*See Facts in Evidence, B*).
- Defendants reaffirmed this promise several times to get Plaintiffs to complete the work on the restaurant using Plaintiffs' own funds. Defendants promised Plaintiffs a 7-year lease in August/September 2003; another time in 2004; and another time in 2005, all of which they breached. (*See Facts in Evidence, F*).

2. The jury received sufficient evidence that Plaintiffs relied upon the promise to their detriment

- Defendants convinced Plaintiffs to make repairs and improvement out of their own pocket without performing any of their duties as a landlord, which Plaintiffs relied upon by completing the repairs and improvements. (*See Facts in Evidence, C, E*).
- Plaintiffs' repairs and improvements to the restaurant included replacing screens and plywood and the outside of the kitchen. They also resurfaced the bar, power washed, did general cleaning, replaced sinks in the bathroom, and re-painted the premises. (*Id.*)

⁵ Defendants again argues that the claims for intentional misrepresentation and breach of duty of good faith and fair dealing should have been dismissed or subsumed under the breach of contract claim pursuant to the gist of the action doctrine. Plaintiffs re-assert that Defendants waived that affirmative defense and incorporate by reference their trial briefs on that issue. *See* Pls' Brief on Certain Issues Raised by Defendants' Rule 50(a) Motion, filed February 28, 2022, and Pls' Response to Defendants' Brief and Supplement to Brief, filed March 1, 2022.

- After a fire from a too-small hood in the kitchen, Plaintiffs had to order and install a new larger hood, exhaust fan, fire suppression system, backsplash and fix the electrical issues. (Facts in Evidence, E).
- Defendants told Plaintiffs they had to fix and pay for all the repairs themselves. (*Id.*). Plaintiffs asked for the lease first before they put all that money and work into the restaurant and **Mosler promised again that Defendants would give Plaintiffs the seven-year lease once they completed the repairs and improvements.** (*Id.*).

3. The jury received sufficient evidence that Chrismos failed to keep its promise to Plaintiffs

- On March 1, 2004, Plaintiffs got a lease from Defendants. The lease was not for the promised seven years but only for two and a half-years, less than the minimum three years needed to even make a profit on a new restaurant. (*See* Facts in Evidence, D).
- In November 2004, Defendants gave them another lease that also breached Defendants' promise of a 7-year lease as that lease was the same as the March 4, 2004, lease with minor changes. (*Id.*).
- After Plaintiffs had repaired and fixed and repainted and improved the premises at their own cost and sweat equity, Defendants still refused to give them the promised seven-year lease. (*See* Facts in Evidence, F).

4. The jury received sufficient evidence that Plaintiffs suffered economic damages because of Defendants' conduct.

- Plaintiffs spent over **\$40,000** in repairs; **\$20,000** in new restaurant equipment; and over **\$50,000** in advertising, promotions and to build good will. (*See* Facts in Evidence, M).
- Plaintiffs submitted **Exhibit 48** to the jury, which was a compilation of receipts for money spent on equipment, tools, repairs, services, and hardware to improve and clean and care for the restaurant/bar. (*Id.*).
- Plaintiffs also had to take out a family loan from Victoria Vooy's father for **\$45,000** for living expenses while getting the Cane Bay Beach Bar operational and running. (*Id.*).
- Plaintiffs also had almost two years of sweat equity, working ten to twelve hours per day, every day to get the restaurant to where it was in March 2005 only to be denied the lease they were promised. (*Id.*).

Therefore, the jury's finding of liability and the award of damages against Defendants is supported by sufficient evidence. Defendants' Rule 50(b) motion must be **DENIED**.

B. Intentional Misrepresentation

The Court instructed the jury that Plaintiffs had to prove by a preponderance of the evidence that 1) Defendants intentionally misrepresented a material fact, opinion, intention or law to the plaintiffs; 2) Defendants knew or had reason to know the intentional misrepresentation was false; 3) the intentional misrepresentation was made for the purpose of inducing the Plaintiffs to act or refrain from acting; 4) the Plaintiffs relied on the intentional misrepresentation; and 5) the Plaintiffs suffered a pecuniary loss from the intentional misrepresentation. (Jury Instructions, p. 22).

- For **elements 1 – 3**, the jury received evidence that Defendants made repeated promises to give Plaintiffs a 7-year lease if they fixed up the restaurant, made improvements and repairs, and Defendants over and over did not produce the 7-year lease, and instead gave Plaintiffs a “crappy” two-year lease that Defendants knew Plaintiffs would not accept. (*See Facts in Evidence, E*).
- The jury received evidence that the Defendants had no intention of doing as they represented, since they kept breaching the promise and stringing Plaintiffs along so that Plaintiffs would spend their own money to fix up Defendants’ property, while Defendants as landlords refused to make the repairs to the physical structure, like fix the leaking roofs. (*See Facts in Evidence, E*).
- Defendants made these misrepresentations to get Plaintiffs to fix up the premises at Plaintiffs’ cost. (*See Facts in Evidence, E*).
- For **element 4**, the jury received sufficient evidence of the breach of contract as shown above. (*See Facts in Evidence, D, F*).
- For **element 5**, pecuniary damages are defined by Black’s Law Dictionary as “Damages that can be estimated and monetarily compensated.” DAMAGES, Black's Law Dictionary (11th ed. 2019). The jury received sufficient evidence of Plaintiffs’ pecuniary damages. (*See Facts in Evidence, M*).

C. Breach of Duty of Good Faith & Fair Dealing

The Court instructed the jury that Plaintiffs had to prove by a preponderance of the evidence that 1) a contract existed; 2) during the performance of the contract the defendant engaged in conduct that was fraudulent, deceitful, or otherwise inconsistent with the purpose of the agreement;

and 3) Plaintiffs suffered economic damages because of Defendants' conduct. (Jury Instructions, p. 23).

Here, the evidence presented above for breach of contract and intentional misrepresentation also support this claim. (*See Facts in Evidence*, B, C, D, E, F, M). Further, the jury received sufficient evidence of Defendants' bad faith:

- Defendants placed Plaintiffs in a poor bargaining position and pressured them into taking poor lease agreements with a two-year period instead of seven as promised.
- Defendants gave Plaintiffs horrible options for leases that they knew Plaintiffs would not accept. (*See Facts in Evidence*, E).
- Defendants concocted reasons to evict Plaintiffs, such as falsely claiming they owed rent, the restaurant was dirty and overrun with dogs, and that the Plaintiffs did not know what they were doing or how to run a restaurant. (*See Facts in Evidence*, H).
- Defendants wanted Plaintiffs out because of their choice of reggae music and full moon parties, and the crowd the reggae attracted, and they wanted the establishment to be a white, middle-class restaurant. (*See Facts in Evidence*, H).
- Defendants as landlords made false complaints to establish reasons to kick Plaintiffs out, however, later owner, Jim Jordan, continued the same exact full moon parties that were complained about by the Defendants. (*See Facts in Evidence*, H).
- Defendants served Plaintiffs with an illegal eviction letter containing numerous falsehoods like saying they were confirming the agreement that Plaintiffs would vacate the premises by April 30, 2005, when no such agreement had ever been reached, and threatening to confiscate Plaintiffs' personal property if they did not vacate by the end of April 2005. (*See Facts in Evidence*, J).

IV. There was more than sufficient evidence to support the jury's verdict against Defendants for defamation of both Plaintiffs

The Court instructed the jury that Plaintiffs had to prove by a preponderance of the evidence that: 1) defendants made false and defamatory statements concerning the plaintiffs; 2) that a publication was to a third party; 3) that there was fault amounting to at least negligence on the part of the publisher; 4) either accountability of the statement irrespective of special harm or the

existence of special harm caused by the publication. (Jury Instructions, p. 25). The Court further instructed the jury, “To be defamatory, it’s not necessary that the communication actually causes harm to another’s reputation or deters a third person [from] associating with him or her. It is enough if the communication tends to have that effect.” (*Id.*). The Court also instructed the jury about “defamation per se.” The Court instructed, “Defamation per se is a disparaging remark that tends to harm someone in his or her business or profession is actionable regardless of harm.” (Jury Instructions, p. 24).

Defendants argue that the jury’s verdict on the defamation claim must be set aside because: 1) Mosler’s statements disparaging the Plaintiffs were “true;” 2) Hanley did not make any disparaging statements about the Plaintiffs; 3) only Victoria Vooy’s testified about the defamation claim; 4) Mosler’s statements were “opinions” and not actionable; and 4) no evidence of economic or pecuniary damages to support jury award of \$60,000 for each Plaintiff.

None of these arguments have any merit. Defendants waived the argument that Mosler’s statements were opinions as they never raised it in their Rule 50(a) motion before the Court. (Vol. IV, pp. 581-585; VI, pp. 775-777, discussing the defamation claim). Second, a statement is only opinion if it is so “imprecise or subjective that it is not capable of being proved true or false”. *Simpson v. Andrew L. Capdeville, P.C.*, 64 V.I. 477, 487 (2016) quoting *Farah v. Esquire Magazine*, 736 F.3d 528, 534–35 (D.C.Cir.2013) (“Where a statement is so imprecise or subjective that it is not capable of being proved true or false, it is not actionable in defamation.”). However, the statements made were capable of being proved true or false.

The jury had more than sufficient evidence from Victoria Vooy’s testimony to find that Mosler and Hanley both made disparaging statements about the Plaintiffs as co-owners of the Cane

Bay Beach Bar on the radio and TV regarding Vooy's and Gerace's business practices, and their alleged lack of ability to conduct their business, which would tend to harm Plaintiffs in their business or profession and constitute defamation *per se*. (*See Facts in Evidence, K*). All of Mosler's and Hanley's disparaging statements were false, and Hanley even admitted they were false. (*Id.*). No special harm is necessary for defamation *per se*. *See Schrader-Cooke v. Government of Virgin Islands*, 2019 VI SUPER 167, ¶ 62, 2019 WL 7985407, at *14 (V.I.Super., 2019) (holding "a plaintiff need not prove the existence of special harm in those categories of defamatory statements that are actionable on their face, or actionable *per se*. Among those categories of defamation that are actionable *per se* is the radio broadcast of a defamatory communication.").

Indeed, courts in this jurisdiction reference the Restatement (Second) of Torts §§ 570, 573 for defamation *per se* that does not require special harm where:

One who publishes a slander that ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business, trade or profession, or of his public or private office, whether honorary or for profit, is subject to liability without proof of special harm.

Restatement (Second) of Torts § 573 (1977); *see also Schrader-Cooke v. Government of Virgin Islands*, 2019 VI SUPER 167, ¶ 62, 2019 WL 7985407, at *FN 17. Here, all of Defendants' disparaging remarks were aimed at Plaintiffs' business. (*See Facts in Evidence, K*). Therefore, the jury had sufficient evidence to find the statements were actionable as defamation *per se* and did not require special harm to a certain monetary figure, as Defendants allege.

Furthermore, Plaintiffs *did* prove special harm. After Mosler and Hanley went on the radio and TV declaring the Plaintiffs to be unable to pay their rent on time and that they did not know how to run a restaurant, their clientele for the restaurant began to die off. (*See Facts in Evidence, O*).

Furthermore, they lost their entire business. They were bullied into selling to Defendants' buyer, Jim Jordan, at a much-reduced price from \$50,000 to \$30,000 after Defendants accused them of closing and selling off their equipment, which was entirely false. (*Id.*). The jury was instructed about compensatory damages, which are "sums of money awarded to an injured party to compensate his or her loss." (Jury Instructions, p. 27). There was sufficient evidence for the jury to award each Plaintiff the total sum of \$60,000 to compensate them for their losses due to Defendants' defamation.

V. The Jury had more than sufficient evidence to support its punitive damage award against Defendants

At the outset, it is important to note that Defendants' contention that Plaintiffs must prove punitive damages by clear and convincing evidence, while consistent with the Court's jury instruction, is incorrect. The standard should be preponderance of the evidence. *See*, 5 V.I.C. § 740(5) ("In civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory the finding shall be according to the preponderance of evidence"). Notwithstanding that Plaintiffs were held to a higher than required burden of proof, there was more than sufficient evidence, even under the clear and convincing standard.

[P]unitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (U.S. 2003). The Restatement (Second) of Torts establishes the requirement for an award of punitive damages. This provision states: 1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future and 2) Punitive damages may be awarded

for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. Restatement (Second) of Torts § 908 (1979).

The jury received evidence that:

- Defendants repeatedly breached their promises to give Plaintiffs a 7-year lease and maliciously served Plaintiffs with an improper eviction notice on April 12, 2005 (*See Facts in Evidence, J*).
- Defendants maliciously forced Plaintiffs to sell their restaurant to Defendant's buyer, Jim Jordan, and gave Jordan the 7-year lease denied to Plaintiffs (*See Facts in Evidence, L*).
- Defendants not only gave Jordan the exact lease promised to Plaintiffs, they also allowed him to perform repairs and not pay rent during that period of two months which is exact situation that Plaintiffs asked for but were denied. (*See Facts in Evidence, L*).
- Landlord Defendants also paid for the repairs when Jordan took over the restaurant such as fixing the roof and the electrical. (*Id.*)
- Plaintiffs had gone to culinary school, had learned how to run a restaurant/bar whereas Jim Jordan had no experience, worked as a rancher/bankruptcy finance person and yet Defendants gave him seven-year lease without needing to see anything in advance, while denying same to Plaintiffs. (*Id.*)
- Defendants went on the radio and TV and defamed the Plaintiffs regarding their business and profession (*See Facts in Evidence, K*).
- Defendants bullied Plaintiffs into making repairs and improvements on the restaurant with the false promises of a 7-year lease that they had no intention of giving them. (*See Facts in Evidence, C, D, E, F*).
- The Plaintiffs paid their rent every month, but Defendants maligned their character publicly saying they did not pay their rent and used this falsity as reason to evict them. (*See Facts in Evidence, G*).

The jury correctly determined that Defendants' deceitful conduct was to take advantage of the plaintiffs who were so passionate about the restaurant and bar and were just starting out, pouring their own money into it. The jury correctly determined that such conduct should be deterred and therefore entered an award of punitive damages. *See Smith v. Elias*, 49 V.I. 65, 85 (V.I. Super. Ct. 2007)(“In this case, Defendants' activities were deceitful to not only the Plaintiff but to members of the community at large; the conduct of Defendants were not a result of mere accident, but of intentional wrongdoing; and Defendants demonstrated they were more concerned with their financial liabilities as a business as opposed to the financial and emotional well-being of its employees and remaining within the constraints of the law. Therefore, the jury's finding of punitive damages must stand as they have essentially spoken to the effect that the Defendant should be punished and hopefully deterred from further fraudulent activities through the imposition of a monetary penalty.”)

RESPECTFULLY SUBMITTED
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DATED: April 27, 2022

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on April 27, 2022, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

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FILED

April 27, 2022 02:33 PM

SX-2005-CV-00368

TAMARA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GRACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

OPPOSITION TO DEFENDANTS' RULE 59(A) MOTION

Defendants argue that they are entitled to the extraordinary remedy a new trial under V.I.R. Civ. P. 59. Defendants are not entitled to any post-judgment¹ relief. There was more than sufficient evidence presented to the jury to support liability and damages on all of Plaintiffs' claims, including the request for punitive damages. In addition, the Court repeatedly instructed the jury that it should *not* consider counsels' opening or closing arguments as evidence, and there is no claim or proof that the jury disregarded the judge's instructions. Therefore, the Rule 59(a) request for a new trial, based solely on alleged improper remarks by Plaintiffs' counsel during her closing argument, must be **DENIED**.

STATEMENT OF FACTS IN EVIDENCE

Plaintiffs fully incorporate their separately filed statement of the facts in evidence that support the jury's verdict in this case.

¹ To date, this Court has not entered judgment. *See* V.I.R. Civ. P. 58 (b)(requiring the prompt entry of judgment).

ARGUMENTS AND AUTHORITIES

I. Rule 59(a) – motion for a new trial

Rule 59(a)(1)(A) of the V.I. Rules of Civil Procedure sets forth the grounds under which a new trial may be granted following a jury trial. The one under which Defendants seek a new trial is alleged “attorney or party misconduct that undermined the trial.” *Id.* at (a)(1)(A)(vi).

The Virgin Islands Supreme Court has recognized that the setting aside of a jury’s verdict is an “extreme remedy...”. *Antilles Sch., Inc. v. Lembach*, 2016 WL 948969, at *4 (V.I. Mar. 14, 2016). *Accord Edwards v. Gov’t of Virgin Islands*, 2006 WL 2709634, at *3 (D.V.I. Aug. 29, 2006), *aff’d*, 233 F. App’x 167 (3d Cir. 2007)(noting the extreme remedy of declaring a new trial). The party requesting a new trial bears a “‘heavy burden’ of demonstrating its entitlement to a new trial ...” *Nelson v. Long Reef Condo. Homeowners Ass’n*, 2017 WL 1823040, at *7 (D.V.I. May 5, 2017), *quoting Compass Tech., Inc. v. Tseng Labs., Inc.*, 71 F.3d 1125, 1130 (3d Cir. 1995).

The court must be careful to “‘not serve as the usurper of the jury’s role as judges of credibility and must also not engage in reweighing the evidence.’”. *Gonsalves v. People*, 2019 WL 539852, at *9 (V.I. Feb. 6, 2019), *quoting Brathwaite v. People*, 60 V.I. 419, 432 (V.I. 2014). As a result, the standard of review is “‘extremely deferential to the jury’s verdict ...” *Gonsalves*, 2019 WL 539852, at *9.

The authority to grant a new trial in a jury action is purely discretionary ... [and] must be exercised with care and circumspection. ... Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the Court or a party — is ground for granting a new trial. ... If the movant alleges insufficiency of the evidence, [t]he appropriate test to be applied by the court in considering [a] motion for a new trial [is] ... whether sufficient evidence existed on the record which, if accepted by the jury, could sustain the verdict. ... Unless the Court is convinced that the jury reached a seriously erroneous result because its verdict was against the clear weight of the evidence, [the Court has] no discretion to order a new trial.

Henry v. World Fresh Markets, LLC, 2018 WL 4002725, at *2 (V.I. Super. Aug. 20, 2018)(internal citations and quotations omitted).

As the V.I. Supreme Court has held, “[n]o error or defect in any ruling ... by the Superior Court ... is ground for granting relief or reversal on appeal where its probable impact, in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” *Better Bldg. Maint. Of the Virgin Islands, Inc. v. Lee*, 60 V.I. 740, 750 (V.I. 2014). A Rule 59 motion should be granted only when “**the great weight of the evidence cuts against the verdict** and . . . a miscarriage of justice would result if the verdict were to stand.” *Springer v. Henry*, 435 F.3d 268, 274 (3d Cir. 2006) (internal quotation marks omitted). *Solomon v. Sch. Dist.*, 2013 U.S. App. LEXIS 16638 (3d Cir. Pa. Aug. 12, 2013).

II. Defendants’ request for a new trial based on “improper arguments” of Plaintiffs’ counsel is without merit; this Court repeatedly instructed the jury that it could only consider actual evidence which they did.

Defendants erroneously assert that they are entitled to a new trial because (1) Rohn mentioned \$125, 000 in her closing part of damages; and (2) purportedly made misrepresentations in her rebuttal argument as to the evidence. (Motion at 16-18) Defendants sole support for this sweeping proposition is a *footnote* citation to a 1979 case from North Carolina, *Karriker v. Sigmon*, 43 N.C. App. 224, 226 (1979), where the appellate court granted a new trial because the closing argument of the defense counsel included the argument of the lack of damage made to the car of the plaintiff—something that was not at issue in the trial—but also included argument about attempts to settle with the plaintiff. The critical issue in that case was the failure of the Court to make any curative instructions—which is not at issue here. The Court in *Sigmon* held that:

When counsel makes an improper argument, it is the duty of the trial court, upon objection as here, or *Ex mero motu*, to correct the transgression by clear instructions. If timely done, such action will often remove prejudicial effect of improper argument. *Crutcher v. Noel*, *supra*. By overruling plaintiff's objection, the jury may have considered the argument to be proper to the prejudice of plaintiff. We are compelled to award plaintiff a new trial in this case where there were no other errors.

Karriker v. Sigmon, 43 N.C. App. 224, 226 (1979). Defendants' arguments are without merit and Defendant's counsel did raise a single objection *during* Plaintiffs' counsels' closing argument.

The Virgin Islands Supreme Court recognizes, as do other courts, that while "a defendant is entitled to a fair trial, he is not entitled to a perfect one, ..." *Davis v. People*, 2018 WL 3691737, at *8 (V.I. July 27, 2018), *citing Bruton v. United States*, 391 U.S. 123, 135 (1968). *Accord United States v. Hasting*, 461 U.S. 499, 508–509 (1983) ("In holding that the harmless error rule governs even constitutional violations under some circumstances, the Court recognized that, given the myriad safeguards provided to assure a fair trial, and taking into account the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and that the Constitution does not guarantee such a trial."); *Kelley v. Wegman's Food Markets, Inc.*, 98 Fed.Appx. 102 (3rd Cir. April 26, 2004) ("The Supreme Court has long held that a litigant is 'entitled to a fair trial but not a perfect one.'"), *quoting McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 553 (1984); *Gov't of Virgin Islands v. Bedford*, 671 F.2d 758, 762 (3d Cir. 1982); *Jadwin v. Cty. of Kern*, 767 F. Supp. 2d 1069, 1091 (E.D. Cal. 2011);² *Olson v. Bradrick*, 645 F. Supp. 645,

² *Jadwin*, 767 F. Supp. 2d at 1091 ("As stated by the Ninth Circuit, a civil litigant is 'entitled to a fair trial, [he is] not entitled to a perfect trial, for there are no perfect trials.'"), *quoting In re First Alliance Mortgage Co.*, 471 F.3d 977, 991 (9th Cir. 2006).

653 (D. Conn. 1986); *Miller v. Aslam*, 2015 WL 1379609, at *2 (Conn. Super. Ct. Feb. 27, 2015);³ and *State v. Hill*, 661 N.E.2d 1068, 1083–1084 (Ohio 1996).

The U.S. Supreme Court has noted the concern “that when courts fashion rules whose violations mandate automatic reversals, they ‘retreat [] from their responsibilities, becoming instead ‘impregnable citadels of technicality.’” *Hasting*, 461 U.S. at 509, quoting R. Traynor, *The Riddle of Harmless Error* 14 (1970).

While attorney misconduct that results in prejudice may serve as a basis for a new trial, not all improper remarks by an attorney during trial will engender sufficient prejudice to mandate the granting of a new trial. *Smith v. Marshall*, 2013 WL 10925049, at *4 (D.V.I. Dec. 9, 2013)(internal citations omitted). Counsel’s conduct constitutes reversible error only where counsel engaged in argument injecting prejudicial extraneous evidence such that the improper statements so pervaded the trial as to render the verdict a product of prejudice. *Leonard v. Stemtech Int’l Inc.*, 834 F.3d 376, 399 (3d Cir. 2016)(internal citations and quotations omitted).

A mistrial is warranted on the ground of attorney misconduct when the improper assertions have made it reasonably probable that the verdict was influenced by prejudicial statements. *Smith*, 2013 WL 10925049, at *4. When a jury is given an instruction, including a curative instruction, the presumption is that the jury will follow the instruction. *Davis v. People*, 2018 WL 3695089, at *5 (V.I. July 27, 2018), citing *Monelle v. People*, 63 V.I. 757, 770 (V.I. 2015). Where any such prejudice is cured by instructions of the court, the motion for a new trial should be denied. *Smith v. Lightning Bolt Prods., Inc.*, 861 F.2d 363, 370 (2d Cir. 1988); and *Smith*, 2013 WL 10925049, at *4.

³ *Aslam*, 2015 WL 1379609, at *2 (“Although the issue arises more typically in criminal cases, even in civil cases our courts have recognized that parties are entitled to a fair trial, not necessarily a perfect one.”)(internal citation omitted).

The V.I. Supreme Court has recognized that even in the situation where a trial judge did not give an immediate curative instruction at the time of an objection to improper statements by counsel, the trial court's instructions which were given both at the start of trial and during the final jury instructions that statements by counsel were not evidence reduced any prejudice from counsel's improper remarks during closing argument. *Francis v. People*, 56 V.I. 370, 389 (V.I. 2012), *citing Mulley v. People*, 51 V.I. 404, 415 (V.I. 2009).

First, the jury award for economic damages on the breach of contract/breach of good faith and fair dealing/intentional misrepresentation claim *was less than \$125, 000*—rendering this argument wholly without merit and reinforcing that the jury followed the court's instruction to only consider the actual evidence not attorney argument.

Second, unlike the *Sigmon* case erroneously relied upon by Defendants, this Court provided the very curative instructions that *Sigmon* recognized would have removed a prejudicial effect any purported improper argument. Defendants have not shown how any of their laundry list of purported improper arguments had any effect at all in the case considering the Court's specific instructions to the jury. Just like in *Francis*, in the Court's jury instructions, both the preliminary instructions given at the beginning of the trial,⁴ and the Court's final jury instructions given at the end of the liability phase of the trial before the jury retired to deliberate,⁵ the Court instructed the jury that statements of counsel are not evidence, which the V.I. Supreme has recognized ameliorates any prejudice from a counsel's improper statement at trial. *Francis*, 56 V.I. at 389.

⁴ See Tr. Vol. II, pp. 61-63, 68-69

⁵ See Jury Instructions, pp. 10-11

RESPECTFULLY SUBMITTED
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DATED: April 27, 2022

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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).

BY: /s/ Lee J. Rohn
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on April 27, 2022, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

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FILED

April 27, 2022 12:56 PM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO
DEFENDANTS' POST-TRIAL MOTION**

On April 22, 2022, this Court entered this Order (which was corrected on April 26th, but not changed):

ORDERED that Plaintiffs' corrected motion to exceed page limit . . . is DENIED.

Despite being denied leave to file an opposition memorandum in excess of 20 pages, *the Plaintiffs still filed a 37 page opposition to Defendants' post-trial motion.* As such, that opposition memorandum should be summarily stricken and not considered.

However, the Defendants will still respond to the arguments raised therein, as even if the Court does not strike this response, Plaintiffs' arguments are without merit.

I. The Defendants' Rule 50 Motion-The Contract Claims

The Defendants raised several arguments in support of their Rule 50 motion seeking to vacate the \$100,000 award for the three "contract" claims—breach of contract (Count V), misrepresentation (Count VIII) and breach of the duty of good faith/fair dealing (Count IX). The primary issue—that the jury's calculation of \$100,000 in damages has no factual support—will be discussed first since it moots the rest.

A. There is no basis for the jury's computation of damages of \$100,000

As the Defendants noted in their Rule 50 motion, the Plaintiffs admitted their damage claim was the same for all three of these "contract" counts. Moreover, the

Plaintiffs put their damages for these “contract” counts into these three buckets at trial—expenses incurred in running the restaurant, loans from family members and damages from not being able to sell a lease.

In their response, the Plaintiffs abandon the third theory, recognizing that they had no evidence to support a damage claim regarding the sale of a lease. However, the Plaintiffs then added a new concept—sweat equity—to try to justify the award of damages for these three “contract” claims.

At the outset, the law of the case regarding the damages for these three “contract” claims is defined by this Court’s jury instructions on these counts, which required proof *of specific economic and/or pecuniary losses*:¹

- Count V-The Court instructed the jury that it had to find that the Plaintiffs “**suffered specific economic losses**” for the contract claim. (J.I., p. 9);
- Count VIII-The Court instructed the jury that it had to find the Plaintiffs “**suffered a pecuniary loss**” for the intentional misrepresentation claim. (J.I., p. 30); and
- Count XI-The Court instructed the jury that it had to find the Plaintiffs “**suffered economic damages**” for the “Good Faith/Fair Dealing” claim (J.I., p. 31).

Not only was the jury not instructed on the concept of, “**sweat equity**” **this was never mentioned as a damage claim in either the complaint or the Joint Final Pretrial Order.** Indeed, to recognize such a claim would require a full *Banks* analysis, which the Plaintiffs did not do. Likewise, it is pure speculation to suggest that the jury made such a calculation in this case. As such, the Court should reject this attempt to justify the \$100,000 jury verdict for these three “contract” claims based upon an alleged calculation of “sweat equity.”

¹ The law of the case doctrine was adopted after a full *Banks* analysis in *Virgin Islands Taxi Ass’n v. Virgin Islands Port Auth.*, 67 V.I. 643, 668 (2017)(“The doctrine of the law of the case dictates that ‘when a court decides upon a rule of law, that rule should continue to govern the same issue in subsequent stages in the litigation.’”)

Of course, the Plaintiffs added this argument because the other items they assert justify the jury's award of \$100,000 cannot support such a verdict. In this regard, the Plaintiffs assert that their total losses were \$155,000, calculated as follows on page 16 of their opposition memorandum:

Plaintiffs spent over **\$40,000** in repairs; over **\$20,000** in new restaurant equipment; and over **\$50,000** in advertising, promotions and to build good will. (Vol. VII., Vooy's, pp. 226-227). Plaintiffs submitted Plaintiffs' Trial Exhibit 48 to the jury, which was a compilation of receipts for money spent on equipment, tools, repairs, services, and hardware to improve and clean and care for the restaurant/bar. (Vol. II, Vooy's, p. 228; Plaintiffs' Trial Exhibit 48). Some things like service repairs were paid for in cash and there is no record of them. (Vol. VIII, Vooy's, pp. 352-353). Plaintiffs also had to take out a family loan from Victoria Vooy's father for **\$45,000** for living expenses while getting the Cane Bay Beach Bar operational and running.

However, these alleged sums cannot support the jury's award of \$100,000 in damages to the Plaintiffs for their alleged losses for several reasons.

First, the Plaintiffs admit they did not spend the "**\$40,000** in repairs; **\$20,000** in new equipment; and over **\$50,000** in advertising," as Vooy's conceded at trial that Barabus, Inc. made **all** of these alleged expenditures.² TT Vol. II, p. 296. Moreover, Barabus sold food and drinks, which it then used to pay for its these expenses, as noted by its tax returns (DEx 15, 16 and 17), so these funds did not come from the Plaintiffs. In short, Barabus' ordinary business expenses cannot also be claimed by the Plaintiffs as separate "pecuniary losses" incurred by them, as they did not incur them---Barabus did from its own revenues.³

² Plaintiffs assert that Defendants did not preserve this objection, but counsel did so in making the Rule 50 motion, stating that "these aren't expenditures that they took out of their own pocket," pointing out that Barabus paid them. TT Vol. IV, pp. 553.

³ The Plaintiffs' response (p. 24) claims that "Whether Plaintiffs must pay the money back to Barabus, Inc. [for these expenses] is of no concern to Defendants" is incorrect. If the Plaintiffs borrowed money (even though there is no evidence that they did so), they cannot claim these funds as part of their personal losses if they never paid the loan back.

Second, the **\$45,000** in “borrowed funds” cannot constitute economic losses for the Plaintiffs since (once again) they never paid the loans back, so there is no monetary loss suffered by them. Indeed, there is no evidence when they received this loan, which they testified that they used the funds to live on, not for use in the business that paid the other items listed above. TT Vol. II, pp. 250-251.

In short, what evidence did the jury use to “calculate” the \$100,000 in specific economic losses suffered by Vooyo and Gerace? There is no such evidence, so this award of \$100,000 is without any factual basis to support it, requiring it to be vacated.

B. The other Rule 50 arguments regarding the “contract” claims

The Defendants made four additional arguments in support of vacating this award, all of which are moot if this Court finds there is no evidence to support the \$100,000 verdict as set forth above. These arguments were raised in the opening motion at pp. 6-8, which the Plaintiffs primarily ignored in their response. For example, where is the evidence to support a finding that the Defendants did not intend to keep any promises when made, an essential element of the misrepresentation claim (Count VIII)? By way of another example, the Plaintiffs simply incorporated their prior response to the gist of the action argument, so no further reply is needed here either.

In short, as the other “contract” issues were not addressed in detail in the Plaintiffs’ response, these additional arguments as raised in the Defendants’ initial motion will simply be incorporated herein by reference since there is nothing to rebut. Moreover, they are all moot if the verdict is vacated due to the lack of any evidentiary basis for awarding the Plaintiffs \$100,000 in specific economic losses.

II. The Defendants’ Rule 50 Motion-Defamation

The Defendants will address the alleged liability of each Defendant for defamation separately for the sake of clarity.

A. Chris Hanley

The Plaintiffs do not dispute in their opposition memorandum that neither one of them identified a single defamatory statement at the trial that they attributed to Chris Hanley. While Chris Hanley testified that the Plaintiffs did pay their rent late, the checks put into evidence by the Plaintiffs confirm that this statement was true.⁴ Thus, the award against Hanley of \$30,000 to each Plaintiff (for a total award of \$60,000) should be vacated, as there is no evidence to support a finding that he made any defamatory statements about either Plaintiff.

B. Warren Mosler

After one gets past all of the rhetoric in the Plaintiffs' voluminous response to this issue, the gist of the Plaintiffs' claim for defamation against Mosler is summarized by the Plaintiffs in their response (p. 30) that his statements questioned their "alleged lack of ability to conduct their business." There are two reasons why his statements were not defamatory.

First, Mosler's stated "opinions" that they could not run their business does not constitute a defamatory statement. As V.I. Supreme Court held in *Simpson v. Andrew L. Capdeville, P.C.*, 64 V.I. 477, 488 (V.I. 2016):

Capdeville further cited approximately 12 statements he claims were published on one or more websites owned and controlled by Simpson. These statements ranged from accusing Capdeville of being a "liar" who has "proven himself to be dishonest," to statements referring to Capdeville as a "disgrace," a "danger," and insisting that his conduct "was so terrible" that it "should be used ... as an example of what Lawyers should not do." But "hyperbole and expressions of opinion" are typically "not provable as false," and are therefore not actionable.

See also, Kendall v. Daily News Pub. Co., 55 V.I. 781, 788 (Sup. Ct. Sept. 21, 2011) hyperbole and expressions of opinion not provable as false are constitutionally

⁴ See, e.g., DEx 14 (which shows rent not being paid for months at a time and always being paid well after the first of the month even when paid in the month that it was due, which was rare).

protected"). Thus, the damage award against Mosler for defamation should be vacated for this reason alone, as his statements about their inability to run a business is clearly his opinion that is not provable as being false.⁵

Second, once one looks at the specific statements Mosler allegedly made about the Plaintiffs' inability to run a business, they were true **based on the Plaintiffs own admissions at trial** that they did not know how to run a business:

- (1) They admitted they had never run a restaurant before. (Vol II, pp. 168, 177, Vol III, p. 439).
- (2) They admitted they bought the business without a lease or tradename. (Vol II, p. 172, 261, 309; Vol III, pp. 368, 457, 459, 461).
- (3) They constantly paid rent late, going five months at one point without paying rent, which Vooy's admitted (See DEx 14, TT Vol II pp. 195-201).
- (4) They paid \$4500 in back rent in February by check, which bounced, as Vooy's admitted (TT Vol II pp. 195-201).
- (5) Their business in fact lost money every year according to their own tax returns (DEx 15, 16, 17).
- (6) Vooy's thought a 7 years lease was better than a 5 year lease with a 5 year option (totaling 10 years) (Vol II, p. 235).
- (7) Vooy's admitted that she did not keep all of the receipts for the business (Vol. II, pp. 293-94, 353, 358-359, 363, 369-370, 373).
- (8) They did not pay any payroll because they "didn't know how to do business taxes" (Vol III, pp. 334, 336-337), nor did they pay any gross receipt taxes because they "never had the money" to pay them (Vol II, pp. 228-29, 287).
- (9) They admitted that they never got a business license (Vol II, pp. 304-05).

Thus, the alleged statements made by Mosler concerning his opinions as to the Plaintiffs' business abilities were true, as the Plaintiffs admit.

⁵ Moreover, contrary to the Plaintiffs' assertion, this issue was preserved when Mosler's counsel moved to dismiss this claim because "there's no evidence to show any credible statements that could be taken as defamatory." TT. Vol VI at pp. 575-76.

Thus, the award against Molser of \$30,000 to each Plaintiff (for a total award of \$60,000) should be vacated, as his alleged comments were “opinions” at best, which were based on multiple admissions made by the Plaintiffs, so they were true as well.

III. The Defendants’ Rule 50 Motion-Punitive Damages

The Plaintiffs argue that the Defendants’ conduct was so egregious as to warrant the imposition of punitive damages, citing one case, *Smith v. Elias*, 49 V.I. 65, 70 (Super. Ct. 2007). However, the facts outlined by the court in that case (involving an employee vehicular accident) explain why punitive damages were appropriate:

Thereafter, Louis Elias . . . , management representative of Merchants Market, approached Plaintiff and requested Plaintiff to *perjure* himself in court by testifying that he was on “*a personal errand*” and not on official business of Merchants Market at the time of the accident. Plaintiff refused to engage in such a dastardly, unethical and unlawful act. Undaunted by Plaintiff’s refusal to engage in an insurance fraud scheme, Elias later insisted upon Plaintiff furnishing a copy of his personal automobile insurance policy. Plaintiff also declined to do that. Shortly after Plaintiff declined to perjure himself or surrender his personal automobile insurance to Elias, a number of verbal threats were made to him. To add insult to injury, unjustifiable retaliatory measures were immediately taken against the Plaintiff by Defendants as well.

In short, trying to get an employee to perjure himself as well as to engage in insurance fraud, and thereafter retaliate against him for not doing so, clearly supports a finding of outrageous conduct sufficient to support an award of punitive damages.

However, in this case, no such similar conduct occurred. At best, the Parties had a difference of opinion as to what was said and/or agreed upon between them. Recognizing that these differences cannot support a punitive damage claim even if they support a compensatory damages award, the Plaintiffs again resort to mischaracterizing the evidence, such as asserting that (1) the Defendants “maliciously served Plaintiffs with an improper eviction notice on April 12” or (2) they “maliciously forced Plaintiffs to sell their restaurant to Defendant’s buyer, Jim Jordan.”

As for this first point, this Court has already held that Rohn's characterization of the April 12th letter (PEx 10), and the applicable law, is totally wrong, as the letter only sought to confirm the Plaintiffs were leaving and asked to be corrected if they were not doing so. (TT Vol VII, pp. 1139-1140). Thus, despite the Plaintiffs' repetitive argument to the contrary, the April 12th letter was not an "illegal eviction letter."

As for the second point, the Plaintiffs voluntarily sold their business while represented by counsel, hardly a forced sale. Indeed, it is undisputed that once the Defendants received Attorney Rohn's April 20th letter (PEx 14) answering their question as to whether the Plaintiffs were vacating the premises, they took no further action against the Plaintiffs.⁶ In fact, the Defendants assisted the Plaintiffs in selling their business, and leaving the premises on their own accord, by giving their buyer a lease at the Plaintiffs' request, something they had no obligation to do.

Thus, it is respectfully submitted that this Court should completely set aside the jury's punitive damage award of \$100,000 (\$50,000 as to Mosler and another \$50,000 as to Hanley).

IV. The Defendants' Rule 59 Motion

The Plaintiffs argue that counsel's closing argument, even if it ran afoul of all appropriate standards, is not a basis for granting a new trial since the Court instructed the jury that counsel's comments are only argument and not evidence. However, the fact that this instruction was given, as it is in every case, does not give counsel *carte blanche* to then completely misstate both the law and the evidence. At some point,

⁶ Indeed, it is undisputed that the Defendants could have simply given the Plaintiffs a 30 day notice to vacate the premises since they were month to month tenants, which they never did, confirming they did not do anything to force the Plaintiffs to leave.

when closing argument exceeds the tolerable limits of impropriety even when such an instruction is given, a new trial is warranted under Rule 59(a)(1)(A)(vi).

Here, the Plaintiffs completely ignore these critical points in their opposition:

- Counsel specifically referred to evidence that was admitted by the Court for the purpose of impeachment as substantive evidence, abusing this Court's limited admission of this testimony.
- After the discussion of this improper argument with the Court, Counsel was expressly warned by the Court not to make any further prejudicial arguments before she began her rebuttal argument, so she was on clearly notice that the Court would not tolerate any further abuses.⁷
- Despite this fact, counsel made repeated improper arguments in her rebuttal, all listed on pages 17 and 18 of Defendants' post-trial brief, none of which the Plaintiffs even tried to justify or explain in their opposition memorandum.⁸

⁷ The Court first admonished Counsel for mentioning the impeachment figure in her closing (TT Vol VII, p. 1042):

THE COURT: Attorney Rohn, my specific--I made it specific, that you were not to mention a number. So the impeachment could not have been where you mentioned or I allowed you to say \$125,000. That was not my ruling.

The Court ultimately denied the initial mistrial motion, but gave this admonition (TT Vol VII, p. 1108):

THE COURT: . . . **If there is another instance like that, I will review the record and if I find it is cumulative, the Court will find it's egregious and I will declare a mistrial.** (Emphasis added)

⁸ These items included the egregious misstatement of both the law and the facts when counsel argued (TT Vol VII, p 1125):

So what they actually tried to do is to evict my clients without a notice to quit and without obeying the law. That's what they actually did. **So yes, that's illegal activity.** (Emphasis added)

As such, having made these additional improper arguments ***after having been fully admonished not to do so*** warrants ordering a new trial, as otherwise counsel will assume such directives are not going to be enforced. In short, flaunting the Court's directives, made after attempting to address a prior improper argument, should not be permitted or tolerated.

In short, while the Defendants are not entitled to a perfect trial, as the Court instructed the jury, they "are entitled to a trial free of prejudice." JI Transcript at p. 17. Plaintiffs' counsel prevented this from occurring by her repeated misstatement of the law and the facts, as specifically identified in the Defendants' post-trial motion, which even she did not try to defend or refute in the opposition brief. As such, at the very least, a new trial is warranted.

V. Conclusion

For the reasons set forth herein, as well as in the initial post-trial motion, it is respectfully submitted that the relief sought should be granted, vacating the jury's findings in this case. Alternatively, a new trial is warranted based on the improper argument of Plaintiffs' counsel in her closing statements.

DATED: April 27, 2022

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CERTIFICATE OF PAGE LIMITATION AND SERVICE

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FILED

April 27, 2022 04:29 PM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' REVISED
OPPOSITION TO DEFENDANTS' POST-TRIAL MOTIONS**

On April 27, 2022, the Defendants responded to the Plaintiffs' April 25th opposition to their post-trial motion. After that filing, the Plaintiffs re-filed their opposition memorandum on April 27th, taking out the statement of facts and then re-filing it as a separate document. As the substance of the Plaintiffs' opposition did not change, the Defendants simply incorporate their April 27th Reply herein by reference to these new filings by the Plaintiffs regarding the Defendants' post-trial motion.

DATED: April 27, 2022

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF PAGE LIMITATION AND SERVICE

I hereby certify that this document complies with the page limitation set forth in Rule 6-1(e), and was served this 27th day of April, 2022, by email:

Lee Rohn, Esq.
Rhea Lawrence, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Joel H. Holt

FILED

March 24, 2022 11:03 AM

SX-2005-CV-00368

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MOTION TO ENTER JUDGMENT

COME NOW Plaintiffs, by and through undersigned counsel, and files this Motion to Enter Judgment. As this Court is aware, V.I.R. Civ. P. 58(b) requires a judge to promptly sign the judgment, which shall take affect for purposes of the appeal upon entry of the clerk of the Court. In fact, in *Henry v. World Fresh Market 71 VI 1161, 2019, VL 30, 2019 VI Supreme LEXIS 43 (Oct. 9, 2019)*, the Virgin Islands Supreme Court previously addressed this Court's failure to do so. In that case, the Supreme Court noted that the jury verdict was entered on September 2, 2015. On September 16, 2015, Henry provided a Proposed Verdict. However, the Court failed to enter the judgment until it had ruled on Defendant's Renewed Motion for Judgment as a matter of law or new trial. As the Court held, "however, as we find the Superior Court's failure to timely, much less "promptly sign" and "enter" the Final Judgment.... Is an error likely to be repeated in future cases, we exercise supervisory powers, 4 V.I.C. 32(b), to address the Clerk of the Superior Court's failure to comply with mandatory prescriptions of 58(b) of the Virgin Islands Rule of Civil Procedure. Rule 58

placed upon, (1) each Superior Court judge to “promptly sign” a written judgment following a jury’s verdict and (2) the Clerk of the Superior Court to “promptly enter the judgment”. The Supreme Court further stated “we take the opportunity to, first, reminded the judges and Clerks of the Superior Court that they have an obligation to adhere to the rules applicable in the Courts of the Virgin Islands, especially those placing affirmative, non-discretionary duties upon judicial officers, and to unfailingly perform those duties, and second, provide guidance as to the meaning, and application of these rules. The Supreme Court then quoted Rule 58(b) and defined; “entry” is the placement of something... on the record. “To sign” means to affix one’s signature. To act “promptly” is ... to be done without delay. The Court stated, “essentially, Rule 58(b) dictates that the trial judge will sign a written judgment memorializing the jury’s verdict without delay after its returned, and further dictates the Clerk of the Superior Court must enter such a judgment on the Court’s docket with delay’.

It has now been twenty-eight (28) days since the jury’s verdict. The failure to enter judgment makes Plaintiffs entitled to prejudgment interest at 9% on \$320,000.000, which is \$78.90 per day. In addition, the failure to promptly enter the verdict has prevented the time running for posting of a bond, and the application of an award of fees and costs.

As such, Plaintiffs request this Court to comply with the Supreme Court’s instructions, enter judgment promptly, and without delay. A courtesy copy of a judgment is attached.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiffs

DATED: March 24, 2022

BY: /s/ Lee J. Rohn

Lee J. Rohn, Esq.

VI Bar No. 52

1108 King Street, Suite 3 (mailing)

56 King Street, Third Floor (physical)

Christiansted, St. Croix

U.S. Virgin Islands 00820

Telephone: (340) 778-8855

lee@rohnlaw.com

CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).

BY: /s/ Lee J. Rohn

Lee J. Rohn, Esq.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on March 24, 2022, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

Joel Holt, Esquire
Quinn House
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
Email Address: holtvi@aol.com
Attorney For: Warren Mosler, Chris Hanley & Chrismos Cane Bay, LLC

BY: /s/ Lee J. Rohn (kj)

FILED

March 24, 2022 03:01 PM

SX-2005-CV-00368

TAMARA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' REQUEST FOR
PRE-JUDGMENT INTEREST**

The Plaintiffs submitted a proposed judgment that seeks to improperly add 9% prejudgment interest of the jury's award, apparently claiming such relief is warranted since the jury's verdict was entered on March 3, 2022.¹ However, there is no legal basis for adding prejudgment interest on said amounts, which amounts were disputed at trial. Indeed, the Rule 50 motions made at trial are still pending, so the verdict is not yet final.

DATED: March 24, 2022

/s/ Joel H. Holt

Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF PAGE LIMITATION AND SERVICE

I hereby certify that this document complies with the page limitation set forth in Rule 6-1(e), and was served this 24th day of March, 2022, by email:

Lee Rohn, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Joel H. Holt

¹ The jury verdict form, signed by the jurors, is still not filed and should be filed as well.

FILED

June 09, 2022 04:56 PM

X-2005-CV-00368

TAMARA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GRACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiffs,

v.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,

Defendants.

CIVIL NO. SX-2005-CV-00368

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

RENEWED MOTION TO ENTER JUDGMENT

COME NOW Plaintiffs, by and through undersigned counsel, and renew their Motion to Enter Judgement originally filed on March 24, 2022, and state the following:

As previously pointed out, the Supreme Court of the Virgin Islands has previously instructed this Court of the requirement of this Court's duty to promptly enter judgment. See prior Motion to Enter Judgment.

Further, in *Espersen, v. Sugar Bay Resort and Spa, et. al. Civil No. ST-2014-CV-00355*, the Supreme Court again explained the necessity of prompt entry of judgment. In that case because judgment was entered in less than a month, that triggered the deadlines for filing the Defendants' motions for new trial, and for judgment. As a matter of law, the Supreme Court was able to hear the appeal because there had been no ruling on the motions within the 120-day period. However, as in *Payne, Aisha v. John P. Charles, Civil No. SX-2011-CV-00448*, this 120-days safeguard cannot be activated in this case because, although the motions have been filed, the 120-days does not begin to run until the

judgment has entered. Further, when the judgment is finally entered the 120-days will begin to run as of the date of the judgment, and not the date of the filing of the motions as they are not timely until the judgment is entered. Thus, the failure to enter judgment in prejudicing the Plaintiff, and is in direct violation of the Supreme Court's admonishment in *Henry v. Pueblo Supermarket, Civil No. SX-2010-CV-00557*.

As such, Plaintiffs request this Court to enter judgment within five (5) days, or Plaintiffs will be forced to file a Petition for Mandamus that the Court do so.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiff

DATED: June 9, 2022

BY: /s/ Lee J. Rohn
Lee J. Rohn, Esq.
VI Bar No. 52
1108 King Street, Suite 3 (mailing)
56 King Street, Third Floor (physical)
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 778-8855
lee@rohnlaw.com

CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).

BY: /s/ Lee J. Rohn
Lee J. Rohn, Esq.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on June 9, 2022, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which will send a notification of such filing to the following:

Joel Holt, Esquire
Law Offices of Joel Holt
Quinn House
2132 Company Street, Suite 2
Christiansted, VI 00820
Email Address: joelholtpc@gmail.com
Attorney For: Warren Mosler, Chris Hanley & Chrisnos Cane Bay, LLC.

BY: /s/ Lee J. Rohn (kj)

FILED

June 10, 2022 11:09 AM
SX-2005-CV-00368
TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

WARREN MOSLER, CHRIS HANLEY,
and CHRISMOS CANE BAY, LLC.,
Defendants.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**DEFENDANTS' REPLY TO PLAINTIFFS' RENEWED
MOTION TO ENTER JUDGMENT**

While the Plaintiffs insist that Judgment be entered at once, this Court has repeatedly stated that it is fully aware of its obligations and intends to promptly address the pending motions, which includes the Rule 50 motions made at trial as well as the post-trial motion (that raised both Rule 50 and Rule 59 (a)(1)(A)(vi), Attorney Misconduct, issues) and then enter a final Judgment.

Indeed, the intervening May 27th decision from the V.I. Supreme Court in *Atlantic Human Resource Advisors, LLC et al v. Espersen*, 2022 V.I. 11 (V.I. 2022), clearly caused an unexpected delay in order to see what, if any, effect that ruling had on the issues in this case. While it appears to the Parties that *Espersen* does not impact the pending post-trial motion, *Espersen* did affirm that the Defendants' primary Rule 50 argument, asserting that the Plaintiffs failed to prove any damages as a required element of their claims, remains a viable defense, stating at *15 as follows:

As a threshold matter, a claim that a plaintiff failed to introduce sufficient evidence to sustain a compensatory damage award is necessarily different from other challenges to the amount of damages. **Since compensatory damages are often an element of a cause of action, the failure of the plaintiff to introduce sufficient evidence to prove damages will result in dismissal of the cause of action and judgment entered in favor of the defendant, just as would be the case with respect to the failure to prove any other element. (Citation omitted) (Emphasis added).**

Indeed, *Espersen* reaffirmed the V.I. Supreme Court's apparent disdain for defamation claims. *Id.* at **11-13. It also confirmed that punitive damages cannot stand against a defendant absent "clear and convincing evidence, that their actions were so reckless or outrageous as to warrant a punitive damages award" *Id.* at *19.

In short, taking the time to review *Espersen* is certainly appropriate, requiring additional time to address the post-trial motions. As such, the Plaintiffs' renewed motion should be denied, as this Court has already indicated it is fully aware of its obligations to address the Rule 50 motions, made during and after the trial, before entering a judgment.

DATED: June 10, 2022

/s/ Joel H. Holt
Joel Holt, Esq. (Bar No. 6)
Law Offices of Joel Holt
2132 Company Street, Suite 2
Christiansted, St. Croix, VI 00820
holtvi@aol.com
T: 340-773-8709

CERTIFICATE OF PAGE LIMITATION AND SERVICE

I hereby certify that this document complies with the page limitation set forth in Rule 6-1(e), and was served this 10th day of June, 2022, by the ECF system and email:

Lee Rohn, Esq.
Rhea Lawrence, Esq.
1101 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Joel H. Holt

ASSET PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is executed effective July 1, 2003 between CB3, Inc.; a U.S. Virgin Islands Corporation ("Seller"); Joseph Gerace, as an Individual ("Purchaser"); and CENTURY 21 Richards & Ayer Real Estate ("Escrow Agent").

WITNESSETH:

A. Seller is the owner of all the furniture, furnishings, equipment, inventory, goodwill, contracts, and other tangible personal property described on Exhibit "A" attached hereto and made a part hereof and the trade name "CANE BAY BEACH BAR"; accounts receivable and cash (collectively "Property"), which Property is used in connection with the operation of the Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. Seller desires to sell the Property to Purchaser and to assign all of its right, title and interest in the lease agreement, if any ("Lease") pertaining to the current location of the Business ("Leased Premises") pursuant to the provisions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Sale and Purchase of Property. Subject to and on the terms and conditions provided herein, Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Property and Seller's leasehold interest in the Leased Premises under the Lease.

2. Purchase Price.

2.1 The purchase price ("Purchase Price") for the Property and for the assignment of the Lease, if any, shall be **Eighty Thousand Dollars (\$80,000.00)**, subject to the credits and prorations provided for herein and shall be paid at Closing as follows:

2.1 (a) An amount equal to Five Thousand Dollars (\$5,000.00) has been paid to the escrow account of CENTURY 21 Richards & Ayer Real Estate by buyer as earnest money and shall be credited to Buyer at closing.

2.1(b) An amount equal to Fifty Thousand Dollars (**\$50,000.00**), **subject to the credits and prorations provided for herein**, shall be paid by Purchaser at closing by certified or cashier's check or other funds acceptable to Seller; and

2.2 An additional amount of Thirty Thousand Dollars (\$30,000.00) shall be amortized over One year and paid in monthly installments of principal and interest of which interest shall be in the amount of six percent (6.0%) for a total monthly payment of One Thousand Five Hundred Dollars (\$1,500); the remainder amount shall be paid in one balloon payment of

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Fourteen Thousand Seven Hundred Seventy Three Dollars and Fourteen Cents (\$14,773.14) by August 31, 2004.

2.5 Any and all advertising and other business related commitments currently made and agreed to by Seller on behalf of the Business shall be assumed by and shall become the obligation and sole liability of the Purchaser at closing. Seller shall not enter into any new obligations covered by this Subsection 2.5 without Purchaser's knowledge and consent between the period of this contract date and closing.

3. Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 Seller is a Corporation duly organized, validly existing and in good standing under the laws of the Territory of the United States Virgin Islands. The execution, delivery and performance of this Agreement and the transactions contemplated herein by the Seller are within the powers of the Seller. Upon execution and delivery, this Agreement and the documents contemplated herein shall be legally binding obligations of Seller enforceable in accordance with their provisions.

3.2 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business, the Lease (if any), or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.3 Up to and including the date of the closing, no one will modify or remove any of the personal property comprising the Property, except that inventory may be sold in the ordinary course of business and personal property may be removed and replaced with property of equal quality and value.

3.4 Seller will not execute any new lease, service contract, employment agreement or enter into any agreement concerning the Property or the Business without Purchaser's prior written consent, unless such agreement shall terminate prior to the effective date of the closing.

3.5 Seller owns good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances.

3.6 This number intentionally left blank

3.7 Neither the execution and delivery of this Agreement nor any agreement required hereby nor the performance by the Seller of its obligations hereunder shall (a) conflict with or result in a breach of or constitute or result in a default under (i) any of the provisions of the Articles of Organization or Operating Agreement or other governing agreements of the Seller; (ii) any agreement between the members of the Seller, or (iii) any judgment, order, injunction,

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decree, regulation or ruling of any court or any governmental authority to which the Seller is subject and to which notice has been received; (b) give to any person any right of termination, cancellation or acceleration in or with respect to any agreements, contracts or commitments of the Seller, except that the consent of the landlord is required; or (c) result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance upon any of the property or assets of the Seller pursuant to the provisions of any mortgage, lease, or other agreement to which the Seller is a party or is bound. The consummation of the transactions contemplated by this Agreement shall not result in any default by the Seller which will give any person any right to accelerate any obligations under any agreement, contract, indenture or other instrument relating to the borrowing of money or other indebtedness by which the Seller is a party or is bound.

4.0 Purchaser's Representations and Warranties:

4.1 Purchaser is taking business as an individual. The execution, delivery and performance of this Agreement and the transactions contemplated herein by the Purchaser are within the powers of the Purchaser. Upon execution and delivery, this Agreement and the documents contemplated herein shall be legally binding obligations of Purchaser enforceable in accordance with their provisions.

4.2 There are no actions, suits or proceedings threatened or pending against, by or affecting Purchaser, which question the validity of this Agreement or question or impair Purchaser's ability to consummate the transaction described herein or contemplated hereby or any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason.

4.4 There are no outstanding options, subscriptions, claims, warrants or other rights to subscribe for or purchase or require the issuance of Stock from the Purchaser. There are no contracts or commitments providing for the issuance of, or the granting of rights to acquire, and no securities convertible into or exchangeable for, any shares of capital stock or any other ownership interest of the Purchaser. Purchaser has the right, ability and the available authorized shares of common stock to issue the shares of stock in Purchaser to Seller if it elects to convert the Loan to common stock of the Purchaser before or after closing as provided in Section 2 hereof.

4.5 Neither the execution and delivery of this Agreement nor any agreement required hereby nor the performance by the Purchaser of its obligations hereunder shall (a) conflict with or result in a breach of or constitute or result in a default under (i) any of the provisions of the Articles, Bylaws, or other governing agreements of the Purchaser; (ii) any agreement between the shareholders of the Purchaser, or (iii) any judgment, order, injunction, decree, regulation or ruling of any court or any governmental authority to which the Purchaser is subject and to which notice has been received; (b) give to any person any right of termination, cancellation or acceleration in or with respect to any agreements, contracts or commitments of the Purchaser, except that the consent of the landlord is required; or (c) result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance upon any of the property

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or assets of the Purchaser pursuant to the provisions of any mortgage, lease, or other agreement to which the Purchaser is a party or is bound. The consummation of the transactions contemplated by this Agreement shall not result in any default by the Purchaser which will give any person any right to accelerate any obligations under any agreement, contract, indenture or other instrument relating to the borrowing of money or other indebtedness by which the Purchaser is a party or is bound.

5.0 Closing. The closing ("Closing") of the transaction contemplated herein shall occur on or before August 1, 2003 on a date and time acceptable to Seller and Purchaser and shall be held at the law offices of _____ . If Seller and Purchaser are unable to agree upon a time and date for the Closing, then the closing shall be held on _____ . Time is of the essence.

5.1 At the closing Seller shall deliver or cause to be delivered the following documents:

- (a) A Bill of Sale conveying the Property to the Purchaser, in a form satisfactory to Seller's counsel and Purchaser's counsel.
- (b) An assignment of any contracts (in a form satisfactory to Seller's counsel and Purchaser's counsel) which Purchaser elects to assume.
- (c) An assignment and assumption agreement of the Lease and the consent of the Landlord to the Lease assignment, if required under the terms of the Lease, in a form satisfactory to Seller's counsel and Purchaser's counsel.
- (d) Resolution(s) authorizing the transactions contemplated herein from the members of Seller.
- (e) A Closing Statement.
- (f) An assignment of the trade name Cane Bay Beach Bar.
- (g) Any other documents necessary and reasonably requested by Purchaser to consummate the transaction contemplated herein in accordance with the provisions of this Agreement.

5.2 At the Closing, Purchaser shall deliver or cause to be delivered the following items:

- (a) The Note;
- (b) A Closing Statement.
- (c) The assignment of any contracts, which Purchaser elects to assume.



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(d) The assignment and assumption agreement of the Lease, if any.

(e) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein in accordance with the provisions of this Agreement.

5.3 Possession of the Property shall be delivered to the Purchaser at Closing.

5.4 Purchaser shall pay the cost of the recording fees for any documents needed to provide clear title to the Property as required under this Agreement. Purchaser shall pay the costs for any title examination obtained by Purchaser. Each party shall pay its own attorney's fees.

5.5 The current payments due under the Lease and any Contracts affecting the Property which are being assumed by Purchaser shall be prorated as of the closing date.

5.6 Seller shall pay for all merchandise which ordered by it and received prior to closing and Purchaser shall pay for all merchandise received after closing.

5.7 The rent due under the Lease, all real property taxes assessed against the Property, all other expenses and obligations under the contracts, if any, to be assigned to Purchaser and all other operating costs and expenses with respect to the Property shall be prorated between Seller and Purchaser as of the Closing Date, with the Seller responsible for all such items applicable to the period prior to the Closing Date and the Purchaser responsible for all such items applicable to the Closing Date and the time period thereafter. Seller shall be responsible for paying all amounts due under any Contract not to be assigned to Purchaser at Closing, including without limitation, any termination fee. Purchaser shall reimburse Seller for any security deposit paid to the Landlord under the Lease.

5.8 Final readings on all metered utilities, including without limitation, water, sewer, gas and electric, serving the Property shall be made on the Closing Date. Seller shall be responsible for all charges for consumption of utilities until the Closing Date and Purchaser shall be responsible for utility charges on and after the Closing Date. All deposits or bonds for utility services to the Property shall be transferred to Purchaser and Seller shall receive a credit at closing in such amount or Purchaser shall pay its own utility deposits. If a final reading cannot be taken for any utility on the Closing Date, then the respective utility charge shall be prorated as of the Closing Date based upon the most current available bill therefor and promptly re-prorated upon receipt of a final bill for such charges.

5.9 All items shall be prorated as of 11:59 p.m. on the day before the Closing Date. All of the above-listed items which are required to be prorated as of the Closing Date and which are not subject to an exact determination shall be estimated by the parties. If the actual amount of any such item, when later determined and re-prorated for the applicable period, differs

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from the credit given therefore at Closing, the parties shall promptly make the appropriate adjustment.

6.0 Real Estate Brokers. The parties acknowledge that CENTURY 21 Richards & Ayer Real Estate is the real estate broker ("Broker"), who brought about this transaction. Seller shall pay a 10% commission ("Commission") to Broker as stipulated in the listing agreement between Seller and the Broker at the closing. Purchaser hereby represents and warrants to the Seller that it has not dealt with any real estate agent or broker in connection with the transaction contemplated herein, other than CENTURY 21 Richards & Ayer Real Estate.


7.0 Casualty. If, prior to the Closing, the Property or any improvements comprising the leased premises are destroyed or damaged by fire or other casualty and such repairs or replacements have not have been completed by Seller at Seller's expense prior to the Closing to Purchaser's reasonable satisfaction, then Purchaser shall have the right and option to terminate this Agreement in accordance with Section 8.0 hereof. If Purchaser does not terminate this Agreement, then all insurance money payable as a result of such casualty shall be paid to Purchaser for the purpose of making the required repairs or replacements.

8.0 Default.

8.1 If Seller defaults in the performance of any of its obligations under this Agreement, through no fault of Purchaser, Purchaser shall have the right only (i) to terminate this Agreement by written notice to Seller, and thereafter, the Earnest Money shall be paid to Seller and no party shall have any further rights, obligations or liabilities under, arising out of or resulting from this Agreement; or (ii) to file an action for specific performance.

8.2 In the event the transaction contemplated herein is not closed by _____, for any reason, including but not limited to, Purchaser's default or refusal to perform Purchaser's obligations hereunder, the Earnest Money shall be paid to Seller as full liquidated damages, and no party shall have any further rights, obligations or liabilities under, arising out of or resulting from this Agreement. Purchaser and Seller recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure to close, it being specifically acknowledged and agreed by Seller and Purchaser that such liquidated damages are reasonable.

9.0 Notices. All notices, demands, or requests (collectively "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent through the United States Postal Service, by express mail or certified mail, return receipt requested, to the parties at the following addresses:


2/27/03 @ 8/2/03

J60008

ASSET PURCHASE AGREEMENT
SCUBAWEST TO ABC COMMUNICATIONS
Page 7

Seller: CB3, Inc
C/o Maria Bentley
PO Box 2307
Kingshill, VI 00851
(340) 513-3902

With a copy to: Jim Meaney
7/8 Queen Street
Christiansted, Virgin Islands 00820

Purchaser: Joseph Gerace
627 West Sterling Place
Chandler, AZ 85225
(602) 570-8040

With a copy to: _____

All Notices shall be deemed effective upon being hand delivered, or if sent by mail, upon the date deposited with the United States Postal Service; provided, however, the time period in which a response to any Notice must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given shall constitute receipt of the Notice. Either party shall have the right to change its address for Notice hereunder by giving two (2) days prior notice thereof to the other party in the manner set forth above.

10.0 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.0 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute the same instrument.

12.0 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Territory of the United States Virgin Islands.

13.0 Prior Discussions and Amendments. This Agreement supersedes all prior discussions and agreements between the parties hereto with respect to the transactions contemplated herein and constitutes the sole and entire agreement between the parties hereto with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

J60009

8/7/03



ASSET PURCHASE AGREEMENT
SCURAWEST TO ABC COMMUNICATIONS
Page 8

14.0 Captions. All captions, headings, and section numbers are solely for the purpose of convenience and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

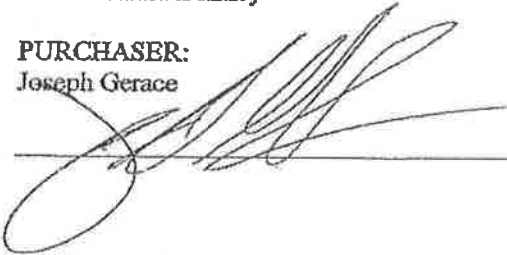
15.0 Other. Seller is a Virgin Islands licensed real estate sales person

IN WITNESS WHEREOF, the parties, by their duly authorized officers, have executed this Agreement effective the day and year first above written.


SELLER:
CB3, Inc.

By: _____
Maria Bentley

PURCHASER:
Joseph Gerace




8/7/03

 8/2/03

JG0010

ESCROW AGENT:

CENTURY 21 Richards & Ayer Real Estate

By: Linda Ayer Hoet
Broker

List of Exhibits

Exhibit A	Schedule of Personal Property
Exhibit B	List of Creditors
Exhibit C	Lease, if any

JA 8/2/03 @ 8/2/03

JG0011

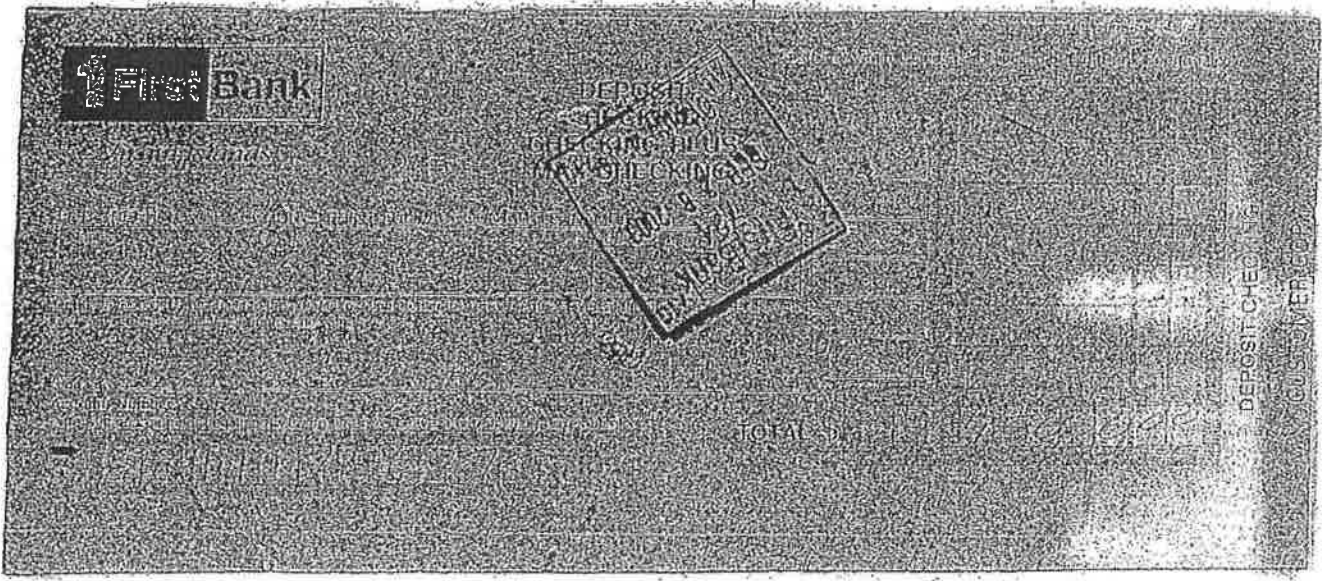


EXHIBIT
2

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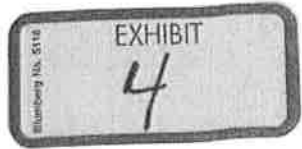
ARTICLES OF ORGANIZATION
OF
CHRISMOS CANE BAY LLC

THE UNDERSIGNED, for the purpose of forming a limited liability company under the laws of the United States Virgin Islands, as the same may be amended from time to time, do hereby make and file these Articles of Organization to transact business for the objects and purposes set forth herein and hereby certifies as follows:

1. The name of the limited liability company shall be "CHRISMOS CANE BAY LLC" ("Company").
2. The physical address of the initial designated office of the Company shall be 52 King Street, Christiansted, VI 00820 and the mailing address of the Company shall be 52 King Street, Christiansted, VI 00820.
3. The name and physical address of the initial agent for service of process on the Company shall be: Caribbean Trust Services Corporation, 5030 Anchor Way, Christiansted, VI 00820.
4. The name and physical address of each organizer of the Company is:

Chris Hanley 52 King Street, Christiansted, VI 00820.

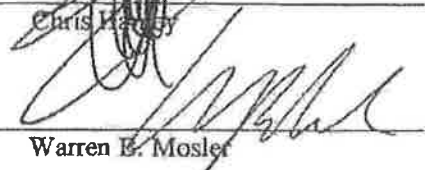
Warren B. Mosler 5007 Chandlers Wharf, Christiansted, VI 00820.
5. The minimum amount of capital with which the Company will commence business is \$1,000.00.
6. The Company shall have perpetual existence.
7. The Company shall be member-managed by its members.
8. None of the members will be liable for the debts and obligations of the company under §1303(c) of Title 13 of the Virgin Islands Code.
9. The Company reserves the right to amend, alter or repeal any of the provisions of this Articles of Organization and to add other provisions authorized by the laws of the United States Virgin Islands at the time in force and in the manner and at the time prescribed by such laws.



IN WITNESS HEREOF, the undersigned do hereby certify that the facts stated herein are true and correct and have executed these Articles of Organization at Christiansted, St. Croix, United States Virgin Islands this September 3, 2003.

ORGANIZER:


Chris Hanley


Warren B. Mosler

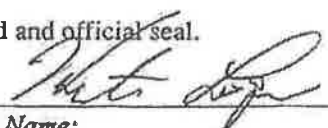
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TERRITORY OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

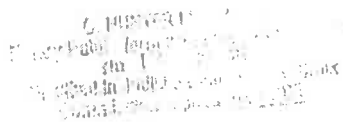
The foregoing instrument was acknowledged before me this Sept 3, 2003, by Chris Hanley and Warren B. Mosler.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARY SEAL)


Print Name: _____
Notary Public Territory of the Virgin Islands
No. _____
Qualified in Judicial District of St. Croix
My Commission Expires: _____

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4414 Ad

WARRANTY DEED

21,000.

THIS DEED is executed this September 8th, 2003, by and between IBYMA DEVELOPMENT CORPORATION N.V. a/k/a IBYMA DEVELOPMENT CORP., N.V., a Netherlands Antilles Corporation, whose address is c/o Baris Lampert, 146 Palo Verde Drive, Leesburg, FL 34748 ("Grantor") and CHRISMOS CANE BAY LLC, a U.S. Virgin Islands limited liability company, whose address is c/o Warren B. Mosler, 5000 Estate Southgate, Christiansted, VI 00820 ("Grantee"). (Grantor and Grantee shall include their respective heirs, representatives, successors and assigns when the context requires or permits.)

7000

IN CONSIDERATION of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby sells, grants and conveys unto Grantee the following described real property ("Property"):

Parcel No. 110 of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 61.62 US acres, more or less, as more fully shown on OLG Drawing No. 1670 dated December 8, 1964;

Parcel No. 108-B (1.275 US acres) and Parcel No. 108-C (1.035 US acres) both of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 545 dated December 20, 1956;

Remainder Parcel No. 110-C (5.6133 US acres), Parcel No. 110-M (0.7567 US acres), Remainder Parcel No. 110-AA (0.8115 US acres), Remainder Parcel No. 110-E (3.5667 US acres), Parcel No. 110-L (4.0126 US acres) and Parcel No. 110-N (0.3985 US acres) all of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 965 dated August 30, 1960;

7000

Parcel No. 110-G (0.413 US acres) and Parcel No. 110-F (0.340 US acres) both of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 601 dated June 17, 1957, revised July 10, 1957;

Plot No. 108-D (3.4535 US acres), Plot No. 108-E (4.0201 US acres), Plot No. 108-F (3.0654 US acres), Remainder Plot No. 108 (1.2384 US acres), Remainder Plot No. 110-I (0.7088 US acres) and Plot No. 110-KA (0.9607 US acres) all of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 963 dated August 17, 1960, revised June 21, 1961;

Plot No. 110-J of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 3.5455 US acres, more or less, as more fully shown on OLG Drawing No. 858 dated December 24, 1959;

000L



Plot No. 110-K of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 0.25 US acres, more or less, as more fully shown on OLG Drawing No. 793 dated May 27, 1959, revised February 15, 1960;

Grantor's undivided partial interest in Parcel No. 110-D of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 0.16 US acres, more or less, as more fully shown on OLG Drawing No. 532 dated October 10, 1956; and

Plot No. 106-E (1.0408 US acres), Plot No. 106-F (0.1928 US acres), Plot No. 107-C (2.2754 US acres) and Plot No. 106-H (0.3666 US acres) all of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 1158 dated January 22, 1962, revised October 20, 1964.

TOGETHER WITH all the tenements, hereditaments, and appurtenances thereunto belonging, and any and all improvements located thereon.


SUBJECT TO all easements, right of ways, conditions, covenants, agreements, and restrictions of public record; all matters which would be disclosed by an accurate survey or inspection of the Property; all zoning, building, environmental and other laws and regulations affecting the use or occupancy of the Property; and real property taxes for the year 2002 and all years thereafter (collectively "Permitted Exceptions").

TO HAVE AND TO HOLD the Property unto Grantee, in fee simple forever.

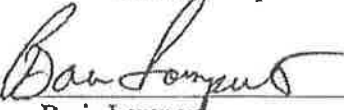
GRANTOR further covenants that Grantor is lawfully seized of the Property and has full right to convey the Property; that the Property is free and clear of all liens and encumbrances except the Permitted Exceptions; that Grantee shall quietly enjoy the Property; and Grantor shall forever warrant and defend the right and title to the Property to Grantee against the lawful claims of all persons, except for claims arising under or by virtue of the Permitted Exceptions.

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

WITNESSES:



Ibyma Development Corporation N.V.,
a Netherlands Antilles corporation

By: 

Baris Lamper
Its Duly Authorized Attorney in Fact

ACKNOWLEDGMENT

TERRITORY OF THE U.S. VIRGIN ISLANDS
STATE OF FLORIDA
COUNTY OF ST. CROIX
Jurisdiction of _____

The foregoing instrument was acknowledged before me this 8th day of September, 2003, by Baris Lampert, attorney in fact for Ibyma Development Corporation, N.V., a Netherlands Antilles corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARY SEAL)

G. HUNTER LOGAN, JR.
Notary Public Territory of the Virgin Islands
No. LNP-003-02
Qualified in Judicial District of St. Croix
Commission expires 12/16/05

[Signature]
Notary Public
My commission expires:

CERTIFICATE OF VALUE

It is hereby certified that the value of the Property described in the foregoing instrument does not exceed \$1,050,000.00.

[Signature]
Baris Lampert, attorney in fact for Grantor

CERTIFICATE OF PUBLIC SURVEYOR

It is hereby certified that according to the records in the Public Surveyor's Office, the Property described in the foregoing instrument has not undergone any change in regard to boundary and area.

Office of the Public Surveyor, Christiansted, St. Croix, U.S. Virgin Islands.

Dated: SEP 11 2003

FEE: 490⁰⁰

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[Signature]
Dr. Bernadette C. Williams
Assistant Tax Assessor

BOOK: 5716
PAGE: 297
FILED & RECORDED
9/12/2003 8:20:41 AM
RECORDED BY: DELOS
ST. CROIX
RECORDING FEE \$ 1,000.00
PREP FEE \$ 5.00
DEED DOC STAMP \$ 21,000.00
[Signature]
Recorder

Hunt Logan
From: Hunt Logan
Sent: Monday, March 01, 2004 4:53 PM
To: 'mlorig@optonline.net'
Cc: Chris Hanley (hanley@islands.vi)
Subject: Cane Bay Beach Club Lease

Attached is the lease for your review and comments

Hunter Logan



Cane
Lease.doc (98



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ATTORNEYS AT LAW
NICHOLS NEWMAN LOGAN & D'ERAMO, P.C.

April 12, 2005

Via Hand Delivery

Joe Gerace
Vic
Cane Bay Beach Bar
St. Croix, USVI

Re: Cane Bay Beach Bar

Dear Joe and Vic:

This law firm represents Chrismos Cane Bay LLC, the owner of the Cane Bay Beach Bar and surrounding property. This letter is written on its behalf.

This letter is to confirm the conversations and agreements between you and the owner (through the owner's representatives Warren Mosler and Chris Hanley) that your rights to occupy and use the Cane Bay Beach Bar shall terminate effective April 30, 2005 and you have agreed to vacate the premises no later than that date. Landlord accepted this agreement.

Please have all personal property owned by you removed from the premises no later than April 30, 2005. Any personal property remaining on the premises after that date shall be deemed to have been abandoned by you and the Landlord will make arrangements to have it removed and disposed of.

If any statement in this letter is inaccurate, please notify me immediately.

Very truly yours,

NICHOLS NEWMAN LOGAN
& D'ERAMO, P.C.


G. Hunter Logan, Jr.

GHL/slp

cc: Warren B. Mosler
Chris Hanley



JG0001

1131 King Street, Christiansted, St. Croix, U.S. Virgin Islands 00820-4971
Telephone (340) 773-3200 Telefax (340) 773-3409

JA - 482

J

Law Offices Of

Rohn and Cameron, LLC

1101 King Street, Christiansted VI 00820-4933

340.778.8855 • Fax 340.773.2954

TOILE FREE

866.778.0044 • Fax 866.778-0055

Lee J. Rohn
(Lic. Texas and U.S.V.I.)
lee@rohnlaw.com

Mary Faith Carpenter
(Lic. New Jersey and U.S.V.I.)
maryfaith@rohnlaw.com

H. Glenda Cameron
(Lic. New York and U.S.V.I.)
glenda@rohnlaw.com

Cathy M. Smith
(Lic. Louisiana and U.S.V.I.)
cathy@rohnlaw.com

Royette W. Russell
(Lic. U.S.V.I. - Of Counsel)
royette@rohnlaw.com

April 20, 2005

VIA HAND DELIVERY

Hunter G. Logan, Esquire
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
St. Croix, VI 00820-4971

RE: Cane Bay Beach Bar v. Chrismos Cane Bay, LLC.

Dear Attorney Logan:

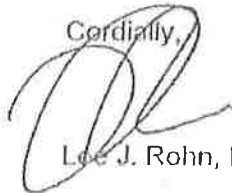
I represent the tenants of the Cane Bay Beach Bar, Joe Gerace and Victoria Vooyo. This is in response to your letter dated April 12, 2005 and received some days thereafter.

My clients have never agreed to vacate the premises on April 30, 2005 and will not do so. It is their position that there was a promise made to them to enter into a two (2) year lease with them and they relied on that promise in expending funds to improve the premises.

As you are well aware, self help is not allowed in this jurisdiction and if you attempt to come in and take my client's property I will ask for sanctions. My clients, in keeping with the promises of a long term lease, have bookings through May they have to honor. Further, they intend to continue paying rent and occupying the premises.

Further, any attempt to evict them will be met with a law suit for refusal to provide a lease, slander, defamation, and fraud. See enclosed letter.

Cordially,



Lee J. Rohn, Esquire

LJR/jb
cc: Joseph Gerace
Victoria Vooyo



JG000402

Law Offices Of

Rohn and Cameron, LLC

1101 King Street, Christiansted VI 00820-4933

340.778.8855 • Fax 340.773.2954

TOLL FREE

866.778.0044 • Fax 866.778-0055

Lee J. Rohn
(Lic. Texas and U.S.V.I.)
lee@rohnlaw.com

Mary Faith Carpenter
(Lic. New Jersey and U.S.V.I.)
maryfaith@rohnlaw.com

K. Glenda Cameron
(Lic. New York and U.S.V.I.)
glenda@rohnlaw.com

Cathy M. Smith
(Lic. Louisiana and U.S.V.I.)
cathy@rohnlaw.com

Royette V. Russell
(Lic. U.S.V.I. - Of Counsel)
royette@rohnlaw.com

April 20, 2005

VIA HAND DELIVERY

Chris Hanley
Warren Mosler
C/O Farchette & Hanley Real Estate
St. Croix, VI

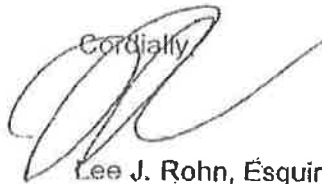
RE: Cane Bay Beach Bar v. Chrisomos Cane Bay, LLC

Dear Mr. Hanley and Mosler:

My clients have informed me that upon receipt of my letter you called them and threatened them and told them you would move them out one way or another by April 30th. Please be advised that self help is illegal in the Virgin Islands and any attempts to touch their property will be illegal and will result in criminal charges being filed against you.

My clients are not interested in being harassed or threatened by you and, as a result, request that any further conversations be handled through me.

Cordially,



Lee J. Rohn, Esquire

LJR/jb

cc: Joseph Gerace
Victoria Vooy
Hunter Logan, Esquire



JG000401

ASSET PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is executed effective May __, 2005, by and between **Joe Gerace and Victoria Vooy** (collectively "Seller"), and **James Jordan** ("Purchaser") and **Nichols Newman Logan & D'Eramo, PC** ("Escrow Agent").

WITNESSETH:

A. Seller is the owner of all the furniture, furnishings, equipment, inventory, goodwill and other personal property and the trade name **Cane Bay Beach Bar** (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as **Cane Bay Beach Bar** located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. Seller desires to sell the Property to Purchaser and to assign all of its right, title and interest in the verbal lease agreement with **Chrismos Cane Bay LLC** ("Landlord"), as lessor ("Lease") pertaining to the current location of the Business pursuant to the provisions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 **Sale and Purchase of Property.** Subject to and on the terms and conditions provided herein, Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Property.

2.0 **Purchase Price.**

2.01 The purchase price ("Purchase Price") for the Property and for the assignment of the Lease shall be **Fifty Thousand Dollars (\$50,000.00)**. The Purchase Price after deducting the Earnest Money and subject to such other credits, proration and adjustments as are provided herein, shall be paid at closing by certified or cashier's check or other funds acceptable to Seller.

2.01 Contemporaneously with the execution of this Agreement, Purchaser shall pay to Escrow Agent the sum of **\$1,000.00** as earnest money ("Earnest Money") under this Agreement. Escrow Agent shall hold the Earnest Money pursuant to the provisions of this Agreement. Escrow Agent acknowledges receipt of the Earnest Money. If the closing is consummated, then the Earnest Money shall be paid to Seller and credited towards the Purchase Price at the Closing. If the closing is not consummated, then the Earnest Money shall be paid to Seller or Purchaser as provided in Sections 10.0 or 11.0 hereof.

2.02 Purchaser shall not hereby, or in connection herewith, whether by implication or otherwise, assume or become obligated or liable for any liability, indebtedness or other obligation of Seller of any nature whatsoever, whether now or hereafter existing, due or to



JG0012

ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 2

become due, absolute or contingent, or otherwise, whether or not any such liability, indebtedness or other obligation was disclosed to Purchaser, including, without limitation, any contracts, mortgages, liens, leases, charges, or encumbrances affecting the Seller, the Property or the Business, except the Lease.

3.0 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Up to and including the date of the closing, no one will modify or remove any of the personal property comprising the Property, except that inventory may be sold in the ordinary course of business.

3.3 Seller will not execute any new lease, service contract, employment agreement, or enter into any other agreement concerning the Property or the Business without Purchaser's prior written consent, unless such agreement shall terminate prior to the effective date of the Closing.

3.4 The Property and the premises to be leased pursuant to the Lease shall be in the same condition as it is on the effective date of this Agreement.

3.5 Seller owns and will convey to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances. There are no unsatisfied judgments against Seller or the Property.

3.6 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.7 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

4.0 Conditions Precedent To Purchaser's Obligation. The obligations of Purchaser hereunder are subject to the satisfaction, at or prior to the Closing, of the following conditions:

4.1 All representations and warranties made by Seller shall be true and correct as of the date of closing as though they were made again on such date.

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*ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 3*

4.2 Seller shall have complied with all its obligations under this Agreement.

4.3 There is no material change in the physical condition of the leased premises or the Property or the financial condition of the Business between the effective date of this Agreement and the Closing.

4.4 Purchaser entering into a new written lease agreement with the Landlord on terms and conditions acceptable to the Purchaser in its discretion.

4.4 Purchaser is able to obtain property and liability insurance for the Property and the leased premises (including without limitation coverage against loss or damage by fire, windstorm, earthquake and against other risks now embraced by the so-called broad form extended coverage endorsement) from a company licensed to do business in the United States Virgin Islands acceptable to Purchaser for a premium not to exceed 2.75% of the amount of the insurance.

5.0 Title Examination. Purchaser shall have until Closing to examine the title to the Property and to notify Seller of any title objections Purchaser may find. Seller shall then have until the Closing to cure any valid title objections raised by Purchaser. Seller shall, at or prior to Closing, pay all taxes and assessments which constitute a lien upon the Property (other than those not then due and payable) and pay all indebtedness secured by the Property. If Seller fails or is unable to cure such valid title objections, then Purchaser shall have the following alternatives: (1) to cure any such valid title objections which are a mortgage, judgment lien, mechanic's or materialman's lien or tax lien, to deduct from the Purchase Price the amount paid to cure such liens or mortgages, and to close the transaction contemplated hereby; (2) to waive such title objections and to close the transaction contemplated hereby without any deduction in the Purchase Price; (3) to terminate this Agreement in accordance with Section 10.0 hereof or to declare a default pursuant to Section 11.0 hereof or both; or (4) to extend the date of Closing for an additional thirty (30) days to allow Seller to try to cure such objections. Purchaser shall have five (5) days from the date of notice by Seller that Seller is unable to cure any such title objections in which to elect one of the options set forth above in this Section 5.0, and Purchaser may extend the time for Closing to the extent necessary to provide such five (5) day period. If Purchaser elects option (4) above and if at the end of such thirty (30) day period Seller has not cured such objection, then Purchaser shall have the right to elect one of options (1) through (3) above.

6.0 Closing. The closing ("Closing") of the transaction contemplated herein shall occur on or before **June 1, 2005**, on a date and time acceptable to Seller and Purchaser and shall be held at the law offices of Nichols Newman Logan & D'Eramo, P.C., 1131 King Street, Christiansted, St. Croix, U.S.V.I. If Purchaser and Seller are unable to agree upon a time and date for Closing, then such Closing shall be held at 10:00 AST on **June 1, 2005**, at the law offices of Nichols Newman Logan & D'Eramo, P.C.

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ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 4

6.1 At the closing Seller shall deliver or cause to be delivered the following documents:

(a) A bill of sale conveying the Property to the Purchaser, in a form satisfactory to Purchaser's counsel, together with a warranty of title and a certificate that there are no liens or other encumbrances against the Property.

(b) An assignment of the Lease, in a form satisfactory to Purchaser's counsel.

(c) A Closing Statement.

(d) An assignment of the trade name Cane Bay Beach Bar.

(e) Any other documents necessary and reasonably requested by Purchaser to consummate the transaction contemplated herein.

6.2 At the Closing, Purchaser shall deliver or cause to be delivered the following items:

(a) The Lease Assignment.

(b) A Closing Statement.

(c) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein.

6.3 Possession of the Property shall be delivered to the Purchaser at Closing.

6.4 Seller shall pay the cost of the recording fees for any documents needed to provide clear title to the Property as required under this Agreement. Purchaser shall pay the costs for any title examination obtained by Purchaser. Each party shall pay its own attorney's fees.

6.5 All of Seller's accounts payable shall be paid by the Seller.

7.0 Real Estate Brokers. Purchaser and Seller hereby represent and warrant to the other party that it has not dealt with any real estate agent or broker in connection with the transaction contemplated herein.

8.0 Casualty. If, prior to the Closing, the Property or any improvements comprising the leased premises are destroyed or damaged by fire or other casualty and such repairs or replacements have not have been completed by Seller at Seller's expense prior to the Closing to Purchaser's reasonable satisfaction, then Purchaser shall have the right and option to terminate this Agreement in accordance with Section 10.0 hereof. If Purchaser does not terminate this

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ASSET PURCHASE AGREEMENT*Cane Bay Beach Bar**Page 5*

Agreement, then all insurance money payable as a result of such casualty shall be paid to Purchaser for the purpose of making the required repairs or replacements.

9.0 Condemnation. If any action or proceeding is filed (or notice of such action or proceeding given) under which all or any portion of the leased premises where the Business is located may be taken by condemnation or other right of eminent domain, then, Seller shall immediately notify Purchaser, and at the option of Purchaser, either (a) Purchaser may terminate this Agreement in accordance with Section 10.0 hereof, or (b) the transaction contemplated hereby shall be closed as provided herein, and Seller shall assign to Purchaser all its rights in the condemnation proceeds.—

10.0 Right to Terminate Agreement In addition to Purchaser's other rights set forth in this Agreement, Purchaser, at Purchaser's sole election, may terminate this Agreement by written notice to Seller, if any one or more of the following conditions or state of facts shall exist:

(a) Purchaser is entitled to terminate this Agreement pursuant to Sections 5.0, 8.0, or 9.0 hereof.

(b) The failure of Seller to satisfy the conditions precedent contained in Section 4.0 hereof.

10.2 If Purchaser elects to terminate this Agreement pursuant to the provisions of this Section 10.0, then this Agreement shall be terminated, the Earnest Money shall be paid to Purchaser, and no party shall have any further rights or obligations under this Agreement, except that if the Seller is in default of its obligations under this Agreement, then Purchaser shall also have the rights and remedies provided in Section 11.0 hereof. Purchaser's rights and remedies under Sections 10.0 and 11.0 hereof shall be cumulative.

11.0 Default. If Seller defaults in the performance of any of its obligations under this Agreement, through no fault of Purchaser, then Purchaser shall be entitled to pursue any and all remedies available to it at law or in equity, including without limitation an action for specific performance. In the event the transaction contemplated herein is not closed by reason of Purchaser's default or refusal to perform Purchaser's obligations hereunder, through no fault of Seller, the Earnest Money shall be paid to Seller as full liquidated damages, and Seller hereby agrees that Purchaser shall have no further liability hereunder or by reason of Purchaser's breach hereof. Purchaser and Seller recognize that it would be difficult to ascertain the actual damages suffered by Seller as a result of such failure to close, it being specifically acknowledged and agreed by Seller and Purchaser that such liquidated damages are reasonable.

12.0 Notices. All notices, demands, or requests (collectively "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent through the United States Postal Service, by express mail or certified mail, return receipt requested, to the parties at the following addresses:

J60016

*ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 6*

SELLER: Joe Gerace and Victoria Vooyo

PURCHASER: James Jordan

w/ a copy to:

G. Hunter Logan, Jr., Esq.
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
Christiansted, VI 00820

All Notices shall be deemed effective upon being hand delivered, or if sent by mail, upon the date deposited with the United States Postal Service; provided, however, the time period in which a response to any Notice must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given shall constitute receipt of the Notice. Either party shall have the right to change its address for Notice hereunder by giving two (2) days prior notice thereof to the other party in the manner set forth above.

13.0 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14.0 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

15.0 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Territory of the United States Virgin Islands.

16.0 Prior Discussions and Amendments. This Agreement supersedes all prior discussions and agreements between the parties hereto with respect to the transactions contemplated herein and constitutes the sole and entire agreement between the parties hereto with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

17.0 Judicial Interpretation. If any provision of this Agreement requires judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who

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*ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 7*

itself or through its agent prepared the document. It is agreed that the agents of all parties participated in the preparation hereof.

18.0 Survival of Agreement All agreements, representations, and warranties shall survive the Closing and shall not be merged into the documents executed and delivered at Closing.

*Floor
Notice*

19.0 Access, Inspection and Cooperation. During the period from the date of this Agreement through the date of Closing, Purchaser and Purchaser's agents, employees, independent contractors, engineers, surveyors and other representatives shall have the right to enter the Property at any time for the purposes of inspecting the Property; performing all activities relating to any of the foregoing in any respect, and for any other reasonable purposes related to the transaction contemplated herein. Purchaser agrees that the entry permitted by this section shall not injure or damage the Property so as to materially decrease its value or reduce its salability, result in injury or damage to the real property adjoining the Property or cause injury or damage to persons or personal property lawfully upon the Property. Purchaser indemnifies and holds harmless Seller against any such injury or damage caused by Purchaser's entry.

20.0 Captions. All captions, headings, and section numbers are solely for the purpose of convenience and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

21.0 Attorneys' Fees. In the event of litigation between the parties hereto, declaratory or otherwise, in connection with this Agreement, the non-prevailing party shall pay the costs thereof and attorneys' fees actually incurred by the prevailing party, which shall be determined and fixed by the court as part of the judgment.

22.0 Earnest Money: The Escrow Agent hereby agrees to hold the Earnest Money in a non-interest bearing escrow account and to hold and disburse the Earnest Money as set forth herein. If there is a dispute between the Purchaser and Seller over the return or forfeiture of the Earnest Money, then Escrow Agent shall place the Earnest Money in an interest bearing escrow account pending written instructions (from both Purchaser and Seller) for distribution of the Earnest Money or receipt of a final, non-appealable order for distribution by a court of competent jurisdiction.

22.1 It is expressly understood that Escrow Agent acts hereunder as a depository only and it shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness, or validity of any instrument deposited with it or for the form of execution of any such instruments or for the identity, authority or rights of any parties executing or depositing the same.

22.2 The Escrow Agent shall incur no liability in acting upon any signature, notice, request, waiver, consent, receipt of other paper or document believed by it to be genuine, and it may assume that any person purporting to give it any notice or advice in accordance with the

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ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 8

provisions hereof has been duly authorized to do so. Seller and Purchaser hereby agree to indemnify and hold harmless Escrow Agent against loss, liability, costs, claims, damages, demands, actions, causes of action, and suits arising out of or in any manner related to Escrow Agent acting as the depository, including but not limited to attorney's fees and court costs, excluding however the gross negligence of Escrow Agent in its actions under this Agreement.

22.3 In the event of any disagreement between any of the parties to this Agreement or involving any other person, the parties agree that Escrow Agent is entitled to refuse to comply with any claims or demands on it as long as such *bona fide* disagreement shall continue and to continue to refrain from acting and to refuse to act until (i) the right of adverse claimants shall have been finally adjudicated in a court assuming and having jurisdiction of the Earnest Money involved herein or affected hereby, or (ii) all differences shall have been adjusted by agreement and it shall have been notified in writing signed by all persons interested; or to interplead the Earnest Money in controversy into a court of competent jurisdiction in the United States Virgin Islands. Following the interpleader Escrow Agent shall *ipso facto* be relieved of all liability to any party hereto for any claims arising out of or resulting from this Agreement. Seller and Purchaser agree to indemnify Escrow Agent for its legal fees and expenses.

The parties acknowledge and agree that Nichols Newman Logan & D'Eramo, P.C. represents the Purchaser in this transaction and Nichols Newman Logan & D'Eramo, P.C. acting as Escrow Agent under this Agreement shall not disqualify Nichols Newman Logan & D'Eramo, P.C. from acting as Purchaser's counsel in any dispute which may arise between the parties.

[Continued on Next Page]

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ASSET PURCHASE AGREEMENT
Cane Bay Beach Bar
Page 9

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

SELLER:

Joe Gerace

Victoria Vooyo

PURCHASER:

James Jordan

ESCROW AGENT:

NICHOLS NEWMAN LOGAN & D'ERAMO, P.C.

By: _____
G. Hunter Logan, Jr.

op:\FILESERV\AT\SHARE\1\4. DOCS\REAL ESTATE
JORDAN\CANE BAY BEACH BAR\ASSET-AGR.DOC

JG0020

ASSET PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is executed effective June 17, 2005, by and between Joe Gerace and Victoria Vooyo (collectively "Seller"), and James Jordan ("Purchaser"), and Nichols Newman Logan & D'Eramo, PC ("Escrow Agent").

WITNESSETH:

A. Seller is the owner of all the furniture, furnishings, equipment, inventory, goodwill and other personal property ~~and the trade name Cane Bay Beach Bar~~ (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. Seller desires to sell the Property to Purchaser and to assign all of its right, title and interest in the verbal lease agreement with Chrismos Cane Bay LLC ("Landlord"), as lessor ("Lease") pertaining to the current location of the Business pursuant to the provisions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 Sale and Purchase of Property. Subject to and on the terms and conditions provided herein, Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Property.

2.0 Purchase Price; Escrow.

2.1 The purchase price ("Purchase Price") for the Property and for the assignment of the Lease shall be **Thirty Thousand Dollars (\$30,000.00)**. The Purchase Price after deducting the Earnest Money and subject to such other credits, prorations and adjustments as are provided herein, shall be paid at closing by certified or cashier's check or other funds acceptable to Seller.

2.2 Contemporaneously with the execution of this Agreement, Purchaser shall pay to Escrow Agent the sum of \$1,000.00 as earnest money ("Earnest Money") under this Agreement. Escrow Agent shall hold the Earnest Money pursuant to the provisions of this Agreement. Escrow Agent acknowledges receipt of the Earnest Money. If the closing is consummated, then the Earnest Money shall be paid to Seller and credited towards the Purchase Price at the Closing. If the closing is not consummated, then the Earnest Money shall be paid to Seller or Purchaser as provided in Sections 10.0 or 11.0 hereof.

2.3 Purchaser shall not hereby, or in connection herewith, whether by implication or otherwise, assume or become obligated or liable for any liability, indebtedness or other obligation of Seller of any nature whatsoever, whether now or hereafter existing, due or to



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become due, absolute or contingent, or otherwise, whether or not any such liability, indebtedness or other obligation was disclosed to Purchaser, including, without limitation, any contracts, mortgages, liens, leases, charges, or encumbrances affecting the Seller, the Property or the Business, except the Lease.

2.4 At the Closing, Seller shall deposit into escrow with Nichols Newman Logan & D'Eramo, P.C. as escrow agent the sum of \$3,000.00 which shall be held in escrow under the terms of the Escrow Agreement attached hereto. The funds are being held in escrow as a means to guarantee and be collateral for the indemnification obligations of the Seller contained in Section 22 hereof. Seller grants Purchaser a a first priority perfected security interest in such funds.

3.0 **Seller's Representations and Warranties.** Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Up to and including the date of the closing, no one will modify or remove any of the personal property comprising the Property, except that inventory may be sold in the ordinary course of business.

3.3 Seller will not execute any new lease, service contract, employment agreement, or enter into any other agreement concerning the Property or the Business without Purchaser's prior written consent, unless such agreement shall terminate prior to the effective date of the Closing.

3.4 The Property and the premises to be leased pursuant to the Lease shall be in the same condition as it is on the effective date of this Agreement.

3.5 Seller owns and will convey to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances. There are no unsatisfied judgments against Seller or the Property.

3.6 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.7 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

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4.0 **Conditions Precedent To Purchaser's Obligation.** The obligations of Purchaser hereunder are subject to the satisfaction, at or prior to the Closing, of the following conditions:

4.1 All representations and warranties made by Seller shall be true and correct as of the date of closing as though they were made again on such date.

4.2 Seller shall have complied with all its obligations under this Agreement.

4.3 There is no material change in the physical condition of the leased premises or the Property or the financial condition of the Business between the effective date of this Agreement and the Closing.

4.4 Purchaser entering into a new written lease agreement with the Landlord on terms and conditions acceptable to the Purchaser in its discretion.

4.4 Purchaser is able to obtain property and liability insurance for the Property and the leased premises (including without limitation coverage against loss or damage by fire, windstorm, earthquake and against other risks now embraced by the so-called broad form extended coverage endorsement) from a company licensed to do business in the United States Virgin Islands acceptable to Purchaser for a premium not to exceed 2.75% of the amount of the insurance.

5.0 **Title Examination.** Purchaser shall have until Closing to examine the title to the Property and to notify Seller of any title objections Purchaser may find. Seller shall then have until the Closing to cure any valid title objections raised by Purchaser. Seller shall, at or prior to Closing, pay all taxes and assessments which constitute a lien upon the Property (other than those not then due and payable) and pay all indebtedness secured by the Property. If Seller fails or is unable to cure such valid title objections, then Purchaser shall have the following alternatives: (1) to cure any such valid title objections which are a mortgage, judgment lien, mechanic's or materialman's lien or tax lien, to deduct from the Purchase Price the amount paid to cure such liens or mortgages, and to close the transaction contemplated hereby; (2) to waive such title objections and to close the transaction contemplated hereby without any deduction in the Purchase Price; (3) to terminate this Agreement in accordance with Section 10.0 hereof or to declare a default pursuant to Section 11.0 hereof or both; or (4) to extend the date of Closing for an additional thirty (30) days to allow Seller to try to cure such objections. Purchaser shall have five (5) days from the date of notice by Seller that Seller is unable to cure any such title objections in which to elect one of the options set forth above in this Section 5.0, and Purchaser may extend the time for Closing to the extent necessary to provide such five (5) day period. If Purchaser elects option (4) above and if at the end of such thirty (30) day period Seller has not cured such objection, then Purchaser shall have the right to elect one of options (1) through (3) above.

JG000464


6.0 **Closing.** The closing ("Closing") of the transaction contemplated herein shall occur on or before **June 30, 2005**, on a date and time acceptable to Seller and Purchaser and shall be held at the law offices of Nichols Newman Logan & D'Eramo, P.C., 1131 King Street, Christiansted, St. Croix, U.S.V.I. If Purchaser and Seller are unable to agree upon a time and date for Closing, then such Closing shall be held at 10:00 AST on **June 30, 2005**, at the law offices of Nichols Newman Logan & D'Eramo, P.C.

6.1 At the closing Seller shall deliver or cause to be delivered the following documents:

(a) A bill of sale conveying the Property to the Purchaser, in a form satisfactory to Purchaser's counsel, together with a warranty of title and a certificate that there are no liens or other encumbrances against the Property.

(b) An assignment of the Lease, in a form satisfactory to Purchaser's counsel.

(c) A Closing Statement and the Escrow Agreement.

(d) ~~An assignment of the trade name Cane Bay Beach Bar.~~ 

(e) Any other documents necessary and reasonably requested by Purchaser to consummate the transaction contemplated herein.

6.2 At the Closing, Purchaser shall deliver or cause to be delivered the following items:

(a) The Lease Assignment.

(b) A Closing Statement and the Escrow Agreement.

(c) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein.

6.3 Possession of the Property shall be delivered to the Purchaser at Closing.

6.4 Seller shall pay the cost of the recording fees for any documents needed to provide clear title to the Property as required under this Agreement. Purchaser shall pay the costs for any title examination obtained by Purchaser. Each party shall pay its own attorney's fees.

6.5 All of Seller's accounts payable shall be paid by the Seller.

7.0 **Real Estate Brokers.** Purchaser and Seller hereby represent and warrant to the other party that it has not dealt with any real estate agent or broker in connection with the transaction contemplated herein.

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8.0 **Casualty.** If, prior to the Closing, the Property or any improvements comprising the leased premises are destroyed or damaged by fire or other casualty and such repairs or replacements have not have been completed by Seller at Seller's expense prior to the Closing to Purchaser's reasonable satisfaction, then Purchaser shall have the right and option to terminate this Agreement in accordance with Section 10.0 hereof. If Purchaser does not terminate this Agreement, then all insurance money payable as a result of such casualty shall be paid to Purchaser for the purpose of making the required repairs or replacements.

9.0 **Condemnation.** If any action or proceeding is filed (or notice of such action or proceeding given) under which all or any portion of the leased premises where the Business is located may be taken by condemnation or other right of eminent domain, then, Seller shall immediately notify Purchaser, and at the option of Purchaser, either (a) Purchaser may terminate this Agreement in accordance with Section 10.0 hereof, or (b) the transaction contemplated hereby shall be closed as provided herein, and Seller shall assign to Purchaser all its rights in the condemnation proceeds.

10.0 **Right to Terminate Agreement** In addition to Purchaser's other rights set forth in this Agreement, Purchaser, at Purchaser's sole election, may terminate this Agreement by written notice to Seller, if any one or more of the following conditions or state of facts shall exist:

(a) Purchaser is entitled to terminate this Agreement pursuant to Sections 5.0, 8.0, 9.0 or 19.2 hereof.

(b) The failure of Seller to satisfy the conditions precedent contained in Section 4.0 hereof.

10.2 If Purchaser elects to terminate this Agreement pursuant to the provisions of this Section 10.0, then this Agreement shall be terminated, and no party shall have any further rights or obligations under this Agreement, except that if the Seller is in default of its obligations under this Agreement, then Purchaser shall also have the rights and remedies provided in Section 11.0 hereof. Purchaser's rights and remedies under Sections 10.0 and 11.0 hereof shall be cumulative.

11.0 **Default.** If Seller defaults in the performance of any of its obligations under this Agreement, through no fault of Purchaser, then Purchaser shall be entitled to pursue any and all remedies available to it at law or in equity, including without limitation an action for specific performance. In the event the transaction contemplated herein is not closed by reason of Purchaser's default or refusal to perform Purchaser's obligations hereunder, through no fault of Seller, then this Agreement shall be terminated, and no party shall have any further rights or obligations under this Agreement and the Earnest Money will be kept by the payees, and Seller hereby agrees that Purchaser shall have no further liability hereunder or by reason of Purchaser's breach hereof. Purchaser and Seller recognize that it would be difficult to ascertain the actual

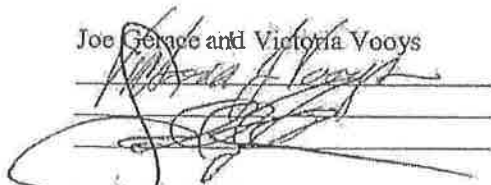
JG000466

damages suffered by Seller as a result of such failure to close, it being specifically acknowledged and agreed by Seller and Purchaser that the payment of the Earnest Money to the payees constitutes liquidated damages and such amount is reasonable.

12.0 **Notices.** All notices, demands, or requests (collectively "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent through the United States Postal Service, by express mail or certified mail, return receipt requested, to the parties at the following addresses:

SELLER:

Joe George and Victoria Vooyo

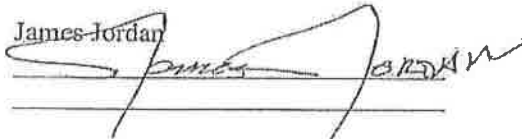


w/ a copy to:

Lee J. Rohn, Esq.
Rohn and Cameron, LLC
1101 King Street
Christiansted, VI 00820

PURCHASER:

James Jordan



w/ a copy to:

G. Hunter Logan, Jr., Esq.
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
Christiansted, VI 00820

All Notices shall be deemed effective upon being hand delivered, or if sent by mail, upon the date deposited with the United States Postal Service; provided, however, the time period in which a response to any Notice must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given shall constitute receipt of the Notice. Either party shall have the right to change its address for Notice hereunder by giving two (2) days prior notice thereof to the other party in the manner set forth above.

13.0 **Binding Effect, Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Purchaser shall have the right to assign this Agreement to another person or entity without the consent of Seller.

14.0 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

JG000467

15.0 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Territory of the United States Virgin Islands.

16.0 **Prior Discussions and Amendments.** This Agreement supersedes all prior discussions and agreements between the parties hereto with respect to the transactions contemplated herein and constitutes the sole and entire agreement between the parties hereto with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

17.0 **Judicial Interpretation.** If any provision of this Agreement requires judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. It is agreed that the agents of all parties participated in the preparation hereof.

18.0 **Survival of Agreement.** All agreements, representations, and warranties shall survive the Closing and shall not be merged into the documents executed and delivered at Closing.

19.0 **Access, Inspection and Cooperation.**

19.1 During the period from the date of this Agreement through the date of Closing, Purchaser and Purchaser's agents, employees, independent contractors, engineers, surveyors and other representatives shall have the right to enter the Property at any time for the purposes of inspecting the Property; performing all activities relating to any of the foregoing in any respect, and for any other reasonable purposes related to the transaction contemplated herein. Purchaser agrees that the entry permitted by this section shall not injure or damage the Property so as to materially decrease its value or reduce its salability, result in injury or damage to the real property adjoining the Property or cause injury or damage to persons or personal property lawfully upon the Property. Purchaser indemnifies and holds harmless Seller against any such injury or damage caused by Purchaser's entry.

19.2 During the period from the Date of this Agreement through fifteen (15) days thereafter ("Due Diligence Period"), if Purchaser shall be, for any reason, in Purchaser's sole opinion, dissatisfied with any aspect of the Property, or for any other reason specified elsewhere in this Agreement, Purchaser shall be entitled to terminate this Agreement by sending written notice to Seller at or before the expiration of the Due Diligence Period and this Agreement shall be terminated, the Earnest Money shall be returned to Purchaser and no party will have any further rights, obligations or other liabilities under, arising out of or resulting from this Agreement. If Purchaser does not exercise this right of termination as set forth above, then this right shall expire and the Closing shall be consummated pursuant to the other terms contained herein.

JG000468

20.0 **Captions.** All captions, headings, and section numbers are solely for the purpose of convenience and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

21.0 **Attorneys' Fees.** In the event of litigation between the parties hereto, declaratory or otherwise, in connection with this Agreement, the non-prevailing party shall pay the costs thereof and attorneys' fees actually incurred by the prevailing party, which shall be determined and fixed by the court as part of the judgment.

22.0 **Indemnification By Seller.**

22.1 Seller, jointly and severally, hereby indemnifies and holds Purchaser and its managers, members, officers, directors, employees and agents harmless from and against any and all claims, demands, obligations, damages, recoveries, liabilities, losses or deficiencies, whether accrued, absolute, contingent, known, unknown, or otherwise (including, without limitation, any and all penalties, interest, costs of investigation and defense, attorneys' fees and other costs and expenses relating to any and all actions, suits, proceedings, demands, assessments, and judgments), which arise out of, result from or relate to any one or more of the following, whether or not involving a third-party claim (collectively "Damages"):

(a) any breach of any representation or warranty made by Seller (i) in this Agreement; (ii) any certificate delivered pursuant hereto, (iii) any transfer instrument or (iv) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(b) any breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(c) any liability arising out of or resulting from the ownership or operation of the Business prior to the Closing other than any liabilities expressly assumed by Seller in this Agreement; or

(d) any environmental, health and safety liabilities arising out of or relating to: (i) the ownership or operation by any person or entity at any time on or prior to the Closing Date of any of the Business, or (ii) any hazardous materials or other contaminants that were present on the leased premises at any time on or prior to the Closing Date.

Purchaser shall be entitled to be represented by counsel of its choice.

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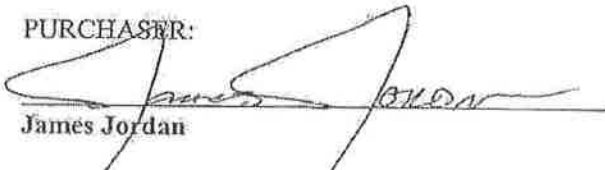
IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

SELLER:


Joe Gerace


Victoria Voors

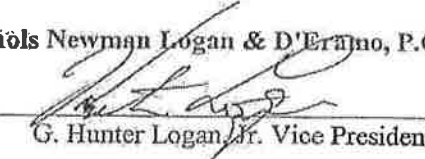
PURCHASER:


James Jordan

ESCROW AGENT:

Nichols Newman Logan & D'Eranno, P.C.

By:


G. Hunter Logan, Jr. Vice President

JG000470

BILL OF SALE AND CERTIFICATION

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned, **Joe Gerace and Victoria Vooy's** ("Seller"), has effective June 30, 2005, sold to and transferred to **James Jordan** ("Purchaser") the following :

JG

All the furniture, furnishings, equipment, inventory, goodwill and other personal property ~~and the trade name Cane Bay Beach Bar~~ (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

Seller does hereby certify that the Personalty has been fully paid for and that there are no unpaid liens, retention of title contracts, or any other form of encumbrance against the title to the Personalty other than as described on Exhibit "C" attached hereto and made a part hereof by this reference.

N/A

Seller and its heirs, personal representatives, successors, and assigns shall warrant and forever defend the right and title to the Personalty unto Purchaser, its heirs, personal representatives, successors, and assigns, against the lawful claims of all persons whomsoever.

Seller and Purchaser agree that the purchase price for the Property is **Thirty Thousand** and NO/100 Dollars (\$30,000.00)

Seller is executing this Bill of Sale for the purpose of consummating the sale of the Property and is fully aware that the statements contained herein may be relied upon by the Purchaser.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale hereto effective the day and year first above written.

SELLER:
[Signature]

Joe Gerace
[Signature]

Victoria Vooy's

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*SUBSCRIBED T SWAN
TO BEFORE METHI'S
1ST OF JULY 2005*

[Signature]


Anita M. Baron
Notary Public, Territory of the Virgin Islands
No. NP-042-04
Qualified in Judicial District of St. Croix
Commission expires: 04/22/2008

JG000471

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into effective June 2005 between Joe Gerace and Victoria Vooyoys, as Assignor, whose address is P.O. B 2307, KURTZ HILL ASS ("Seller") and James Jordan, as Assignee, whose address is P.O. B 26503, C. STUBBS DR ("Buyer").

RECITALS:

 A. Seller has contemporaneously with the execution hereof sold and conveyed to Buyer all the furniture, furnishings, equipment, inventory, goodwill and other personal property and ~~the trade name Cane Bay Beach Bar~~ (collectively "Property") which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. In connection with the sale of the Property, Seller has agreed to assign to Buyer the existing "Verbal Tenancy" with Chrismos Corporation, as Landlord, pertaining to the use of of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands, and Buyer has agreed to assume Seller's obligations under such Verbal Tenancy from and after the date hereof.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Seller and Buyer hereby agree as follows:

1.0 Seller does hereby transfer, assign and convey to Buyer all of Seller's right, title and interest in and to the Verbal Tenancy, including all rights, duties, obligations, powers and privileges conferred by the Verbal Tenancy upon Seller.

2.0 Buyer hereby accepts this assignment of the Verbal Tenancy from and after the date hereof, and assumes and agrees to be bound by and timely perform all of Seller's agreements, duties, obligations, covenants and undertakings under the Verbal Tenancy arising from and after the date hereof.

3.0 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Seller has executed any new lease, service contract, employment agreement, or entered into any other agreement concerning the Property.

JG000472

ASSIGNMENT AND ASSUMPTION AGREEMENT

Page 2

3.3 The Property and the premises is in the same condition as it was on the effective date of the Asset Purchase Agreement between the parties.

3.4 Seller owns and has conveyed to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances. There are no unsatisfied judgments against Seller or the Property.

3.5 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.6 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

4.0 Seller hereby indemnifies and agrees to hold harmless Buyer from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Buyer may incur or which may be asserted against Buyer, arising out of the Verbal Tenancy, prior to the date hereof. If Buyer believes that any claim has been asserted which is covered by this indemnity provision, then Buyer shall immediately provide written notice to the Seller to afford the Seller the right and opportunity to defend such claim.

5.0 Buyer hereby indemnifies and agrees to hold harmless Seller from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Seller may incur or which may be asserted against Seller, arising out of the Verbal Tenancy, after the date hereof. If Seller believes that any claim has been asserted which is covered by this indemnity provision, then Seller shall immediately provide written notice to the Buyer to afford the Buyer the right and opportunity to defend such claim.

6.0 This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns.

7.0 Neither this Agreement nor any term, provision or condition hereof may be changed, amended or modified, and no obligation, duty or liability of any party hereto may be released, discharged or waived, except in a writing signed by all parties hereto.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the date first above written.

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ASSIGNMENT AND ASSUMPTION AGREEMENT


Page 3

WITNESSES:






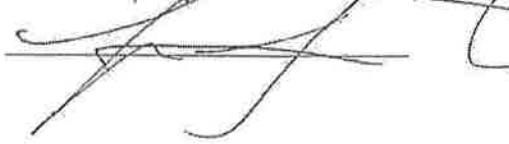
ASSIGNEE / BUYER:




James Jordan
Dated: 7/13/05

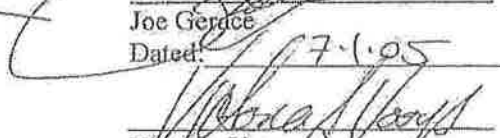
WITNESSES:





ASSIGNOR / SELLER:



Joe Gerace
Dated: 7-1-05


Victoria Vooy
Dated: 7-1-05

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Escrow Agreement

This Escrow Agreement ("Agreement") is entered into as of June 17, 2005 (the "Closing Date") by and between Joe Gerace and Victoria Vooyoys (collectively "Seller"), and James Jordan ("Purchaser"), and Nichols Newman Logan & D'Eramo, PC ("Escrow Agent").

This is the Escrow Agreement referred to in the Asset Purchase Agreement dated June 17, 2005 (the "Purchase Agreement"), by and among Seller and Purchaser. Capitalized terms used in this Agreement without definition shall have the respective meanings given to them in the Purchase Agreement.

The parties hereby agree as follows:

1. ESTABLISHMENT OF ESCROW

(a) Seller is depositing with Escrow Agent an amount equal to Three Thousand Dollars (\$3,000.00) in immediately available funds (as reduced by any disbursements, amounts withdrawn under Section 5(j), the "Escrow Fund"). Escrow Agent acknowledges receipt thereof.

(b) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Escrow Fund pursuant to the terms and conditions hereof.

2. INVESTMENT OF FUNDS

The Escrow Fund shall be held in the non-interest bearing trust account of the Escrow Agent.

3. CLAIMS

(a) From time to time on or before October 1, 2005, Purchaser may give notice (a "Notice") to Seller and Escrow Agent specifying in reasonable detail the nature and dollar amount of any claim (a "Claim") it may have under the Purchase Agreement, including without limitation under the indemnification provisions contained in Section 22; Purchaser may make more than one claim with respect to any underlying state of facts. If Seller gives notice to Purchaser and Escrow Agent disputing any Claim (a "Counter Notice") within ten (10) days following receipt by Escrow Agent of the Notice regarding such Claim, such Claim shall be resolved as provided in Section 3(b). If no Counter Notice is received by Escrow Agent within such ten-day (10-day) period, then the dollar amount of damages claimed by Seller as set forth in its Notice shall be deemed established for purposes of this Agreement and the Purchase Agreement and, at the end of such ten-day (10-day) period, Escrow Agent shall pay to Seller the dollar amount claimed in the Notice from (and only to the extent of) the Escrow Fund. Escrow Agent shall not inquire into or consider whether a Claim complies with the requirements of the Purchase Agreement.

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(b) If a Counter Notice is given with respect to a Claim, Escrow Agent shall make payment with respect thereto only in accordance with (i) joint written instructions of Seller and Purchaser or (ii) a final, non-appealable order of a court of competent jurisdiction. Any court order shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to Escrow Agent to the effect that the order is final and non-appealable. Escrow Agent shall act on such court order and legal opinion without further question.

4. TERMINATION OF ESCROW

On October 1, 2005, Escrow Agent shall pay and distribute the then amount of the Escrow Fund to Seller, unless (a) any Claims are then pending, in which case an amount equal to the aggregate dollar amount of such Claims (as shown in the Notices of such Claims) shall be retained by Escrow Agent in the Escrow Fund (and the balance paid to Seller), or (b) Purchaser has given notice to Seller and Escrow Agent specifying in reasonable detail the nature of any other claim it may have under the Purchase Agreement with respect to which it is unable to specify the amount of Damages, in which case the entire Escrow Fund shall be retained by Escrow Agent, in either case until it receives joint written instructions of Seller and Purchaser or a final, non-appealable order of a court of competent jurisdiction as contemplated by Section 3(b).

5. DUTIES OF ESCROW AGENT

(a) Escrow Agent shall not be under any duty to give the Escrow Fund held by it hereunder any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder except as directed in this Agreement. Escrow funds held hereunder shall not earn or accrue interest.

(b) Escrow Agent shall not be liable for actions or omissions hereunder, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against Escrow Agent, the other parties hereto shall jointly and severally indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its gross negligence or willful misconduct) in the investment or reinvestment of the Escrow Fund or any loss of interest incident to any such delays.

(c) Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do

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so. Escrow Agent may conclusively presume that the undersigned representative of any party hereto which is an entity other than a natural person has full power and authority to instruct Escrow Agent on behalf of that party unless written notice to the contrary is delivered to Escrow Agent.

(d) Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice.

(e) Escrow Agent does not have any interest in the Escrow Fund deposited hereunder but is serving as escrow holder only and has only possession thereof. Any payments of income from the Escrow Fund shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide Escrow Agent with appropriate Internal Revenue Service Forms W-9 for tax identification number certification, or nonresident alien certifications. This Section 5(e) and Section 5(b) shall survive notwithstanding any termination of this Agreement or the resignation of Escrow Agent.

(f) Escrow Agent makes no representation as to the validity, value, genuineness or collectability of any security or other document or instrument held by or delivered to it.

(g) Escrow Agent shall not be called upon to advise any party as to the wisdom in selling or retaining or taking or refraining from any action with respect to any securities or other property deposited hereunder.

(h) Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Escrow Fund to any successor Escrow Agent jointly designated by the other parties hereto in writing, or to any court of competent jurisdiction, whereupon Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of Escrow Agent will take effect on the earlier of (i) the appointment of a successor (including a court of competent jurisdiction) or (ii) the day which is thirty (30) days after the date of delivery of its written notice of resignation to the other parties hereto. If, at that time, Escrow Agent has not received a designation of a successor Escrow Agent, Escrow Agent's sole responsibility after that time shall be to retain and safeguard the Escrow Fund until receipt of a designation of successor Escrow Agent or a joint written disposition instruction by the other parties hereto or a final, nonappealable order of a court of competent jurisdiction.

(i) In the event of any disagreement between the other parties hereto resulting in adverse claims or demands being made in connection with the Escrow Fund or in the event that Escrow Agent is in doubt as to what action it should take hereunder, Escrow Agent shall be entitled to retain the Escrow Fund until Escrow Agent shall have received (i) a final, nonappealable order of a court of competent jurisdiction directing delivery of the Escrow Fund or (ii) a written agreement executed by the other parties hereto directing delivery of the Escrow Fund, in which event Escrow Agent shall disburse the Escrow Fund in accordance with such order or agreement. Any court order shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to Escrow Agent to the effect that the order is final and nonappealable. Escrow Agent shall act on such court order and legal opinion without further question.

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(j) . No printed or other matter in any language (including, without limitation, prospectuses, notices, reports and promotional material) that mentions Escrow Agent's name or the rights, powers or duties of Escrow Agent shall be issued by the other parties hereto or on such parties' behalf unless Escrow Agent shall first have given its specific written consent thereto.

6. LIMITED RESPONSIBILITY

This Agreement expressly sets forth all the duties of Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement.

7. NOTICES

All notices, Consents, waivers and other communications required or permitted under this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by a nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail (with confirmation by the transmitting equipment); or (c) received by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and facsimile numbers and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number or person as a party may designate by notice to the other parties):

SELLER:

Joe Garace and Victoria Voors

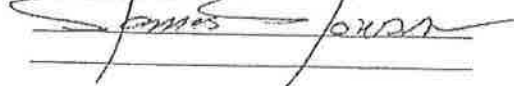


w/ a copy to:

Lee J. Bohn, Esq.
Bohn and Cameron, LLC
1101 King Street
Christiansted, VI 00820

PURCHASER:

James Jordan



ESCROW AGENT:

G. Hunter Logan, Jr., Esq.
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
Christiansted, VI 00820

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9. JURISDICTION; SERVICE OF PROCESS

Any Proceeding arising out of or relating to this Agreement may be brought in the courts of the United States Virgin Islands, District of St. Croix, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding and waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement in any other court. Process in any Proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

10. EXECUTION OF AGREEMENT

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for any purposes whatsoever.

11. SECTION HEADINGS, CONSTRUCTION

The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

12. WAIVER

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement supersedes all prior agreements among the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by Seller, Purchaser and Escrow Agent.

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14. GOVERNING LAW

This Agreement shall be governed by the laws of the United States Virgin Islands without regard to conflicts of law principles that would require the application of any other Law.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

SELLER:


Joe Gerace


Victoria Voors

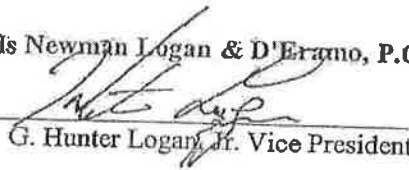
PURCHASER:


James Jordan

ESCROW AGENT:

Nichols Newman Logan & D'Eramo, P.C.

By:


G. Hunter Logan, Jr. Vice President

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Jordan\Cane Bay Beach Ba\Escrow Agr.doc

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ASSIGNMENT OF TRADE NAME

THE UNDERSIGNED, being the whole current user of the trade name "CANE BAY BEACH BAR" ("Transferor") hereby transfers and assigns to JAMES JORDAN or Assigns, ("Transferee") the right to use the name "CANE BAY BEACH BAR".

Transferee hereby accepts this Assignment and after the date hereof, hereby indemnifies and agrees to hold harmless Transferor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, attorneys' fees and court costs) which Transferor may incur, sustain or suffer or which may be asserted or assessed against Transferor on or after the date hereof, arising out of, pertaining to or in any way connected with the obligations, duties and liabilities under the arising from and after the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this assignment this ____ day of _____, 2005.

Witness as to All:

Joe Gerace

Victoria Vooy's

TERRITORY OF THE VIRGIN ISLANDS)
JUDICIAL DIVISION OF ST. CROIX)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2005 by Joe Gerace and Victoria Vooy's.

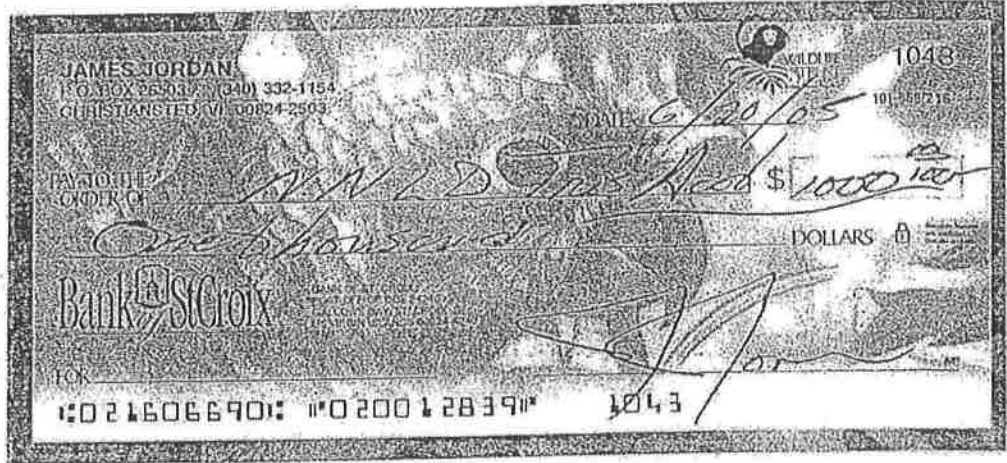
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Notary Seal)

Notary Public

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COMMERCIAL LEASE AGREEMENT

This lease is made between Christmas Cane Bay LLC, herein called Lessor and James V. Jordan and/or assigns, herein called Lessee. Lessee hereby offers to lease from Lessor the premises situated in Estate Cane Bay, St. Croix, United States Virgin Islands, described as Plot 110C Estate Cane Bay North Side Quarter (commonly known as "Cane Bay Beach Bar"), upon the following TERMS and CONDITIONS.

1. Term and Rent/Deposit: Lessor demises the above premises for a seven year term, commencing on July 1, 2005 or sooner as provided herein at the initial monthly rental rate of Two-Thousand Dollars (\$2,000) ("Base Rent") payable in advance on the first day of each month for that month's rental, during the term of this lease. Starting with the 2nd twelve month period of the term and continuing to the end of the term, said rental rate shall increase by 5% of the Base Rent per annum. Such rental rate after the first year, for any given month shall be adjusted quarterly for CPI if the level of the index is greater for that same month; to be determined from the Bureau of Labor Statistics of the United States Department of Labor ("Index"). Lessor will be responsible for making said calculation and notify Lessee 10 business days notice prior to such rental rate adjustment taking place. All rental payments shall be made to Lessor, at an address specified if different than the above, a \$50.00 late fee will be assessed for any payment, excluding CPI, more than 5 business days late. There shall be no rent charged for the months of July, 2005 or August, 2005. This Agreement shall be assignable by either party for any reason whatsoever with 30 day's written notice to the other and such notice shall not in any way diminish the rights and obligations of the parties contained within this Agreement. Lessor has the right to pre-approve assignees as to suitability; such consent shall not be unreasonably withheld.
2. Use: Lessee shall use and occupy the leased premise for business purposes: a restaurant and bar. Tenant shall have full use of all parking areas surrounding the premises to include those adjacent to the walkways. Tenant shall have exclusive vending rights to all bench areas. Live music is permitted as long as it is not a nuisance to the surrounding tenants and other neighbors. The leased premises shall be used for no other purpose.
3. Care and Maintenance of Premises: Lessor acknowledges that the leased premises are currently in disrepair and agrees to install new electrical and roofing. Lessee is leasing the same "as is" with the repairs discussed above. Lessee shall, at his own expense and at all times, maintain the plumbing, electrical and structure of leased premises in good and safe condition Lessee shall be responsible for the cost of all repairs to the same, required for maintenance and general upkeep. The Lessee will have the right to terminate the lease rather than institute repairs in excess of \$10,000, unless an equitable agreement is reached, by both parties, for said repairs. No claim of construction lien shall attach to Landlord's interest in the Premises for any work performed by or for the tenant.
4. Alterations: Lessee shall not, without first obtaining the written consent of Lessor, make any material alterations, additions or improvements, in, to or about the leased premises. Cosmetic changes are not considered to be material.
5. American Disabilities Act: Tenant shall pay the cost of making improvements to the property so that it complies with the ADA. Landlord and Tenant shall cooperate to determine what improvements are needed to be made to comply with such laws and to agree upon the



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reasonable cost thereof. Landlord will pay for such improvements and the tenant will reimburse the Landlord for the cost of such improvements by paying equal annual payments to the Landlord over the remaining term of the seven year lease, without interest.

6. Ordinances and Statutes: Lessee shall comply with all statutes, ordinances and requirements of all municipal, territorial and federal authorities now in force or which may hereafter be in force, pertaining to the leased premises, occasioned by or affecting the use thereof by Lessee. However, Lessor is responsible for all property taxes.
7. Assignment and Subletting: Lessee may assign this lease at any time to entities it represents with the approval of the Landlord but may not sublet any portion of the leased premises.
8. Utilities: Lessee shall be responsible for payment of utility charges as they become due, including those for telephone, sewer, water, gas, trash removal and electricity on a direct bill from provider.
9. Entry and Inspection: Lessee shall permit Lessor or Lessor's agents to enter into the leased premises at reasonable times and upon reasonable notice for any reasonable business purpose.
10. Indemnification: Lessor shall not be liable for any damage or injury to Lessee, Lessee's invitees or affiliates of whatsoever sort or type, nor to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless and indemnify Lessor from any claim whatsoever for damages, unless caused by Lessor's intentional or grossly negligent conduct, including but not limited to payment of claims and any related attorney's fees and/or costs to defend. Lessee shall not be liable for any damage or injury to Lessor, Lessor's invitees or affiliates of whatsoever sort or type, nor to any property, occurring on the demised premises or any part thereof, and Lessor agrees to hold Lessee harmless and indemnify Lessee from any claim whatsoever for damages, unless caused by Lessee's intentional or grossly negligent conduct, including but not limited to payment of claims and any related attorney's fees and/or costs to defend.
11. Eminent Domain: If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for and period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof.
12. Lessor's Remedies on Default: If Lessee defaults in the payment of deposit, rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee written notice of such default and if Lessee does not cure any such default within 5 days after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 5 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than 5 days' notice to Lessee. On the date specified in such notice, the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain

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liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by immediate entry therein without further delay permission for which is hereby irrevocably granted, or by any lawful means, and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

13. Insurance: Lessee shall be responsible for fire, theft, vandalism and liability insurance up to \$500,000. Lessor shall be responsible for carrying insurance (or may self-insure) on the lease premises which covers wind, earthquake, fire and liability.
14. Attorney's Fees: In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including attorney's fees.
15. Notices: Any notice which either party may, or is required to give, shall be given by hand delivering or mailing same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such other places as may be designated by the parties from time to time.
16. Heirs, Assigns, Successors: This lease is binding upon and inures to the benefit of the heirs, successors in interest to the parties.
17. Documents: Lessee agrees to execute, on demand, any instruments which may be deemed necessary or desirable further to render any mortgages or encumbrances, whenever made or recorded, superior or prior to this Lease.
18. No Waiver: The acceptance by the Lessor after knowledge of any breach by the Lessee of any covenants, conditions, rules or regulations, or any of them, or failure of Lessor to insist upon the strict performance of any of the covenants and conditions of this Lease, or suffering Lessee to remain in possession thereafter, or failure of Lessor to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or any relinquishment for the future of any such covenants, conditions, rules, regulations or options, or of any breach thereof, but the same shall remain in full force and effect, unless such waiver be in writing and signed by the Lessor.
19. Sale: In the event that the property is not sold during the term of this lease and all criteria of the lease have been observed, Lessee shall have the automatic right to renew this agreement for an additional three years under the same terms and conditions set forth herein. Lessor shall give Lessee 60 days notice of an impending sale. Should a sale occur prior to the end of this lease term, one of the conditions precedent to such sale must be that the lease is carried over by the new owner under the same terms and conditions and for the same term as this agreement.
20. Business License: Tenants obligation under this Lease are contingent upon it obtaining a business license to operate the restaurant, bar and nightclub. If Tenant is unable to obtain the business license within 60 days after the effective date of this lease, then it shall have the right to terminate this lease by delivering written notice to the Landlord before the expiration of such 60 day period, whereupon this lease shall terminate and no party shall have any further rights, liabilities, or obligations. Landlord shall have no obligation to reimburse the


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Tenant for any improvements or expenditures that it may have made in connection with the premises.

21. Entire Agreement: The foregoing constitutes the entire agreement between the parties and may be modified only in a writing signed by both parties.

This lease Between Christmas Cane Bay LLC and James Y. Jordan signed this 27th day of June, 2005.


LESSOR: Christmas Cane Bay LLC
Title: _____


LESSEE: James Y. Jordan

*As between the parties and
the lessor and immediate
lessor will be charged
no more than 50% of
the regular price for
land and should be the focus
of the lease.*

JG000432

ATTORNEYS AT LAW
NICHOLS NEWMAN LOGAN & D'ERAMO, P.C.

MEMORANDUM

To: Jim Jordan
From: G. Hunter Logan, Jr. Esq.
Date: June 24, 2005
Re: Cane Bay Beach Bar lease

Jim

Here is the revised lease. Please see new sections 4.4, 14, 15 and 32.

Hunt



1131 King Street, Christiansted, St. Croix, U.S. Virgin Islands 00820-4971
Telephone (340) 773-3200, Ext. 35 Telefax (340) 773-3409
Email: hlogan@nnldlaw.com

JG000435

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into effective _____, 2005 by and between CHRISMOS CANE BAY, LLC, a U.S. Virgin Islands limited liability company, having its principal office and mailing address at c/o Warren B. Mosler, 5000 Estate Southgate, Christiansted, VI 00820, as lessor ("Landlord") and _____, a United States Virgin Islands _____, having its mailing address at c/o James Jordan, _____, St. Croix, VI, 008____, as lessee ("Tenant").

WITNESSETH:

1. Premises

1.1 That in consideration of the rents to be paid and the covenants and agreements to be performed by the parties and the parties intending to be legally bound hereby, the Landlord does hereby lease to Tenant and the Tenant does hereby lease from Landlord under the terms and conditions set forth hereunder, the following described leased premises, situated in Frederiksted, St. Croix, U.S. Virgin Islands: That portion of Plot 110C, Estate Cane Bay, Northside Quarter B, St. Croix, U.S. Virgin Islands shown on Exhibit "A" attached hereto and made a part hereof ("Real Property"), including the building and other improvements located thereon ("Building" or "Improvements"). The Real Property and the Improvements are hereinafter sometimes collectively referred to as the "Premises".

Need AS BUILT survey to determine Leased Premises

1.2 *The taking of possession of the Premises by Tenant shall be conclusive evidence that Tenant accepts the same "AS IS". Notwithstanding any other provision to the contrary contained in this Lease, Tenant is leasing the Premises "AS IS", "WHERE IS", WITH ALL FAULTS AND DEFECTS. Tenant acknowledges and agrees that Landlord (and/or any employee or agent of Landlord) has not made and does not make, and Landlord specifically disclaims, any representations, warranties, promises, guarantees, covenants, or agreements of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Premises, including, without limitation, the following:*

- (i) The nature, quality or condition of the Premises, including without limitation, the water, soil and geology of, or the presence or absence of any pollutant, hazardous waste, gas or substance or solid waste on or about, or deriving, from the Premises;
- (ii) The habitability, merchantability or fitness for a particular purpose of the Premises.
- (iii) The suitability of the Premises for any and all activities and uses which Tenant may intend to conduct thereon;

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(iv) Any income to be derived from the Premises; and

(v) The compliance of or by the Premises or its operations with any laws, rules, ordinances or regulations of any governmental authority or body having jurisdiction over the Premises.

Tenant acknowledges and agrees that the Improvements and the rest of the Premises need substantial work to repair and restore them to an acceptable habitable condition and the Tenant has agreed to perform such work at its expense.

1.3 Tenant acknowledges that it is relying solely on its own inspections, examinations, research, tests, investigation and other acts of due diligence concerning the Premises and not on any information provided or to be provided by Landlord. Tenant further acknowledges that no independent investigation or verification has been or will be made by Landlord with respect to any information supplied by Landlord concerning the Premises and that Landlord makes no representations or warranties as to the accuracy or completeness of such information. Tenant hereby acknowledges that they have not received or relied upon any statements or representations made by the brokers, which are not expressly set forth in this Lease.

1.4 Tenant bears the risk of any costs or expenses suffered or incurred by Tenant with regard to any lack of information, incorrect information or inadequate information relating to any of the matters described above.

2. Term of Lease - Tenant's Work

2.1 The term of this Lease shall commence on _____, 2005, or the date the existing tenants vacate the Premises, whichever is later ("Commencement Date") and shall expire at six o'clock (6:00) p.m. A.S.T. on the date that is seven years after the Commencement Date ("Expiration Date") unless extended or sooner terminated as provided herein. Provided, however, if the existing tenants have not vacated the Premises by August 1, 2005, then either party shall thereafter have the right to terminate this Lease by sending written notice to the other party prior to the time the existing tenants vacate the Premises.

The Base Rent due from Tenant shall begin on the date that is sixty days after the Commencement Date.

2.2 This Lease shall be effective and enforceable between Landlord and Tenant on the date it is signed by both parties, whether the execution and delivery of the Lease occurs on, prior to, or after the Commencement Date.

2.3 Tenant acknowledges and agrees that it is its responsibility to repair and renovate the Premises, including all Improvements located thereon, to a good, clean, habitable condition in compliance with all applicable laws, rules, regulations, ordinances, building codes and all other governmental requirements. Tenant shall prepare plans and specifications for the repair and

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renovation of the Premises and shall submit such plans and specifications to the Landlord for its approval, which approval will not be unreasonably withheld. The approved plans and specifications are hereinafter referred to as the "Work Agreement". Tenant shall complete all work to repair and restore the Premises within _____ days after the Commencement Date at its expense. The provisions of Section 10 of this Lease shall also apply to the Tenant's obligation under this Section 2.3. Tenant shall use good faith, commercially reasonable efforts in performing its obligations under this Section 2.3. Tenant shall hire contractors who are competent to perform the work, who are licensed contractors under the laws of the United States Virgin Islands and who carry appropriate Worker's Compensation and liability insurance coverage.

Provided, however, Landlord will pay the cost of repairing the roof, electrical systems and plumbing systems and any structural repairs that are needed to the Building as agreed upon by Landlord and Tenant. Tenant shall pay the cost of making improvements to the property so that it complies with the Americans with Disabilities Act. Landlord and Tenant shall cooperate to determine what improvements needed to be made to comply with such law and to agree upon the reasonable cost thereof. Landlord will pay for such improvements and the Tenant will reimburse the Landlord for the cost of such improvements by paying equal annual payments to Landlord over the term of the Lease, without interest.

2.3.1 Tenant shall promptly commence the Tenant's Work as set forth in the Work Agreement and Tenant shall diligently pursue such work to completion. All of Tenant's Work shall be at Tenant's sole cost and expense and shall be pursuant to plans and specifications which meet with Landlord's prior written approval as set forth in the Work Agreement. Tenant's contractor shall name Landlord and Tenant as additional insureds on contractor's insurance policies. All Tenant's Work shall be undertaken and completed in a good, workmanlike manner and Tenant shall obtain all necessary governmental permits, licenses and approvals with respect thereto and shall fully comply with all applicable laws, rules, regulations, ordinances, building codes and all other governmental requirements.

2.3.2 Landlord and Tenant acknowledge and agree that the costs of the repairs and the renovations to the Premises shall not be treated as rent, but rather shall be treated as capital expenditures by the Tenant and the Tenant shall be entitled to deduct the cost of such capital expenditures over the life of the Lease on its financial statements, tax returns, etc..

2.4 Should this Lease commence at any time other than the first day of the calendar month or terminate at any time other than the last day of the calendar month, the amount of rent due for such month(s) shall be proportionately adjusted based on that portion of the month that this Lease is in effect.

2.5 Subject to Section 2.6 below, provided no "Event of Default" by Tenant has occurred during the term of the Lease and the Lease is otherwise still in effect, Tenant shall have an option to extend the term of this Lease for an additional period of three years upon the same terms and conditions contained herein except that the Base Rent shall be adjusted the then fair

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market rental value ("Fair Market Rental Value") of the Premises as agreed upon by the parties. Tenant shall have the right to exercise this option only by giving the landlord written notice setting forth that it is exercising this option, which written notice must be sent to Landlord not more than 12 months prior to the Expiration Date and not less than three (3) months prior to the Expiration Date of this Lease.

2.5.1 If Landlord and Tenant are unable to agree mutually on the Fair Market Rental Value at least sixty (60) days prior to the Expiration Date, then the Fair Market Rental Value will be determined by one (1) or more Qualified Appraisers, selected under the procedures in this Section 2.5. If Landlord and Tenant agree on one Qualified Appraiser, then such Qualified Appraiser shall determine the Fair Market Rental Value of the Premises.

2.5.2 If Landlord and Tenant can not agree on one Qualified Appraiser, then Landlord and Tenant shall each appoint a Qualified Appraiser at least thirty (30) days prior to the Expiration Date. If both parties appoint Qualified Appraisers, these two (2) Qualified Appraisers shall establish the fair market value of the Offered Stock in a single written opinion agreed to by both of them.

2.5.3 If these two (2) Qualified Appraisers cannot agree on the Fair Market Rental Value within thirty (30) days of the appointment of the latter of them, then these two (2) appointed Qualified Appraisers shall together appoint a third Qualified Appraiser. All three Qualified Appraisers shall render an opinion and the Fair Market Rental Value shall be the average of the three opinions.

2.6 Landlord's Right to Buy-out Tenant's Leasehold Interest. If the Landlord has sold the Property, is in the process of selling the Property, or if it desires to change the use of the Property, then the then Landlord shall have the right to buy-out the Tenant's leasehold interest at any time during the renewal term of this Lease for the then fair market value of Tenant's leasehold interest under the remaining term of this Lease. The fair market value of Tenant's leasehold interest shall be determined by one or more Qualified Appraisers using the same procedures set forth in Section 2.5 above.

3. Base Rent

3.1 Tenant hereby agrees to pay a base rent of **Two Thousand Dollars (\$2,000.00)** per month ("Minimum Rent"), subject to adjustments as set forth herein.

3.2 The Minimum Rent due from Tenant shall begin on the date that is sixty days after the Commencement Date. Tenant covenants and agrees to pay Landlord the Base Rent due hereunder in advance on the first day of each month during the term of this Lease, without any demand, setoff or deduction whatsoever. Such Minimum Rent shall be due and payable to Landlord at Landlord's address or at such other place as the Landlord may designate in writing.

If Tenant tenders less than the full rent and other charges due, Landlord may accept such payment, which payment shall be applied on account; however, in such event Tenant shall still be

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responsible for the full amount of rent and other charges due and owing. Any endorsement or statement on any check or any letter accompanying any check or payment as rent or other charge as paid by Tenant, shall not be binding on Landlord, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease or by law.

3.3 Upon the commencement of any Lease Year (as defined in Subsection 3.6 below) after the first full Lease Year, the Minimum Rent shall be increased by 5% per year.

3.4 Upon the commencement of any Lease Year (as defined in Subsection 3.6 below) after the first full Lease Year, if the Consumer Price Index of the United States Bureau of Labor Statistics for All Urban Consumers (CPI-U), 1982-1984=100, All Items, U.S. City Average, for the preceding month of April, as published by the Bureau of Labor Statistics of the United States Department of Labor ("Index"), shall be greater than the level of the Index for the month of April 2005 (the "Base Level") Tenant shall pay to Landlord the Minimum Rent identified in Section 3.1 above plus the 5% annual increase, the additional minimum rent ("Add-On Minimum Rent") computed as follows:

3.4.1 After the completion of the first Lease Year, and every Lease Year thereafter, the Index for the preceding month of April of such Lease Year ("Annual Level") shall be determined. For purposes of this Section, a "Lease Year" shall be deemed to begin on August 1.

3.4.2 If the Annual Level for such Lease Year shall exceed the Base Level, the percentage by which the Annual Level exceeds the Base Level shall constitute the "Percentage of Increase".

3.4.3 The Minimum Rent shall be multiplied by the Percentage of Increase, the resulting amount thereof shall be deemed the Add-On Minimum Rent for the next following Lease Year. For example, on July 1, 2006, the Index for April 2006 shall be calculated and compared to the Base Index (April 2005) to determine the Percentage of Increase. The Base Rent of \$2,000 shall be multiplied by the Percentage of Increase to determine the Add-On Rent due from July 1, 2006 through June 30, 2007.

3.4.4 The Add-On Minimum Rent for a Lease Year during any Lease Year shall be payable in equal monthly installments, in advance, on the first day of each calendar month during such Lease Year with the Minimum Rent.

3.4.5 If the compilation or publication of the Index shall be revised or discontinued, there shall be substituted therefor its successor, or, if no successor is designated, any other index acceptable to Landlord and Tenant, it being understood that such an index shall be utilized at all times so that, in the event of a failure of Landlord and Tenant to agree upon a mutually acceptable index, Landlord may designate the same, in its sole discretion, even though the same is most favorable to Landlord.

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3.4.6 For example, the Minimum Rent shall adjust on August 1, 2006 as follows: $\$2,000 \times 1.05\% = \$2,100$. If the CPI increases by 5% from April 2005 to April 2006, then the Add-On Minimum Rent shall be calculated as follows: Minimum Rent of $\$2,000 \times 5\% = \100 . The total new Minimum Rent and Add-On Minimum Rent due from August 1, 2006 through August 1, 2007 shall be $\$2,100 + \$100 = \$2,200$. The Minimum Rent shall adjust on August 1, 2007 as follows: $\$2,100 \times 1.05\% = \$2,205$. If the CPI increases by 8% from April 2005 to April 2007, then the Add-On Minimum Rent shall be calculated as follows: Minimum Rent of $\$2,000 \times 8\% = \160 . The total new Minimum Rent and Add-On Minimum Rent due from August 1, 2007 through August 1, 2008 shall be $\$2,205 + \$160 = \$2,365$.

3.5 Nothing contained in any provision of this Lease dealing with the adjustments of the Minimum Rent or Add-On Minimum Rent shall be construed so as to reduce the Minimum Rent due and payable for any Lease Year below the rental paid by Tenant during the preceding Lease Year. If during the Term, the Index declines so as to cause the Add-On Minimum Rent computed in accordance with the terms of Paragraph 3.3 hereof to be less than the Add-On Minimum Rent for the preceding Lease Year, the Add-On Minimum Rent for the current Lease Year shall be the same as the preceding Lease Year.

3.6 Unless shortened by destruction or other causes, "Lease Year" shall be defined as the successive twelve (12) calendar month periods during the terms of this Lease, the first year to be deemed to commence on August 1, 2005 for purposes of Subsections 3.3 and 3.4.

4. Additional Rent

4.1 In addition to Base Rent, Tenant shall pay as additional rent (herein sometimes collectively called "Additional Rent"), all other sums of money or charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to this Lease, whether or not the same is designated as "Additional Rent" upon receipt of an invoice from same from Landlord. The Base Rent and Additional Rent is hereinafter sometimes collectively referred to as the "Rent".

4.2 Tenant shall pay 100% of the real property taxes for the Premises during the Lease term and any renewals thereof, including general real estate taxes, special assessments and any other taxes that may be imposed upon the Premises. Real property taxes are billed a year late and Tenant's obligation to pay property taxes shall apply to the tax bill billed in each year even if it applies to the next. Property taxes for the year 2004 (issued in 2005) and for the last year of the lease shall be prorated between Landlord and Tenant as of the Commencement Date and the Expiration Date. If the Lease terminates in 2012, the property taxes for the year 2011 (issued in 2012) shall be prorated as of the Expiration Date and Tenant shall have no obligation to pay any portion of the 2012 tax bill.

4.3 Tenant shall pay 100% of the electricity costs, including all charges incurred to provide power to the Premises, any charges billed by a public utility company; garbage pick up, and sewer charges for the Premises, costs of insurance as hereinafter provided, all costs for maintenance, repair or replacement of the Premises, including, but not limited to the roof,

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foundation, structural portions, plumbing, electrical systems, HVAC systems, plumbing, parking lot, shrubbery, walkways and landscaping, exterior lighting, picture windows, if any, paving, striping, cleaning, electricity, utilities, janitorial service, etc. Currently, the Premises obtains its electricity through a meter shared with the Cane Bay Dive Shop and the Tenant shall be responsible to work with the owner of the Dive Shop on prorating and paying for the electricity.

4.4 Currently, the Premises obtains its water through a common cistern with the Cane Bay Dive Shop and the Tenant shall be responsible to work with the owner of the Dive Shop on prorating and paying for the electricity. Tenant will pay 50% of the cost of the water and the other tenants who share the water will pay the remaining 50% of the water costs.

4.5 In the event Tenant does not pay any and all charges referenced above directly to the provider of such services or taxing authority when due, Landlord, at Landlord's sole option, may make such payment on Tenant's behalf and Tenant shall pay to Landlord as Additional Rent an amount equal to any payments made by Landlord plus 15% as an administrative fee. Notwithstanding the foregoing, Tenant acknowledges that Landlord has no obligation to make payments on behalf of Tenant to third parties as referenced above.

5. Late Fee

5.1 If any installment of Rent or any other amount due from Tenant to Landlord hereunder shall not be paid by Tenant within ten (10) days after the date such payment is due as provided hereunder, then Tenant shall immediately pay to Landlord a late charge in the amount of five percent (5%) of the amount due, plus any attorney's fees and other collection costs incurred by Landlord resulting from Tenant's failure to pay such rent or other amount when due. Landlord and Tenant agree that such late charge represents a fair and reasonable estimate of the costs to be incurred by Landlord and does not constitute a penalty. Acceptance of such late charge by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount and shall not prevent Landlord from exercising any and all other rights and remedies available to Landlord.

5.2 If any payment of Rent is not paid within thirty (30) days of its due date, then such amount shall thereafter bear interest at the rate of twelve per cent per annum until paid.

6. Omitted

7. Use Of The Premises

7.1 Tenant acknowledges that the rental rate negotiated and fixed herein is in part based on Tenant's commitment to restrict its usage of the Premises as hereinafter defined. Tenant covenants and agrees that the Premises shall be used and occupied for the purpose of conducting the following, AND ONLY THE FOLLOWING BUSINESS: a restaurant and bar. Live music is permitted as long as it is not a nuisance to the surrounding tenants and other neighbors and Tenant otherwise complies with its obligations under this Lease. Tenant shall deal with and resolve in a reasonable manner complaints by neighbors, governmental

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officials, etc. over the noise from the Premises. Tenant shall maintain at all times a safe place of business. ANY UNAUTHORIZED USE OF THE PREMISES SHALL BE A MATERIAL DEFAULT BY TENANT UNDER THIS LEASE, except with the prior written consent of the Landlord, which consent Landlord may withhold in its reasonable discretion. Tenant understands and agrees that the Landlord will only consider giving its consent to another charitable/ educational organization and the Premises shall only be used for charitable/ educational purposes during the term of this Lease and any renewal thereof. Tenant's use and occupancy of the Premises must be in compliance with all laws, rules, regulations and ordinances applicable to the Premises and Tenant's use and occupancy of the Premises.

7.2 Storage of inventory and other goods and materials must be arranged in accordance with the Fire Department's regulations.

7.3 Tenant shall not cause or permit any hazardous wastes, hazardous substances, toxic substances or related materials (collectively "Hazardous Materials") to be used, generated, stored, spilled or disposed of on, under or about, or transported to or from the Premises (collectively "Hazardous Materials Activities"), except that those Hazardous Materials customarily used by restaurant and bar and stored at its principal place of business are permitted to be used and stored on the Premises strictly in compliance with all applicable laws, rules, regulations and ordinances. Tenant shall indemnify, defend with counsel acceptable to Landlord, and hold the Landlord harmless from and against any claims, damages, fines, penalties, losses, judgments, costs (including attorney's fees), expenses and any and all other liabilities of any type arising out of or resulting from any Hazardous Materials Activities conducted or permitted on, under or about the Premises by the Tenant or by the Tenant's employees, agents, contractors, licensees or invitees, regardless of whether the Landlord hereafter expressly consents to, approves of, or has notice of such Hazardous Materials Activities. The provisions of this Subsection 7.3 shall survive the expiration or termination of this Lease. At the expiration or termination of this Lease, including any extensions, the Tenant shall remove from the Premises, at the Tenant's sole expense, all Hazardous Materials located, stored, spilled or disposed of on, under or about the Premises which were first brought to or used, stored or disposed of on the Premises by the Tenant or by the Tenant's employees, agents, contractors, licensees or invitees. For the purposes of this Subsection 7.3, the term "Hazardous Materials" shall include also all other substances defined or regulated as pollutants or as hazardous, toxic, infectious, or radioactive substances under any Federal statute or regulation and an Territorial or other law, regulation, or ordinance applicable to the Premises, all as amended from time to time.

7.4 Tenant shall, at Tenant's sole cost, comply and shall cause the Premises to comply with all requirements of all laws, rules, regulations, codes and ordinances pertaining to the use and/or occupancy of the Premises, including without limitation all zoning laws, environmental laws, including without limitation the Americans with Disabilities Act.

7.5 Tenant shall, at Tenant's sole cost, comply and shall cause the Premises to comply with all requirements of any insurance organization or company pertaining to the use and/or occupancy of the Premises necessary for the maintenance of the property insurance and public liability insurance covering the Premises required under this Lease.

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7.6 Tenant will not install or operate in the Premises any electrically operated equipment or other machinery, other than personal computers, typewriters, adding machines and such other electrically operated office machinery and equipment normally used in modern homes, offices and art museums, without first obtaining the prior written consent of the Landlord, which shall not be unreasonably withheld.

8. **Nuisance.** Tenant shall not disturb the peace or commit or allow any nuisance to be committed on the Premises. Tenant shall not commit or allow any waste to the Premises. The Tenant will not use or permit the Premises or any part thereof to be used for any disorderly, unlawful or extra hazardous purpose nor for any other purpose than hereinbefore specified; and will not manufacture any commodity therein, without the prior written consent of the Landlord which will not be unreasonably withheld.

9. **Subletting And Assignment**

9.1 Tenant agrees not to assign, sell, mortgage, pledge, or in any manner encumber or transfer this Lease, or any rights or interest herein, or sublet the Premises or any part or parts thereof, or permit occupancy of all or any part thereof by anyone by, through or under it, except in compliance with the terms of this Lease without Landlord's prior written consent, which consent will not be unreasonably withheld as provided herein. The term "sublet" shall be deemed to include but not be limited to the granting of licenses, concessions and any other rights of occupancy for any portion of the Premises.

9.2 If the Tenant is a corporation, then any sale, exchange, transfer, or assignment of stock, or issuance of new stock, to a person or entity other than the existing stockholders of the lessee, equaling Fifty percent (50%) or more of the then outstanding stock of the lessee corporation in one or more transactions within a one (1) year period, shall constitute an "assignment" hereunder, and all the terms of this Section 9 shall be applicable thereto.

9.3 If Tenant is a partnership, limited liability company or other entity, then any sale, exchange, transfer, or assignment of partnership, membership or other ownership interests (as the case may be), or the issuance of new partnership, membership or other ownership interests, to a person or entity other than existing partners, members or other owners (as the case may be) of the lessee, equaling Fifty percent (50%) or more of the partnership, membership or other ownership interests in one or more transactions within a one (1) year period, shall constitute an "assignment" hereunder, and all the terms of this Section 9 shall be applicable thereto.

9.4 In determining whether to give such consent to an assignment or other transfer, the Landlord may review such factors as it deems appropriate, including without limitation, the proposed assignee's intended use of the Property, the business qualifications of the proposed assignee, and the financial statements and financial condition of the proposed assignee. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in evaluating whether to approve or disapprove the assignment or transaction.

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9.5 Any consent granted by Landlord shall not be deemed to be a consent to, nor waive Landlord's right to consent to, any further assignment, sublease or transfer of this Lease, or any rights or interest herein, in accordance with this Section 9. If Landlord consents to any assignment, sublease or transfer, then any assignee, subtenant or transferee shall become liable directly to Landlord for all obligations of Tenant hereunder without relieving or in any way modifying Tenant's liability hereunder. The collection of rent by Landlord from any assignee, sublessee or occupant, shall not be deemed to be a waiver of this covenant or the acceptance of such assignee, sublessee or occupant, or a release of Tenant from the further performance by Tenant of all its obligations under this Lease.

10. Alterations And Additions By Tenant

10.1 In addition to the tenant's Work described in Section 2.3 hereof, Tenant may make material alterations, additions, or improvements to the Premises with the prior written consent of Landlord, which consent will not be unreasonably withheld by Landlord. As used in this paragraph, the term "material" shall mean an alteration, addition, or improvement which (a) costs in excess of \$35,000.00; (b) affects the exterior of the Improvements; or (c) is structural in nature. All costs of such work shall be paid promptly so as to prevent the assertion of any liens for labor or materials. Prior to commencing any work, Tenant must provide to Landlord proof that it has the necessary funds to pay for the alterations, additions, or improvements to the Premises, which proof must be acceptable to the Landlord. Tenant agrees to indemnify and hold harmless Landlord against any loss, liability or damage resulting from such work, and Tenant shall, if requested by Landlord, furnish a bond or other security satisfactory to Landlord against any such loss, liability or damage. If a lien is filed against the Premises, then Tenant shall cause, at its sole expense, such lien to be removed of record within thirty (30) days after the date such lien is filed.

10.2 All alterations, additions or improvements by Tenant shall be at Tenant's sole expense and not at the expense of Landlord. All such construction work shall be performed in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations, ordinances, building codes and all other governmental requirements. Tenant shall procure all necessary permits for the Work and shall deliver to Landlord a final certificate of occupancy as a condition precedent to the use of the Improvements for their designated purpose. Upon completion of the renovations, Tenant shall deliver to Landlord a set of the "as-build" plans.

10.3 Whenever Tenant proposes to do any construction work within the Premises for which Landlord's consent is required under this Lease, Tenant shall first furnish to Landlord plans and specifications in such detail as Landlord may reasonably request covering all such work. Such work shall be performed strictly in compliance with the plans and specifications approved by Landlord. Any structural alterations must be made under the supervision of a licensed engineer and by a licensed Virgin Islands contractor. Tenant, its contractor or the contractor performing the Work shall provide and maintain, at their own cost and expense, full workers' compensation insurance in respect to such Work and all risk builder's risk insurance covering such Work in an amount not less than the cost of such Work as well as any other insurance in respect to such Work as may then be required by law. Landlord shall be named as

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an additional insured on such policies and certificates of all such policies shall be delivered to Landlord prior to commencement of such Work. If under the provisions of any insurance policies required to be provided and maintained under this Lease, any consent to such Work by the insurers therein shall be required to continue and keep such policies in full force and effect, Tenant shall obtain such consents and pay any premiums or charges that may be incurred.

10.4 The Tenant's Work described in Section 2 hereof and all other alterations, additions, improvements and fixtures (other than unattached, moveable trade fixtures) which may be installed or otherwise made to the Premises shall become the property of the Landlord at the expiration or earlier termination of this Lease without credit, compensation or other payment of any kind to Tenant. Landlord reserves the right to require Tenant to remove any alterations, additions or improvements made to the Premises by Tenant and to repair and restore the Premises to their condition prior to such alteration, addition or improvement, reasonable wear and tear, unrepaired casualty not caused by Tenant (or its employees, agents, contractors, licensees or invitees), and condemnation excepted as a condition for Landlord's approval of same or Landlord may agree in writing that such item need not be removed or restored by Tenant at the expiration or earlier termination of this Lease. Landlord agrees that the Tenant's Work described in Section 2 hereof will not have to be removed or restored by Tenant at the expiration or earlier termination of this Lease.

10.5 Tenant shall neither cause nor permit any lien arising out of or resulting from its construction or other operations to be placed or filed against the Premises. In the event such lien is filed, Tenant shall cause it to be discharged within fifteen (15) days after it is filed. Any contract made by Tenant with suppliers or contractors for the repair of the Premises or for improvements consented to by Landlord shall contain a clause whereby the contractors, suppliers, or others waive any right they may have to claim a construction lien on Landlord's property or against Landlord's interest under Chapter 12 of Title 28 Virgin Islands Code or its successor statutes. *No claim of construction lien shall attach to Landlord's interest in the Premises for any work performed by or for the Tenant. Neither the Landlord nor its property shall not be liable for any such construction liens.* Nothing contained herein shall be construed to authorize Tenant to subject Landlord's fee simple title in the Property to any easements or to any liens of construction, mechanics, artisans, laborers, materialmen, contractors, or subcontractors, or to any mortgages or other liens or charges whatsoever arising out of or resulting from any work or arising in any manner; and Tenant is hereby expressly prohibited from subjecting Landlord's title to any such easement, lien or charges. The foregoing provision applies regardless of whether the Landlord knew or otherwise consented to the Tenant performing work on the Premises.

11. Maintenance And Repairs; Surrender of Premises.

11.1 Tenant shall be responsible for all maintenance, repair, replacements and renovations of the Premises. Tenant shall maintain the Premises in good clean condition and in good repair. Tenant agrees to provide for the removal of all trash at its expense and shall not allow the same to accumulate on the Premises. Tenant shall be responsible for and shall pay for all maintenance, repairs and replacements to the Premises, excepting only those which are the

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Landlord's responsibility under Section 19 hereof. Tenant shall also be responsible for, at its sole expense, all damage done to the Premises which is caused by, arises out of, or results from, directly or indirectly, by natural causes, the negligence or intentional acts or omissions of Tenant, its agents, employees, contractors, licensees, invitees or known or unknown third parties; or (b) faulty construction performed by Tenant or its contractor to the extent Landlord does not actually receive insurance proceeds sufficient to pay for such damage, including any deductible imposed under the applicable insurance coverage.

11.2 Landlord shall have obligation or other liability of type to make any repairs, replacements, alterations, or improvements of any type to the Premises, including the Improvements. The parties expressly acknowledge and agree that all such repairs, replacements, alterations, and improvements are the sole responsibility of Tenant. Landlord shall have no obligation to inspect the Premises.

11.3 After providing reasonable notice to Tenant, Landlord, its agents and/or representatives, shall have the right to enter upon the Premises at reasonable hours for the purpose of showing the Premises to prospective purchasers, lenders or tenants; or to examine or inspect the Premises, including inspections which are structural and/or invasive in nature, provided Landlord returns the Premises to their original condition thereafter.

11.4 If Tenant abandons the Premises, Landlord or its representatives may enter the same forcibly without rendering Landlord or its representatives liable therefore or affecting Tenant's obligations under this Lease.

11.5 Tenant agrees to surrender, at the end of the term or earlier termination of this Lease, the Premises in good clean condition and in good repair; reasonable wear and tear only excepted. At such time, Tenant shall remove all of Tenant's personal property and repair all injury done by or in connection with the installation or removal of such property and surrender the Premises (together with the keys, alarm codes, etc.) to Landlord.

12. Conformance To Law and Prohibited Acts

12.1 Tenant agrees to comply with all applicable laws, rules, regulations, ordinances, building codes and all other governmental requirements of all governmental authorities regarding any aspect of the Premises, Tenant's business and the use of the Premises. Tenant covenants and agrees to possess, use, occupy and operate the Premises in strict conformance with all applicable laws, rules, regulations, ordinances, building codes and all other governmental requirements of all governmental authorities which are now or hereafter in effect, subject, however, to the right of Tenant, at its option, to contest the validity of any unreasonable rule or regulation, and so long as such contest does not threaten or impair the Premises or Landlord's property or business and is pursued diligently, no default under this Lease shall be declared. Tenant covenants and agrees to possess, use, occupy and operate the Premises only for charitable purposes.

13. Insurance

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13.1 Beginning when the Tenant commences to perform the Tenant's Work and thereafter during the term of this Lease, Tenant shall, at its own expense, carry and maintain in full force and effect at all times property insurance in a policy or policies which shall name Tenant, Landlord and any mortgagee designated by Landlord as named insureds. The insurance to be obtained by Tenant and maintained throughout the term of this Lease, at Tenant's expense, shall cover the Improvements against loss from fire, windstorm, earthquake, flood and all other matters covered in the broadest standard form policy of extended coverage or supplementary contract endorsements obtainable in an amount not less than one hundred percent (100%) of the full replacement cost of the premises and other improvements, exclusive of the cost of excavations, foundations, and below-ground improvements (but sufficient to satisfy the requirements of any co-insurance clause), and without any deduction being made for depreciation, and such other matters as Landlord may desire. Such full replacement cost shall be recalculated from time to time upon Landlord's demand (but not more frequently than once in any twenty-four (24) calendar months) in accordance with a fair market value appraisal of the premises and other improvements to be performed by an appraiser as designated by Landlord and approved by Tenant, and Tenant shall cause the amount of such insurance to be increased to reflect any such recalculation of replacement cost immediately thereupon. If the Premises is located in an area designated as a federal flood area, then federal flood insurance shall also be obtained. All proceeds received from any insurance company for loss or damage to the improvements, fixtures and other items comprising the Premises, including any leasehold improvements made by the Tenant which become the property of the Landlord upon the expiration or earlier termination of the Lease, shall be paid solely to the Landlord, and Tenant shall have no claims to or rights in such insurance and/or the proceeds thereof. Landlord shall be named the loss payee under the property insurance policy. The insurance required under this paragraph shall be maintained with insurance companies authorized to do business in the Territory of the United States Virgin Islands and reasonably satisfactory to Landlord. Notwithstanding the foregoing, Tenant shall be entitled to retain any insurance proceeds relating solely to its non-fixtured personal property, to the extent that such insurance proceeds are not needed to fund repair/replacement of the Premises to its condition prior to the casualty loss due in insufficiency of the insurance proceeds received by Landlord as referenced above.

13.2 Beginning when the Tenant commences to perform the Tenant's Work and thereafter during the term of this Lease, Tenant shall, at its own cost and expense, carry and maintain in full force and effect at all times the following types of insurance which shall name both Landlord and Tenant as named insureds and shall be with insurance companies authorized to do business in the Territory of the United States Virgin Islands and reasonably satisfactory to Landlord:

13.2(a) Comprehensive property damage insurance covering liability for damage to Tenant's personal property. Any insurance proceeds payable for loss or damage to Tenant's non-fixtured personal property shall be paid solely to the Tenant except as referenced in Section 13.1 hereof.

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13.2(b) Commercial general liability insurance and such policy shall have a combined single limit of not less than \$500,000.00 for bodily injury and property damage per occurrence.

13.3(c) Such other insurance, and in such amounts, as may from time to time be reasonably required by Landlord or Landlord's fee mortgagee against other insurable hazards that at the time are commonly insured against in the case of premises similarly situated, appropriate due regard being given to the height and type of building, its construction, use, and occupancy.

13.3 Landlord and Tenant shall each have included in all policies of insurance respectively obtained by them with respect to the Building and/or the Premises a waiver by the insurer of all right of subrogation against the other in connection with any loss or damage thereby insured against. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other for any loss or damage that may occur to the Premises or any improvements thereto, or any personal property of Landlord or Tenant, arising from any cause that (a) would be insured against under the terms of any property insurance required to be carried hereunder; or (b) is insured against under the terms of any property insurance actually carried, regardless of whether it is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of the claim, including but not limited to the negligence of a part or that party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of Landlord or Tenant.

13.4 Tenant shall furnish Landlord with appropriate evidence of said insurance coverage no later than the commencement date of the construction of the Work. At least ten (10) days prior to the expiration or termination of any policy, Tenant shall deliver to Landlord appropriate evidence that such insurance has been renewed or replaced. Upon Tenant's failure to deliver such evidence, Landlord may, at its option, obtain such insurance and the cost thereof shall be paid by Tenant as Additional Rent due and payable immediately.

13.5 Tenant agrees to obtain a written obligation from its insurers to notify Landlord in writing at least fifteen (15) days prior to cancellation or refusal to renew such policies.

13.6 All public liability and property damage liability policies maintained by Tenant shall contain a provision that Landlord and any other additional insureds, although named as an additional insured, nevertheless shall be entitled to recover under such policies for any loss sustained by Landlord and such other named or additional insureds, its agents and employees as a result of the acts or omissions of Tenant or as provided in this Lease..

13.7 Landlord and its agents and employees make no representations that the limits of liability specified to be carried by Tenant pursuant to this Section 13 are adequate to protect Tenant. If Tenant believes that any such insurance coverage is inadequate, then Tenant should obtain, at Tenant's sole expenses, such additional insurance coverage as Tenant deems appropriate.

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13.8 Landlord may obtain such property and/or liability insurance as it deems appropriate and Tenant shall have no rights in the policy or any proceeds paid thereunder. All insurance obtained by the Landlord shall be for its sole benefit.

14. Parking. Tenant, and its customers, vendors, and invitees has the right to park in designated parking areas, parking lots, and adjacent to buildings and walkways.

15. Beachside Vending. Tenant shall have the exclusive right to sell food and drinks on the Premises and the adjoining beach as far as the Landlord is concerned. Landlord agrees not to grant you any other person or entity the right to sell food and drinks on the adjoining beach.

16. Subordination; Security Interest.

16.1 This Lease is subject and subordinate to any mortgage or encumbrance which may now or hereafter encumber the Landlord's interest in the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant shall within ten (10) days of Landlord's request, execute, acknowledge and deliver to Landlord any appropriate certificate or instrument that Landlord may request evidencing such subordination. Tenant shall also deliver to any Mortgagee within ten (10) days of written request an attornment agreement providing that such Tenant shall continue to abide by and comply with the terms and conditions of the Lease in the event such Mortgagee takes title to the Property, so long as the Mortgagee delivers to Tenant a non-disturbance agreement (which non-disturbance agreement may be part of the above-mentioned attornment agreement), which non-disturbance agreement shall provide that so long as Tenant continues to abide by the terms and conditions of this Lease, Mortgagee will permit Tenant to continue to occupy the Premises. Tenant hereby constitutes and appoints Landlord the Tenant's attorney-in-fact to execute any such certificate or instrument for and on behalf of Tenant. In the event of the enforcement by the holder any such mortgage or encumbrance of the remedies provided for by law or by such mortgage or encumbrance, Tenant will automatically become the tenant of such successor in interest without change in the terms or other provisions of such Lease. Upon request by such successor in interest, Tenant shall execute and deliver an instrument or instruments confirming the attornment and nondisturbance provisions provided for above.

16.2 At any time during the term of this Lease, Tenant shall, within ten (10) days of the request by Landlord, execute, acknowledge and deliver to Landlord, any mortgagee, prospective mortgagee, or any prospective purchaser of the Premises, an estoppel certificate in recordable form or in such other form as Landlord may from time to time require, evidencing whether (a) this Lease is in full force and effect; (b) this Lease has been amended in any way; (c) Tenant has accepted and is occupying the Premises; (d) there are any existing defaults on the part of Landlord hereunder or any defenses or setoffs against the enforcement of this Lease to the knowledge of Tenant (and specifying the nature of any such defaults, defenses or offsets, if any); (e) the date to which rents and other amounts due hereunder, if any, have been paid; and (f) any other information as may be reasonably requested by Landlord. Each certificate delivered

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pursuant to this Paragraph may be relied upon by Landlord or any other party to whom the certificate is addressed.

16.3 16.2 At any time during the term of this Lease, Landlord shall, within ten (10) days of the request by Tenant, execute, acknowledge and deliver to Tenant, any mortgagee, prospective mortgagee, or any prospective purchaser of the leasehold interest, an estoppel certificate in recordable form or in such other form as Tenant may from time to time require, evidencing whether (a) this Lease is in full force and effect; (b) this Lease has been amended in any way; (c) there are any existing defaults on the part of Landlord hereunder or any defenses or setoffs against the enforcement of this Lease to the knowledge of Landlord (and specifying the nature of any such defaults, defenses or offsets, if any); (d) the date to which rents and other amounts due hereunder, if any, have been paid; and (e) any other information as may be reasonably requested by Tenant. Each certificate delivered pursuant to this Paragraph may be relied upon by Tenant or any other party to whom the certificate is addressed.

17. Indemnification Of Landlord

17.1 Tenant covenants and agrees to save Landlord harmless from any and all actions, suits, damages, costs, expenses, penalties, claims, demands or other liabilities of whatsoever kind or nature (hereinafter called "claim") that may be made against or incurred by Landlord, the Premises arising out of or in any way connected with the occupation or use of the Premises, or the conduct of its business, or from any activity, work, or other thing done, permitted or suffered by the Tenant, its agents, employees, contractors, licensees, and invitees in or about the Premises, including but not limited to any loss or damage to property, personal injury, and loss of life, complaints by neighbors, governmental officials, etc. over the noise from the Premises and any other failure of Tenant to keep or perform each and all of the covenants, agreements and conditions to be kept and performed by it hereunder. Tenant shall defend Landlord from and against each and every claim to the end and intent that the Landlord shall suffer no loss or costs, including reasonable attorney's fees, of whatever kind on account of the assertion of any such claim, except for those claims caused solely by any act or omission of Landlord or its agents, employees, contractors, licensors or invitees which would amount to gross negligence or willful misconduct. Landlord shall have the right to be represented by counsel of its choice. The provisions of this paragraph shall survive the expiration or termination of this Lease. The Tenant's liability insurance shall include a contractual liability provision covering Tenant's obligations under this indemnification.

17.2 All damages or injury done to the Premises by Tenant or its agents, employees, contractors, licensees and invitees, or caused by the negligence or willful acts of same, shall be paid by Tenant to the extent Landlord does not actually receive insurance proceeds sufficient to pay for such damage, including any deductible imposed under the applicable insurance coverage.

17.3 Tenant shall occupy the Premises at its own risk.

18. Default By Tenant; Landlord's Remedies

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18.1 If Tenant shall fail: (i) to pay any installment of rent for a period of five (5) days after the same becomes due hereunder; or (ii) to observe or perform any of its obligations under this Lease and fail to cure such default within ten (10) days after the same becomes due date for performance hereunder; or (iii) if Tenant shall be adjudicated bankrupt or become insolvent or shall make an assignment for the benefit of creditors, or (iv) Tenant abandons the Premises; then in any of said cases, Landlord lawfully may enter into and upon the Premises or any part thereof and repossess the same and expel the Tenant and persons claiming under and through it, and remove any effects, forcibly if necessary, without being guilty of trespass and without prejudice to any remedies which may be available for arrears of rent or for Tenant's breach of covenant, and upon entry as aforesaid, this Lease shall terminate and wholly expire, and Tenant covenants that in case of such termination it will indemnify Landlord against all loss of rent which Landlord may incur by reason of such termination during the residue of the specified term. For purposes of determining whether a default has occurred under clause (iv) of this paragraph, an "abandonment" occurs when the tenant vacates the Premises or closes the museum/ art center to the public for a period in excess of 15 consecutive days without justification or without Landlord's prior written approval, which shall not be unreasonably withheld. Because of the minimal amount of the rent due hereunder, the parties agree the failure of the Tenant to pay rent shall not be considered a factor in determining whether an abandonment of the Premises has occurred.

18.2 Upon the occurrence of any one or more event of default, Landlord shall have the option to do and perform any one or more of the following:

18.2(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant shall fail to do so, Landlord may, without further notice, enter upon the Premises and expel or remove Tenant and Tenant's effects by lawful means without being liable to prosecution or any claim for damages therefor. Tenant indemnifies Landlord and hold Landlord harmless from and against any loss, cost, damage or expense (including, but not limited to, attorneys fees) which Landlord may suffer by reason of such termination, whether through inability to release the Premises, decrease in rent, or otherwise.

18.2(b) Declare the entire amount of rent calculated on the current rate being paid by Tenant, and other sums which in Landlord's reasonable determination would become due and payable during the remainder of the term discounted to present value by using a reasonable discount rate selected by Landlord, and any other rent which would have been due of Tenant to Landlord hereunder if not for certain concessions granted by Landlord to Tenant, to be due and payable immediately. Upon such acceleration or rent, Tenant agrees to pay the same at once, at Landlord's address as provided herein; provided however that such payment shall not constitute a penalty, forfeiture or liquidated damages, but shall constitute payment in advance of the rent for the remainder of the term. Upon making such payment, Tenants shall receive from Landlord all rents received by Landlord from other Tenants renting the Premises during the term, provided that the monies to which Tenant shall so become entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to the preceding sentence, less all costs (including, but not limited to, the reasonable costs of the use and time of Landlord's personnel), expenses, and fees for professional services (including, but not limited to, attorney's, architect's,

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broker's, and engineer's fees) incurred by Landlord in connection with the termination of this Lease, eviction of Tenant and re-letting of the Premises. The acceptance of such payment by Landlord shall not constitute a waiver of rights or remedies to Landlord for any failure of Tenant thereafter occurring to comply with any term, provision, condition or covenant of the Lease.

18.2(c) Enter the Premises by lawful means as the agent of Tenant without being liable to prosecution of any claim for damages therefor, and relet the Premises as the agent of Tenant without advertisement and by private negotiations and for any term Landlord deems proper, and receive the rent therefor. Tenant shall pay Landlord any deficiency that may arise by reason of such re-letting on demand, but Tenant shall not be entitled to any surplus so arising. Tenant shall reimburse Landlord for all costs of re-letting the Premises including, but not limited to, advertising expenses and any professional fees, and for the amount of any other rent which would have been due of Tenant to Landlord hereunder if not in lieu of or in limitation of, any other right or remedy provided to Landlord under the terms of this Lease or otherwise (but only to the extent such sum is not reimbursed to Landlord in conjunction with any other payment made by Tenant to Landlord), shall have the right to be immediately repaid by Tenant the amount of all sums expended by Landlord and not repaid by Tenant in connection with preparing or improving the Premises to Tenant's specifications and any and all costs and expenses incurred in renovating or altering the Premises to make it suitable for re-letting.

18.3 No act or thing done by Landlord or Landlord's employees or agents during the term shall be deemed an acceptance of a surrender of the Premises, unless Landlord expressly agrees to accept a surrender. Neither the mention in this Lease of any particular remedy, nor the exercise by Landlord of any particular remedy hereunder, at law or in equity, shall preclude Landlord from any other remedy Landlord might have under this Lease, at law or in equity. Any waiver of or redress of for any violation of any covenant or condition contained in this Lease or any of the rules now or hereafter adopted by Landlord, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of all or any portion of the rent due with knowledge of the breach of any covenant in this Lease shall not be deemed a waiver of such breach. *Tenant hereby waives any right it may have to a judicial termination of the Lease. Tenant hereby also waives any statutory right which may exist to thirty (30) days notice to quit prior to commencement of such summary eviction proceedings.*

19. Casualty

19.1 If the Premises are totally destroyed by fire, storm, lightning, earthquake, or other casualty or Act of God or by any other cause; or if the Premises is substantially destroyed by fire, storm, lightning, earthquake, or other casualty or Act of God or by any other cause so that reconstruction or repairs to such damaged portions cannot be reasonably accomplished in the Landlord's reasonable discretion; or if the Premises is damaged as a result of a risk which is not covered by Tenant's insurance; or if the Tenant's insurance company fails or is otherwise unable to pay the property insurance proceeds due to Landlord; or if the Premises is damaged in whole or in part during the last year of the term or any renewal term hereof; or if any or all of the Buildings located on the Real Property are totally destroyed or substantially destroyed so that

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such repairs and reconstruction cannot be accomplished in the Landlord's reasonable determination which would preclude Tenant from operating a museum/ art center; then Landlord and Tenant shall each have the option to terminate this Lease and the tenancy created hereunder. If the Lease is terminated, then the Base Rent, Additional Rent and all other amounts due hereunder shall be prorated as of the date of the damage or the date Tenant last is able to occupy the Premises whichever occurs later. All property insurance proceeds shall be paid to and be the property of the Landlord and Tenant shall have no claim to or interest in the insurance proceeds. If Tenant elects to repair or restore the Premises and if Landlord does not elect to terminate this Lease, then the provisions of this Lease shall remain in full force and effect and Tenant shall repair and restore the Improvements to at least as good a condition as they were in prior to the casualty, whether or not insurance proceeds on account of such damage or destruction shall be sufficient for such purpose, at the Tenant's expense; provided, however, the term of the Lease shall be extended for a period equal to the reasonable time necessary for the repair/restoration not to exceed 2 years. Tenant will promptly commence and complete the restoration, replacement or rebuilding of the Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction (such restoration, replacement, rebuilding, alterations and additions, together with any temporary repairs and property protection pending completion of the work, being herein referred to as the "Restoration"). Tenant shall deposit with Landlord sufficient funds which when added to the net insurance proceeds received by Landlord shall be sufficient to cover the costs of the Restoration as determined by the supervising architect or engineer selected by the Landlord to protect Landlord's interests.

19.2 All insurance proceeds received by the Landlord from the insurance policy carried by the Tenant on account of any damage to or destruction of the Improvements or any part thereof (less the costs, fees and expenses incurred by the Landlord in the collection, receipt and disbursement thereof, including, without limitation, all adjuster's fees and expenses and attorneys' fees and expenses) together with the funds deposited by the Tenant to cover the costs of Restoration shall be disbursed to the Tenant or as the Tenant may direct, from time to time as Restoration progresses, to pay (or reimburse the Tenant for) the cost of Restoration, upon written request of the Tenant to the Landlord, which request shall be accompanied by (a) a certificate of a supervising architect or engineer selected by the Landlord describing in reasonable detail the work and materials in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a completed part thereof, and that no part of the cost thereof has previously been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration; and (b) an opinion of counsel satisfactory to the Landlord that there exist no construction mechanics' or similar liens for labor or materials supplied except such as are to be discharged by the application of the amount requested; and (c) such other requirements as the Landlord may require; provided, that the balance of such net proceeds so held by the Landlord shall not be reduced below the amount specified in such certificate as necessary to complete the Restoration. Upon receipt by the Landlord of evidence of a character required by the foregoing clauses (a), (b) and (c) that Restoration has been completed and the cost thereof paid in full, and that there are no construction, mechanics' or similar liens for labor or materials supplied in connection therewith, any balance of such Restoration funds shall, be retained by the Landlord. Tenant shall pay all costs and expenses incurred by the Landlord, including without limitation the fees and expenses charged by the supervising architect or engineer. The Landlord

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may impose such requirements on the Tenant and the disbursement of the funds as a bank normally imposes upon the disbursement of funds under a commercial construction loan. If the Tenant fails to comply with the requirements of this Section 19, then the Landlord shall have the right to retain the insurance proceeds and terminate the Lease.

19.3 Notwithstanding anything contained herein to the contrary, if an Event of Default has occurred and is continuing, the Landlord shall have the right in its sole discretion to retain the insurance proceeds and terminate the Lease.

19.4 The Tenant shall be responsible at its sole cost and expense to repair and replace any of the Tenant's equipment, inventory and other personal property made by Tenant which were damaged or destroyed by such event.

19.5 In no event shall Landlord be liable for any loss of business, loss of economic opportunity, or any other damages whatsoever suffered or claimed to be suffered by Tenant, unless the loss was caused by Landlord's willful acts.

20. Eminent Domain

20.1 If the whole or a substantial part of the Premises shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain or private purchase in lieu thereof, by a public body vested with the power of eminent domain, then, when possession shall be taken thereunder of the Premises, or a substantial part thereof, the term and options hereby demised and all rights and obligations of Tenant hereunder shall immediately cease and terminate and the rent shall be adjusted as of the time of such termination, and Tenant shall have no claim against the Landlord for the value of the unexpired term hereof. All damages awarded for such taking shall belong to and be the property of Landlord, whether such damages shall be awarded as compensation for diminution in value to the fee of the Premises herein leased; provided, however, that Landlord shall not be entitled to any portion of the award made to Tenant for loss of business. A sale by Landlord to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes under this section.

21. No Liability; Tenant Or Tenant's Business

21.1 To the fullest extent permitted by law, Tenant agrees that Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, damage to person or property sustained by Tenant or any person claiming through Tenant, regardless of the cause thereof, resulting from any accident or occurrence in or upon the Premises or the Building of which they shall be a part, or any other part of the Building, including but not limited to claims for damage resulting from: (a) any equipment or appurtenances being repaired; (b) injury done or occasioned by wind; (c) any defect in or failure of plumbing or air conditioning equipment, electric wiring or installation thereof; (d) broken glass; (e) the backing up of any sewer pipe or downspout; (f) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or demised

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premises; (g) the falling of any fixture, plaster, tile or stucco; and (h) any act, omission or negligence of co-tenant, licensees or of any other persons or occupants of the Improvements or of adjoining or contiguous property. No such damages shall entitle Tenant to a reduction or abatement of rent.

22. Covenant Of Quiet Enjoyment

22.1 Landlord covenants that Tenant, on paying the rentals and keeping, observing and performing all of the other terms, covenants, conditions, provisions, and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the term granted herein, peaceably and quietly have and hold the Premises, subject to the terms, covenants, and conditions hereof.

23. Holding Over

23.1 If Tenant remains in possession of the Premises after the expiration of the term of this Lease or after any permitted termination of this Lease by Landlord, without the prior written consent of Landlord, then such possession shall be subject to all of the obligations imposed upon Tenant by this Lease except that the tenancy shall be from day to day and the amount of rent shall be Five Thousand Dollars (\$5,000.00) per month. There shall be no renewal of this Lease by operation of law. Nothing contained in this paragraph shall be construed as a consent by Landlord to the possession of the Premises by Tenant after the expiration of the term of this Lease or any permitted termination of the Lease by Landlord. Tenant shall indemnify and hold harmless Landlord from and against any and all claims for damages by any other tenant to whom Landlord shall have leased all or any part of the Premises effective upon the expiration or termination of this Lease.

23.2 Any holdover with the express written consent of Landlord shall thereafter constitute this Lease to be a Lease from month to month at a rent equal to One Thousand Dollars (\$1,000.00) per month or such other amount as has been agreed upon by Landlord and Tenant.

24. Rights Cumulative

24.1 It is agreed that each and every of the rights, remedies, and benefits provided by this Lease shall be cumulative, and shall not be exclusive of any other said rights, remedies and benefits allowed by law.

25. Non-Waiver

25.1 The failure of the Landlord or Tenant to insist in any one or more instances upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect. No waiver by the Landlord or Tenant of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord or Tenant, as the case may be.

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26. Captions

26.1 The captions as to contents of particular paragraphs herein are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular paragraphs to which they refer.

27. This Lease

27.1 It is agreed that Landlord has not made any statements, promises or agreements, or taken upon itself any engagement whatever, in conflict with the terms of this Lease, or that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, unless such is in writing, signed by the Landlord, notarized and delivered to Tenant at or after execution of this Lease, and that no obligations of Landlord shall be implied in addition to the obligations herein expressed.

27.2 Neither the method of computation of rent or any other provision of this Lease shall be deemed to create any relationship between the parties hereto other than that of landlord and tenant.

27.3 Tenant agrees there are no representations on the part of Landlord or its agents as to the present or future condition of the Premises that in any way vary or enlarge the provisions of this Lease.

27.4 This Lease may not be varied or modified except in writing subscribed to by each of the parties hereto, and it is also agreed and understood that this Lease shall be binding on and inure to the benefit of the respective heirs, representatives, successors and permitted assigns of the parties hereto. Tenant agrees that Landlord shall only be bound to recognize such assigns or successors of Tenant as are permitted under the provisions of Section 9 hereof.

27.5 No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

27.6 Notwithstanding anything contained herein to the contrary, Tenant agrees that neither Landlord nor any shareholder, officer, director, employee or agent of Landlord, nor any other person having any interest in Landlord, shall have any personal liability with respect to any of the provisions of this Agreement and Tenant shall look solely to the estate and property of Landlord in the Premises for the satisfaction of Tenant's remedies, including without limitation, the collection of, any judgment or the enforcement of other judicial process requiring the payment or expenditure of money by Landlord, subject, however, to the prior rights of any holder of any mortgage covering all or part of the Premises, and no other asset of Landlord or any shareholder, officer, director, employee or agent of Landlord, or of any other aforesaid person having an interest in Landlord, shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claims. Without limitation of the foregoing, upon each transfer of the Premises and the Landlord's interest in this Agreement, the transferor shall automatically be

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released from all liability under this Agreement. Tenant further acknowledges that Landlord may assign its interest in this Agreement to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that, subject to the other provisions of this Section, Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

27.7 Notwithstanding any other provision contained herein, this Lease shall be interpreted and construed to be a completely net lease and Tenant shall pay to Landlord all Rent due and payable hereunder net throughout the term, free of any offsets, abatements or other deductions whatsoever and without notice or demand. Under no circumstances or conditions, whether now existing or hereafter arising or whether or not beyond the present contemplation of Landlord and Tenant shall Landlord be required to make any payment of any kind whatsoever with respect to this Lease or be under any obligation or liability hereunder, except as expressly set forth in this Lease. By way of explanation and not limitation, it is the intention and agreement of the parties hereto that all rent shall be received by Landlord absolutely net to the Landlord and free of any assessments, costs, expenses, insurance, taxes, liabilities, charges, repairs, remodeling, refurbishing, rebuilding or other costs whatsoever with respect to the Premises, all of which Tenant agrees to pay so that this Lease shall yield the Rent net to Landlord throughout the term of this Lease. Landlord shall only be responsible for paying any income taxes and gross receipts taxes which may be due and payable by the Landlord on the Rent received by it.

28. Notice

28.1 Any and all notices required by or sent in connection with this Lease shall be in writing and hand delivered or sent by United States Postal Service express mail or certified mail, return receipt requested, postage prepaid. If to Tenant, the notice shall be delivered or sent to the Premises or to the address set forth in the first Paragraph of this Lease. If to Landlord, it shall be delivered or sent to Landlord at the address set forth in the first Paragraph of this Lease or such other address as Landlord may designate in writing with a copy to Alan Richard Simon, Esquire, 3980 RCA Blvd., Suite 8012, P.O. Box 31041, Palm Beach Gardens, FL 33420-1041 and G. Hunter Logan, Jr., Esquire, Nichols Newman Logan & D'Eramo, P.C., 1131 King Street, Christiansted, St. Croix, United States Virgin Islands 00820. Notices shall be effective when delivered, if hand delivered personally, or if sent through the United States Postal Service, then such notice shall be effective when received as evidenced by the return receipt. Rejection of a properly delivered notice shall be effective as delivery as of the date of rejection. Either party may change the address to which notices to it are to be sent by providing the other party with at least ten (10) days prior written notice.

29. Real Property Taxes.

29.1 Throughout the term of this Lease, Landlord shall pay when due the real property ad valorem taxes assessed against the Real Property.

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30. Waiver Of Jury Trial

30.1 It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of said Premises, and any emergency statutory or any other statutory remedy.

31. Time.

31.1 Time is deemed by both parties to be of the essence of this Lease.

32. Business License. Tenant's obligations under this Lease are contingent upon it obtaining a business license to operate the restaurant, bar and nightclub. If Tenant is unable to obtain the business license within 60 days after the effective date of this Lease, then it shall have the right to terminate this Lease by delivering written notice to the Landlord before the expiration of such 60 day period, whereupon this Lease shall terminate and no party shall have any further rights, liabilities, or obligations under, arising out of or resulting from this Lease except for any provision which specifically survives the termination or expiration of this Lease. Landlord shall have no obligation to reimburse the tenant for any repairs, improvements, or other expenditures that it may make to or in connection with the Premises.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease effective the day and year first above written.

Landlord:
CHRISMOS CANE BAY, LLC

By: _____
Warren B. Mosler, Manager

Tenant:

By: _____

CLOSING STATEMENT

SELLER: JOE GERACE & VICTORIA VOOYS
PURCHASER: JAMES JORDAN
PROPERTY: PERSONALTY-PROPERTY AT CANE BAY BEACH BAR
St. Croix, VI
CLOSING DATE: JUNE 30, 2005

	A. Credits to Purchaser	B. Due Seller
Sales Price		\$30,000.00
Deposit	\$1,000.00	
Escrow for Pending Bills	\$3,000.00	
TOTALS	\$4,000.00	\$ 30,000.00
Column B Less Column A		(\$4,000.00)
BALANCE DUE SELLER FROM PURCHASER		\$26,000.00
Plus Deposit held by Nichols, Newman, Logan & D'Ermo		\$1,000.00
AMOUNT DUE TO SELLER AT CLOSING		\$27,000.00

Seller and Purchaser have read, checked and approved the figures set forth above and hereby authorize disbursement of the funds in accordance with this Closing Statement.

APPROVED FOR SELLER:

6593-4 hl
sm\files\server\uhans\FILE DOCS\Real Estate\Jordan\Cane Bay Beach Bar\CLOSING.doc

SELLER
APPROVED FOR PURCHASER:

APPROVED FOR PURCHASER



JG000461



SILICONE DISTRIBUTORS, INC.

July 8, 2005

3025 ESTATE FRIEDENSTAHL • CHRISTIANSTED • VI 00820-4312 • (340) 778-8550

Mr. Warren Mosler
C/o Chris Hanley
52 King Street
Christiansted, VI 00820

Re: Cane Bay Beach Bar

Rooftops proposes the following roof repairs over the kitchen and interior room (the outdoor dining bar and game area are not included).

- 1) Remove and dispose of deteriorated metal roofing.
- 2) Repair or modify underlying wood structure as necessary on a Time & Materials basis.
- 3) a) Install ¼" treated exterior grade plywood on low sloped section over kitchen.
b) Apply Vulkem urethane coating system over new wood.
c) Fabricate and install necessary flashings around duct work and exhaust fans.

Note: A plywood and coating system is proposed on this roof section because of the low pitch and numerous equipment penetrations.

- 4) Fabricate and install flashings to tie various adjoining roof sections into work included in this proposal.
- 5) Provide and install new Galvalume metal roofing and flashings on steeper pitched room over interior room.

Roof work as outlined above is warranted against leaking caused by defects in materials or workmanship provided by **Rooftops** for a period of three (3) years from date of job completion. This warranty is limited to repairs or replacement of materials as provided by **Rooftops** and as more fully described in warranty document(s).

(Continued on Page 2)



Proposal to: Mr. Warren Mosler
Re: Cane Bay Beach Bar

Dated: 07/08/05
Page 2 of 2

Total Labor and Materials for work as outlined above

\$9,800.00

Handwritten: \$5000 = #338
\$4800 =

Payment Terms: \$5,000.00 due prior to commencement of work
Balance due upon date of job completion
Any balance remaining due after that date may be assessed
interest at the rate of 1.5% per month for an annual rate of 18%.

The approximate additional cost to replace all the deteriorated roofing on the various roof sections over the dive shop, if contracted with work outlined above, is \$21,000.00.

Handwritten: NO!

Sincerely,

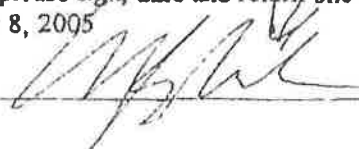


Richards J. Isherwood
President

Handwritten: Encl -
ok to give
Roof tops check for
\$5,000
Wam

For acceptance please sign, date and return one copy. This proposal is valid for ninety (90) days, or until October 8, 2005

ACCEPTED: _____



DATE: _____

Handwritten: 7/14/05

Beach Bar
Nov & Dec 03

VICTORIA J. VOOYS 09-01
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85018-4133

Pay to the
order of

FARChette Hanley Escrow

Date 12/19/03

357

91-170/1221 AZ
2243

Three thousand dollars \$ 3000.⁰⁰
Bank of America. ~~100~~ Dollars

ACH/R/T 182101700

For

Nov/Dec

Victoria J. Vooy

CANE BAY BEACH BAR
 PO BOX 2307
 KINGSHILL, USVI 00851

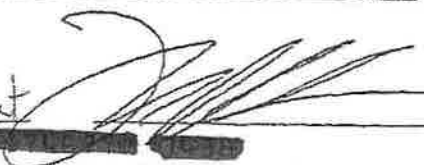
0438
 101-7285/2216

1/5/04 DATE

PAY TO THE ORDER OF FARCHEFFE ESCROW \$ 1500
Fifteen hundred and DOLLARS

First Bank
 Cane Bay Branch
 St. John, Virgin Islands

FOR CANE BAY JAN RENT



Jan 04

FEL 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0482
T01-7285/2216

DATE 2/1/04

PAY TO THE ORDER OF Frederick Amity ESCRO \$ 1500⁰⁰

Fifteen hundred dollars ^{XX} DOLLARS

1 First Bank
Orange Grove Branch
St. John, Virgin Islands

FOR FEL 04 'cane Bay [Signature]

⑆ [Redacted]

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0544

101-7285/2216

3/22/04 DATE

PAY TO THE
ORDER OF

Franchette Hanley

\$ 921⁰⁰

nine hundred Twenty one

DOLLARS

1 First Bank

Orange Grove Branch
St. John, Virgin Islands

FOR Rent March - Phoebe Bills



9

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0534
01-7265/2216

3/12/04 DATE

PAY TO THE ORDER OF FARCHELLE HAYLEY ESCROW \$ 1500

One thousand five hundred dollars ~~XX~~ DOLLARS

First Bank
Orange Grove Branch
St. John, Virgin Island

FOR March 2004 Victoria J. King

1: [REDACTED] [REDACTED] [REDACTED]

March 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

772
101-7285/2216

8/2/04
DATE

PAY TO THE ORDER OF Archette & Haulley Escrow \$ 2000 -
Two thousand DOLLARS

1 First Bank
Orange Grove Branch
St. Croix, Virgin Islands

FOR Victoria Keys

⑆ [REDACTED] [REDACTED] [REDACTED]

Approved

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1104

101-72852216

1-23-05

DATE

PAY TO THE
ORDER OF

FARCHELLE HANLY ESCROW

\$ 3000 -

THREE THOUSAND DOLLARS

DOLLARS



Security
Features
Check for
Details

1 First Bank

Orange Grove Branch
St. John, Virgin Islands

FOR

[Redacted MICR line]

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1135

101-7285/2216

2-7-05

DATE

PAY TO THE
ORDER OF

Fardelette Hanby Escrow

\$ 4500-

Fourty five and

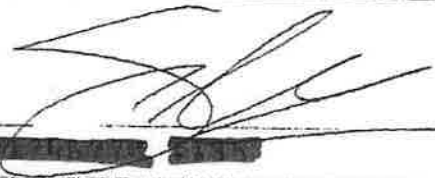
DOLLARS

1 First Bank

Orange Grove Branch
St. Croix, Virgin Islands

FOR

Rent



Microprint line with numbers and characters

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1231

101-7285/2216

3-15-05

DATE

PAY TO THE
ORDER OF

Farchette Harley Escrow

\$ 3000-

Three thousand

DOLLARS



Security
Features
Detailed on
Back.

1 First Bank

Orange Grove Branch
St. Croix, Virgin Island

FOR

[Redacted MICR line]

© 1998, 2001

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1289
101-7285/2218

DATE 4-19-05

PAY TO THE ORDER OF FARLETTE HANLEY ESCROW \$ 1500 -
one thousand five hundred and 00/100

1 First Bank
Orange Grove Branch
St. Croix, Virgin Islands

CASH April 18, 2005

Signature: *[Handwritten Signature]*

Security Features:

see

4.14.05

12:45⁰

[Handwritten mark]

CANE BAY BEACH BAR
PO BOX 2807
KINGSHILL
ST. CROIX, VI 00851

1320

101-7285/2216

5/3/05

DATE

PAY TO THE
ORDER OF

F & H S crew

\$ 1500 -

one thousand five hundred and

DOLLARS



Security
Features
Detailed on
Back

1 First Bank

George Town, British
St. Croix, Virgin Island

FOR

MAY Rent

[Redacted MICR line]

© 2001

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1377

101-7285/2218

6.9.05

DATE

PAY TO THE
ORDER OF

Fanchette & Hayley Esquivel \$ 1500 -

One thousand, five hundred dollars

DOLLARS

Security
Features
www.frb.com

1 First Bank

Orange Grove Branch
St. Croix, Virgin Islands

FOR

June

[Signature]

0 101-7285 2218

Name	Date	Bates No.	Hours	Rate	Amount	Description
AA Lock and Key	10/16/2003	ig000667			\$70.00	Locks
Princesse Hardware	11/20/2003	ig000563			\$9.33	Toilet Float, Cobra Coils
Barsotti Refrigeration	2/4/2004	ig000646			\$75.00	Work on Ice machine
Barsotti Refrigeration	2/9/2004	ig000647			\$67.50	Clean ice machine
Gallows Bay Hardware	2/22/2004	ig000582			\$362.88	Round Padlock
Mikes Electronics	4/8/2004	ig000569			\$24.95	RF MOD RCA
Home Depot	5/6/2004	ig000559			\$38.00	
Standard Equip. Co	5/7/2004	ig000620			\$63.72	Restaurant Equipment
Standard Equip. Co	5/7/2004	ig000619			\$96.51	Platter
Rob Schmauder	5/15/2004	ig000641			\$174.00	Flo Air Vent
Tropical Shipping	5/20/2004	ig000642			\$259.00	Verdelation Fan
American Metal	6/4/2004	ig000638			\$1,650.00	Installation of Hood
Tropical Shipping	6/14/2004	ig000633			\$433.70	
Tropical Shipping	6/15/2004	ig000634			\$269.70	
Tropical Shipping	6/15/2004	ig000635			\$164.00	
Dealers Industrial Equip	6/17/2004	ig000631/32			\$75.00	3/4 HP 1800 RPM Marathon
Paint Locker	6/17/2004	ig000605			\$42.62	Paint***
Princesse Hardware	6/17/2004	ig000564			\$16.40	Toilet supplies
Dealers Industrial Equip	6/18/2004	ig000640			\$75.00	
UDL Lumber	6/18/2004	ig000575			\$15.30	Red Bricks
Princesse Hardware	7/2/2004	ig000567			\$41.20	Faucet
Princesse Hardware	7/2/2004	ig000566			\$49.50	Saw Blade
Tropical Supply	7/2/2004	ig000544			\$7.65	Brass Coupling
Browne's Maintenance	7/7/2004	ig000622			\$70.00	Repairs
Browne's Maintenance	7/7/2004	ig000623			\$90.00	Repairs
Gallows Bay Hardware	8/13/2004	ig000552			\$80.47	
Gailows Bay Hardware	8/14/2004	ig000583			\$111.80	Bulbs
Receipt-backward	8/14/2004	ig000624			\$375.00	*****
Kmart	8/15/2004	ig000550			\$12.00	General Merchandise
Princesse Hardware	8/16/2004	ig000565			\$30.00	Locks

EXHIBIT

JA-559

tabular

Quality Electric	8/17/2004	ig000599		\$183.20	PVC supplies
Paint Locker	8/17/2004	ig000606		\$64.21	Stripper
Gallows Bay Hardware	8/17/2004	ig000584		\$75.98	Lampholder and supplies
Gallows Bay Hardware	8/17/2004	ig000585		\$47.45	Floor Leveler, Rubber float
Paint Locker	8/19/2004	ig000607		\$166.10	latex and chipper brush
Gallows Bay Hardware	8/20/2004	ig000586		\$15.98	Lawnmower parts
Princesse Hardware	8/20/2004	ig000568		\$7.50	Wire
UDL Lumber	8/20/2004	ig000574		\$11.34	2x4 Lumber
Gallows Bay Hardware	8/21/2004	ig000587		\$232.16	Tires and supplies
Gallows Bay Hardware	8/21/2004	ig000588		\$12.92	Brass nipple
Caribe Home Center	8/22/2004	ig000604		\$213.15	Paint
Caribe Home Center	8/22/2004	ig000602		\$254.36	Multi purpose Hardware and Electrical
Gallows Bay Hardware	8/23/2004	ig000589		\$67.36	Photocell, screws
Paint Locker	8/24/2004	ig000610		\$32.90	Gloss and Tray Liners
Gallows Bay Hardware	8/24/2004	ig000590		\$126.83	Pedestal Fan and accessories
Paint Locker	8/25/2004	ig000608		\$353.42	Base and supplies
UDL Lumber	8/25/2004	ig000573		\$161.06	Lumber (Various)
Reliable Rental	8/25/2004	ig000150		\$75.00	Airless Paint Sprayer
Paint Locker	8/26/2004	ig000611		\$12.15	Tray Liners
Paint Locker	8/26/2004	ig000612		\$109.50	Clear Base
Paint Locker	8/26/2004	ig000609		\$71.25	Wood Finish
Gallows Bay Hardware	8/26/2004	ig000591		\$55.12	Screws, Grit Pak
UDL Lumber	8/27/2004	ig000572		\$157.95	Lumber (Various)
Gallows Bay Hardware	8/28/2004	ig000592		\$22.93	Screws, bolts,
Caribe Home Center	8/28/2004	ig000603		\$59.78	Electrical Floodlights
Gallows Bay Hardware	8/28/2004	ig000557		\$12.99	
Gallows Bay Hardware	8/29/2004	ig000593		\$86.04	Nuts and Bolts
St. Croix Trading	8/31/2004	ig000600		\$126.00	Lumber
Paint Locker	9/2/2004	ig000613		\$20.40	Wood Finish
Gallows Bay Hardware	9/3/2004	ig000594		\$422.36	Black Grill
UDL Lumber	9/4/2004	ig000580		\$137.29	Lumber (Various)
Gallows Bay Hardware	9/6/2004	ig000554		\$10.47	Utility Hinge
Gallows Bay Hardware	9/12/2004	ig000651		\$46.20	Screws
UDL Lumber	9/14/2004	ig000579		\$178.93	Lumber (Various)
Gallows Bay Hardware	9/15/2004	ig000652		\$33.04	Screws
Hand Written Note	9/1/2004	ig000617		\$287.00	New Register & Sharpening Stone

Cost U Less	9/16/2004	jg000617		\$659.99	Generator
UDL Lumber	9/19/2004	jg000578		\$167.80	Lumber - T - 111
Express Builders Supply	9/10/2004	jg000545		\$191.80	Plywood
Caribe Home Center	9/14/2004	jg000601		\$74.10	Hardware, Bolts and Moulding
Dave Holcome	9/16/2011	jg000548		\$375.00	Redid Bar Top
Tool Box	9/11/2004	jg000546		\$16.05	Supplies
Walsh Metal Works	9/18/2004	jg000570		\$60.00	Metal
Ferrel Trucking	9/20/2004	jg000629/645		\$125.00	2 Appliances
Tropical Shipping	9/20/2004	jg000630		\$573.20	
Excise Tax	9/20/2004	jg000636		\$88.82	
Ventilation Direc	9/20/2004	jg000637		\$2,465.56	Exhaust Hood & Accessories
Paint Locker	9/20/2004	jg000614		\$27.90	Primer
Paint Locker	9/20/2004	jg000615		\$183.68	Paint
Paint Locker	9/21/2004	jg000616		\$17.11	Brushes
Raycon Mechanical	9/22/2004	jg000649		\$4,325.00	Quote Exhaust fan- Paid\$2500
Gallows Bay Hardware	9/22/2004	jg000596		\$77.21	Galvanize, Candelabra Base
Caribe Home Center	9/23/2004	jg000655		\$15.00	Round Moulding
Raycon Mechanical	9/23/2004	jg000648		\$936.55	
Walsh Metal Works	9/24/2004	jg000571		\$46.00	Epoxy
Gallows Bay Hardware	9/28/2004	jg000595		\$66.76	Nuts and Bolts
Tool Box	9/29/2004	jg000546		\$7.80	T - Rods
Tropical Supply	9/24/2004	jg000125		\$8.05	Drain Opener
Gallows Bay Hardware	9/25/2004	jg00054		\$49.95	
UDL Lumber	9/27/2004	jg000577		\$35.00	Lumber
Airs R Us	10/2/2004	jg000644		\$385.00	Unit
Gallows Bay Hardware	10/10/2004	jg000553		\$51.02	Nuts and Bolts
UDL Lumber	10/16/2004	jg000576		\$79.00	Cement & Putty Knife
Tropical Supply	10/2/2004	jg000124		\$40.50	Gas Flex Connector
Gallows Bay Hardware	11/8/2004	jg000598		\$43.12	Screws, bolts, and padlock
Gallows Bay Hardware	11/21/2004	jg000597		\$29.49	Cleaner, and PVC cement
Mike Belchauff	11/29/2004	jg000560		\$265.00	Security Brackets
Byassee Equip	12/8/2004	jg000643		\$166.18	Thermostat
The Tool Box	1/7/2005	jg000650		\$17.50	Bath Lockset

Hood Cleaning	1/15/2005	ig000624			\$225.00	
Budget Rest. Supply	1/12/2005	ig000625			\$903.00	Charbroiler
Tropical Supply	1/19/2005	ig000626/627			\$96.60	
Excise Tax	1/19/2005	ig000628			\$36.40	Gas Grill
Tool Box	1/21/2005	ig000547			\$18.00	Supplies
Mike Belchauff	1/23/2005	ig000665/666			\$1,515.42	Pd. \$1000
Gallows Bay Hardware	1/30/2005	ig000618			\$79.96	Trash Can
Gallows Bay Hardware	2/2/2005	ig000558			\$25.77	Shelves, Adapter, & Cable
Princesse Hardware	2/10/2005	ig000659			\$25.65	PVC supplies and Valves
Tropical Supply	2/11/2005	ig000663			\$112.18	Faucet
Tropical Supply	2/11/2005	ig000661			\$35.19	PVC supplies
Tropical Supply	2/12/2005	ig000662			\$2.78	Nipples
Caribe Home Center	2/12/2005	ig000561			\$6.60	Washers
Hood Cleaning	2/13/2005	ig000624			\$155.00	
Cost U Less	2/13/2005	ig000617			\$249.75	Chairs
Cost U Less	no date	ig000617			\$79.50	Chairs
Gallows Bay Hardware	2/18/2005	ig000653			\$18.63	
UDL Lumber	2/19/2005	ig000657			\$187.23	Lumber
Gallows Bay Hardware	2/21/2005	ig000654			\$38.98	
Walsh Metal Works	2/21/2005	ig000565			\$33.00	Metals and Piping
Gallows Bay Hardware	2/21/2005	ig000551			\$146.30	Shingles and Screws
Kmart	no date	ig000555			\$25.62	
Gallows Bay Hardware	no date	ig000556			\$46.90	
UDL Lumber	2/25/2005	ig000658			\$23.97	Lumber
Gallows Bay Hardware	2/23/2005	ig000664			\$50.00	Locksmith Labor
Hood Cleaning	3/12/2005	ig000624			\$80.00	
Hood Cleaning	4/1/2005	ig000624			\$75.00	
Tropical Shipping	4/18/2005	ig000639			\$36.00	
Hood Cleaning	5/1/2005	ig000624			\$75.00	
Princesse Hardware	6/4/2005	ig000660			\$34.95	Locks

Hand Written Note

no date

ig000624

\$12,279.00 Unknown



GRIFFIN ELECTRIC
 P.O. Box 24407
 St. Croix, U.S. Virgin Islands
 Christiansted VI 00824-4407
 340-772-6049

JOB INVOICE
 0177

CUSTOMER ORDER NO.	DATE ORDERED 9/1/25
WORK TAKEN BY	DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.

BILL TO <i>Jim Jordan</i>	PHONE
ADDRESS	MECHANIC
CITY	HELPER
JOB NAME AND LOCATION <i>Cain Bay</i>	<input type="checkbox"/> DAY WORK
DESCRIPTION OF WORK <i>worked on new panel for compressor area. also wired walk in cooler lights & fan</i>	<input type="checkbox"/> CONTRACT
	<input type="checkbox"/> EXTRA

QTY.	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
1	2 circuit panel		62.75
1	30 Amp Breaker		20.00
1	20 Amp Breaker		10.00
6	1/2" cable		8.00
2	straight 1/2" Adapters		14.00
1	80 Amp Breaker		60.00

82/10 3/3
86.8

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
5	MECHANICS • 60.	300.00	174.75
	HELPERS •		TOTAL LABOR 300.00
I hereby acknowledge the satisfactory completion of the above described work.		TOTAL LABOR	TAX 38.50
SIGNATURE	DATE COMPLETED	TOTAL	474.75

total 860.25





GRIFFJN ELECTRIC
 P.O. Box 24407
 St. Croix, U.S. Virgin Islands
 Christiansted VI 00824-4407
340-772-6049

JOB INVOICE
0140

CUSTOMERS ORDER NO.	DATE ORDERED 8/2/05
ORDER TAKEN BY	DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.

BILL TO <i>Jim Jordan</i>	PHONE
ADDRESS	MECHANIC
CITY	HELPER
JOB NAME AND LOCATION <i>Cain bay Beach bar</i>	<input type="checkbox"/> DAY WORK
DESCRIPTION OF WORK	<input type="checkbox"/> CONTRACT
	<input type="checkbox"/> EXTRA

QUANT.	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
8/5	4 hrs - ran conduit for the bathrooms, run and hooked up telephone to office and kitchen		
8/6	2 hrs - pulled wire to bathroom and hooked up to panel, installed light under cabinet in bar, installed GFI's under bar.		
4	GFI's		80.00
1	wire mold box		7.00
2	Telephone Jacks		6.50

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
6	MECHANICS	50. 300.00	93.50
	HELPERS	0	TOTAL LABOR 300.00
I hereby acknowledge the satisfactory completion of the above described work.		TOTAL LABOR	TAX
SIGNATURE	DATE COMPLETED	TOTAL	393.50

~~XIPDI~~ 7.15.05
JOB INVOICE

GRIFFIN ELECTRIC

P.O. Box 24407
St. Croix, U.S. Virgin Islands
Christiansted VI 00824-4407

340-772-6049

0124



CUSTOMER'S ORDER NO.	DATE ORDERED 7/12/05
ORDER TAKEN BY	DATE PROCESSED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.

BILL TO <i>Jim Jordan</i>	PHONE
ADDRESS	MECHANIC
CITY	HELPER
JOB NAME AND LOCATION <i>Cape Bay Beach Bar</i>	<input type="checkbox"/> DAY WORK
DESCRIPTION OF WORK:	<input type="checkbox"/> CONTRACT
	<input type="checkbox"/> ECTMA

QUANT.	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
120'	#2 Wire		180.00
> 60'	#4 wire		60.00
1	6x6x4 PVC Box		25.00
50'	PVC conduit 1 1/2"		45.00
2	1 1/2" male Adapters		2.00
3	1 1/2" Sweeps		8.00
4	1 1/2" Coupling		4.00
2	1 1/2" LBS		18.00
12	1 1/2" Clamps		8.00
6	1/2" LBS		22.00
6	Blank covers		4.00
6	1/2" T's		28.00
2	PVC Pull els		10.00
100"	1/2" Clamps		23.00
1	Can of Glue		6.00
200'	1/2" PVC		60.00

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
	MECHANICS		<i>continue</i>
	HELPERS		TOTAL LABOR
		<i>2340</i>	<i>Page 1</i>
I hereby acknowledge the satisfactory completion of the above described work.		TOTAL LABOR	TAX
SIGNATURE	DATE COMPLETED	TOTAL	



GRIFFIN ELECTRIC
 P.O. Box 24407
 St. Croix, U.S. Virgin Islands
 Christiansted VI 00824-4407
 340-772-6049

JOB INVOICE
 0125

CUSTOMER'S ORDER NO.		DATE ORDERED
ORDER TAKEN BY		DATE PROMISED <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
BILL TO		PHONE
ADDRESS		MECHANIC
CITY		HELPER
JOB NAME AND LOCATION		<input type="checkbox"/> DAY WORK <input type="checkbox"/> CONTRACT <input type="checkbox"/> EXTRA
DESCRIPTION OF WORK		

Page 2

QUANT.	DESCRIPTION OF MATERIAL USED	PRICE	AMOUNT
3	1/2" hole round weatherproof boxes		12.00
5	6' track		160.00
5	4' track		110.00
3	4x4 W.P. Boxes		26.00
3	4x4 W.P. Covers		22.00
10	2x4 FS Boxes		80.00
10	2x4 Blank Covers		30.00
1	30 circuit panel		100.00
1	30 circuit cover		30.00
7	Small oval Bulkhead lights		180.00
3	Double mini Flood lights		100.00
12	60 watt light bulbs		8.00
10	conduit feed track ends		75.00
3 rolls	#12 wire		135.00
		7/14/05	1581.00

HOURS	LABOR	AMOUNT	TOTAL MATERIALS
23	MECHANICS @ 50	1150.00	1581.00
4	HELPERS @ 25	100.00	TOTAL LABOR 1250.00
I hereby acknowledge the satisfactory completion of the above described work.		TOTAL LABOR 1250.00	TAX
SIGNATURE		DATE COMPLETED	TOTAL 2831.00

Make check to William Griffin Jr.

Cane Bay

9/7/05

Elizabeth,

This is ^{the} last Electric
billing for the Bar.

I paid it directly
so please just ^{make} the
check out to me.

Everything's going well.

Thanks

Jim Jordan

868.25
CK# 399

EXHIBIT
32

DEPOSITION
EXHIBIT
4
Hogan

NICHOLS NEWMAN
LOGAN & D'ERAMO, PC TRUST ACCOUNT
1131 KING STREET
CHRISTIANSTED, VI 00820

THE BANK OF NOVA SCOTIA
CHRISTIANSTED, VI
10/3/2005

13455

10/3/2005

PAY TO THE ORDER OF Joseph Gerace And Victoria Vooyo

\$ 3,000.00

Three Thousand Only

DOLLARS

Release of Escrowed Funds
Jordan=Cane Bay Beach Bar



MEMO Release Escrow Funds #6593-4 (HL FF)

⑈013455⑈ -⑈021606069⑈ 058⑈45094218⑈

NICHOLS NEWMAN LOGAN & D'ERAMO, PC TRUST ACCOUNT

Joseph Gerace And Victoria Vooyo
RefundEscrow/Jordan=Cane Bay BB

10/3/2005

13455

3,000.00

BNS Trust Acct Release Escrow Funds #6593-4 (HL FF)

3,000.00

NICHOLS NEWMAN LOGAN & D'ERAMO, PC TRUST ACCOUNT

Joseph Gerace And Victoria Vooyo
RefundEscrow/Jordan=Cane Bay BB

10/3/2005

13455

3,000.00

PAYMENT
RECORD



BNS Trust Acct Release Escrow Funds #6593-4 (HL FF)

3,000.00

JG000482

VICTORIA J. VOOYS 09-01
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85018-4133

355

Date 10/7/03

91-170/1221 AZ
2248

Pay to the
order of

Charlotte & Harvey Brown \$1500.00

one thousand five hundred and

Dollars



Bank of America

Bank of America.

ACH R/T 12/01/00

For

Game Day Grade Ser'03 Victoria J. Vooy

EXHIBIT
45

✓
Beach
New F Per On

VICTORIA J. VOORYS
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85018-4133

09-01

357

91-170/1221 AZ
240

Date 12/19/03

Pay to the
order of

Fredrick Hawley Escrow

Bank of America

ACR RT 12210700



101 Dollars

\$ 3000.00

For

[Redacted]

Victoria J. Voorys

AP

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0438

1/5/04 DATE 101-7286/2216

PAY TO THE ORDER OF Fardette Escrow \$ 1500
fifteen hundred and DOLLARS

First Bank
Orange Grove Branch
St. John, Virgin Islands

FOR CANE BAY BAR

1: [REDACTED]

Jan 04

FEL 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0482
101-7285/2216

2/1/04 DATE

PAY TO THE ORDER OF Frederick Amity ESCRO \$ 750.00
Fifteen hundred dollars ^{XX}/₁₀₀ DOLLARS

1 First Bank
Orange Grove Station
St. John, Virgin Islands

FOR FEL 04 'caveBry [Signature]

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0544

101-7285/2216

3/22/04 DATE

PAY TO THE ORDER OF

Farchette Hanley

\$ 921⁰⁰

nine hundred Twenty one

DOLLARS

1 First Bank

George Town, Bimini
St. John, Virgin Islands

FOR Rent March - Plumbers Bills



9

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0534
91-7285/2216

3/12/04 DATE

PAY TO THE ORDER OF Fanchette Hayley Escrow \$ 1500

One thousand five hundred dollars XX 1500 DOLLARS

First Bank
Orange Grove Branch
St. John, Virgin Island

FOR March 2004 Victoria J. [Signature]

1: [REDACTED]

March 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

772
101-7285/2216

8/2/04
DATE

PAY TO THE ORDER OF Archette & Hailey Escrow \$ 2000 -
Two thousand DOLLARS

1 First Bank
Orange Grove Branch
St. Croix, Virgin Island

PO# Victoria Keys

██████████ ██████████ ██████████

Approved
8/2/04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1104

101-7285/2215

123-05

DATE

PAY TO THE
ORDER OF

FARCHELLE HARLY ESCROW

\$ 3000 -

three thousand and no/100

DOLLARS



1 First Bank

Orange Lake Branch
St. Croix, Virgin Islands

FOR



CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1135
101-7285/2216

2-7-05

DATE

PAY TO THE
ORDER OF

Fardette Hanby Escrow

\$ 4500-

fourty five and

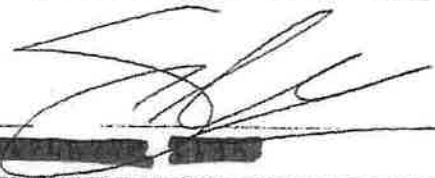
DOLLARS

1 First Bank

Omaha Grove Branch
St. Croix, Virgin Islands

FOR

Rent



██████████ ██████████ ██████████

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1231

101-7285/2216

3-15-05

DATE

PAY TO THE
ORDER OF:

Farchette Harley Escrow

\$ 3000-

Three thousand

DOLLARS



Security Features
Details on
Back

1 First Bank

Orange Grove Branch
St. Croix, Virgin Islands

FOR



© 2005/100 200

CANE BAY BEACH BAR
 PO BOX 2307
 KINGSHILL
 ST. CROIX, VI 00851

1289
 101-7285/2218

9-19-05
 DATE

PAY TO THE ORDER OF FARLETTE HANLEY ESCROW \$ 1500-
one thousand five hundred and 00/100

First Bank
 Orange Grove Branch
 St. Croix, Virgin Island

ISS: April 08 Rent

Signature: [Handwritten Signature]

ice

4.14.05

12:45⁰

[Handwritten mark]

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1320

101-7285/2216

5/3/05
DATE

PAY TO THE
ORDER OF

F & H ESCROW

\$ 1500 -

ONE THOUSAND FIVE HUNDRED AND

DOLLARS

7

SEVEN
THOUSAND
AND
NO/100

1 First Bank

Livingstone Avenue
St. Croix, Virgin Islands

FOR

MAY REEF

MP

000114020001

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1377

101-7285/2218

6.9.05 DATE

PAY TO THE
ORDER OF

Farchette & Hawley Esq. \$ 1500 -

One thousand, five hundred dollars DOLLARS

1 First Bank
Orange Grove Branch
St. Croix, Virgin Islands

POR June

Michael Wang

Bambus, Inc
 (Cane Bay Beach Bar)

GROSS RECEIPTS

	2004	2005
JAN	18,338. ⁶²	22,490
FEB	17,617. ²⁶	21,120
MAR	13,523. ⁷⁵	25,347
APR	15,864. ⁷⁸	15,040
MAY	12,627. ⁵²	8,421
JUN	15,415. ⁰²	0
JUL	15,116. ⁶⁹	
AUG	10,383. ²¹	
SEP	3,634. ³³ (fire)	
OCT	11,450. ⁵⁰	
NOV	16,525. ⁰⁵	
DEC	18,046. ⁸⁵	
	\$168,584	\$92,418

← Public Defamation started



2003 Rent

OCT (Duplicate + Check on Order) Cleared 10/20/03

VICTORIA J. VOOYS 09-01
4411 N. 40TH ST. APT. 33
PHOENIX, AZ 85018-4133

CHECK HERE IF TAX DEDUCTIBLE ITEM

\$ 355

10/17/03

Bank of America

For added security, the account number no longer appears on this copy.

0355 NOT NEGOTIABLE

NOV
DEC (Duplicate + Real Check on order) Cleared 12/29

VICTORIA J. VOOYS 09-01
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85015-4133

CHECK HERE IF TAX DEDUCTIBLE ITEM

\$ 357

12/19/03

Bank of America

For added security, the account number no longer appears on this copy.

0357 NOT NEGOTIABLE

EXHIBIT
47

JG0035

(126)



VICTORIA J. VOOYS
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85018-4133

355

91-1701221 AZ
2243

Date 10/7/03

Pay to the
order of

Farchette & Haley - Escrow \$1,500.⁰⁰
One thousand five hundred and 00/100 Dollars

Bank of America

TELLER ST. CROIX
ST. CROIX
U.S. VIRGIN ISLANDS

ACH/RVT 12/01/03

For

Gene By Grand Escrow *Victoria Vooy*

10/20/03 @ 9:02 415

4212-750-1

10/20/03
LA/RS KPC
1229-6416-6

10/20/03 23:15 01 P01

OF Deposits and Other Accounts
BANK OF ST. CROIX
BANQUE DE ST. CROIX
POPULAR BANK OF ST. CROIX
ST. CROIX, U.S. VIRGIN ISLANDS
755-5500
755-5500
755-5500
Pay To The Order of
BANK OF ST. CROIX
Escrow
E&H ESCROW S. ACCOUNT

Capture Date: 20031020 Sequence #: 3550005715
JG000093

Capture Date: 20031226 Sequence #: 3550038701

12262003
 12262015
 EMT: 1024 TR: 1024 EX: 11
 12-25-03 13:57:21 PM
 BANK OF ST. CROIX
 BANCO POPULAR
 WITH
 PAY TO THE ORDER OF
 BANK OF ST. CROIX
 FOR DEPOSIT ONLY
 F&H ESCROW ACCOUNT
 DEPOSIT TO THE ACCOUNT

VICTORIA J. VOYTS
 4411 N. 40TH ST. APT. 44
 PHOENIX, AZ 85018-4133
 09-01

Pay to the order of
 \$ 2000.00
 Two thousand dollars
 Date 12/19/03
 357

Bank of America
 12101706
 For Mr/Car
 Signature: *Victoria J. Voyts*



2004 Rent

JAN

written 1/5 cleared 1/7

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0438
101-7285/2218

BANK OF ST. CROIX
JAN 07 2004
TELEPHONE NUMBER 3
ST. CROIX
U.S. VIRGIN ISLANDS

DATE 1/5/04

FOR FORTY FIVE HUNDRED AND NO/100 DOLLARS \$ 450.00

FOR Cane Bay Jan Rent

First Bank
Cane Bay Branch
St. Croix, Virgin Islands

FEB

written 2/1 cleared 2/5

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0482
101-7285/2218

BANK OF ST. CROIX
FEB 05 2004
TELEPHONE NUMBER 4
ST. CROIX
U.S. VIRGIN ISLANDS

DATE 2/1/04

FOR FORTY FIVE HUNDRED AND NO/100 DOLLARS \$ 450.00

FOR Feb 04 Cane Bay

First Bank
Cane Bay Branch
St. Croix, Virgin Islands

MAR

written 3/12 cleared 4/7

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0534
101-7285/2218

BANK OF ST. CROIX
APR 07 2004
TELEPHONE NUMBER 3
ST. CROIX
U.S. VIRGIN ISLANDS

DATE 3/12/04

FOR ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS \$ 1500.00

FOR March 2004

First Bank
Cane Bay Branch
St. Croix, Virgin Islands

J60036

OK'd by Hanley
APRIL (- 1/2 Plumber Bills) written 3/27 cleared 3/29

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0544
101-7285/2218

DATE: 3/29/04
TELEPHONE NUMBER: 101-62-9110

PAY TO THE ORDER OF: Fanchette Hanley
NINE HUNDRED TWENTY DOLLARS \$ 921.00

FOR: Rest industry - Plumber Bills

First Bank
Orange Water Branch
St. Croix, Virgin Islands

Signature: [Handwritten Signature]

MAY & JUNE written 6/7 cleared 6/8

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

657
101-7285/2218

DATE: 6/7/04

PAY TO THE ORDER OF: Fanchette Hanley PSC000
THREE THOUSAND DOLLARS \$ 3000.00

FOR: May & June

Signature: [Handwritten Signature]

JG0037

3.

(200)

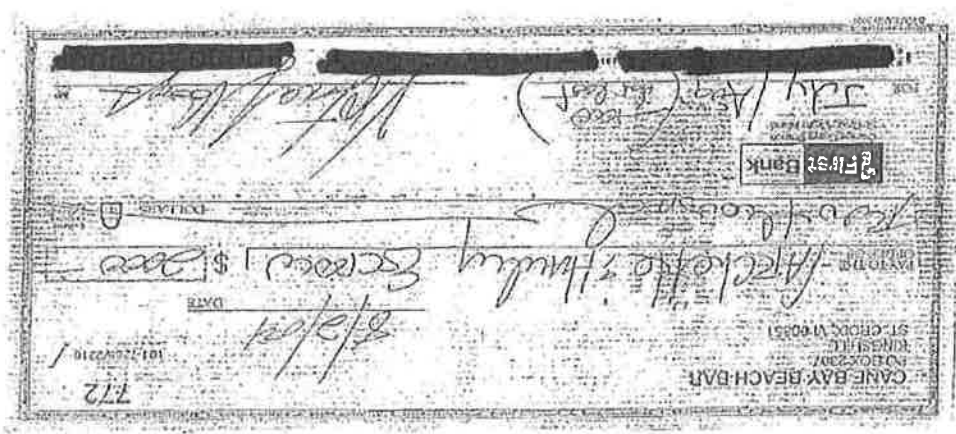
(486)

4.

JG0038

(check on order)

SEPT & OCT written 1.23.05 cleared 1.26.05



OK'd by Hanley
 \$1500 & 500 (- \$1000 for roof repairs)
 JULY & AUG written 8/2 cleared 8/9

For Sept/Oct 2004

1104
101-722672216

CAME BAY BEACH BAR
PO BOX 2307
KINGS HILL
ST. CROIX, VI 00061

DATE: 10/23/05

AMOUNT: \$ 3000

PAY TO THE ORDER OF: *Three thousand*

First Bank
One of the Banks of St. Croix, Virgin Islands

Pay to the Order Of
BANK OF ST. CROIX
For Deposit Only

For Deposit to the Account of

Bank of St. Croix
St. Croix
Virgin Islands

DEPOSIT SLIP
01/26/05
BANK OF ST. CROIX
021502016787

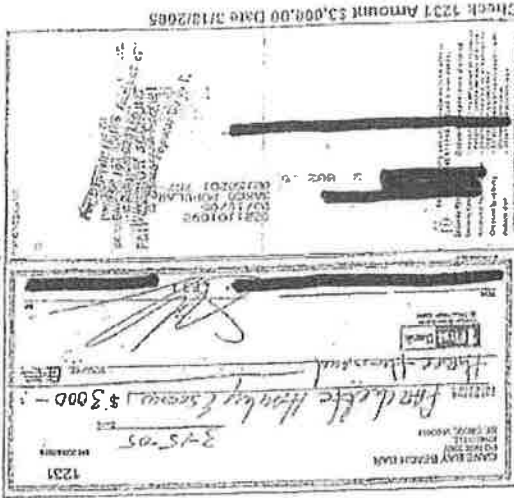
Seq# 760155, Cl# 1104, Acct# 7241174677, Amt. \$3,000.00

JG000087

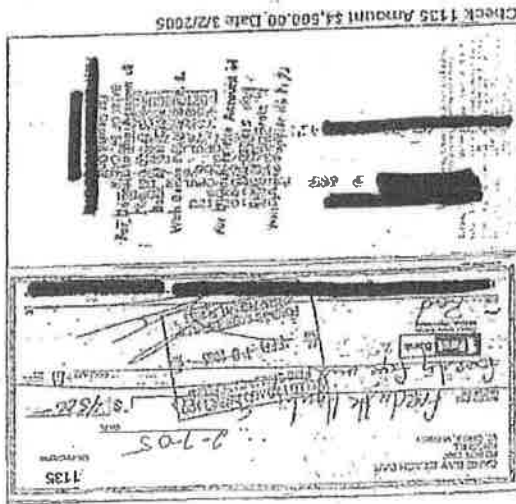
(S.M.)

S.

J60039



FEB & MAR
Written 3-15 Cleared 3-18-05



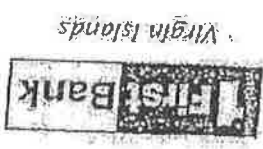
Bounced 2-10-05
Cleared 3-2-05

NOV. DEC. JAN
Written 2-7-05

2005

JG000085

April May 2005



Check 1299 Amount \$1,500.00 Date 4/18/2005

Pay to the order of: [Redacted]

For Deposit Only
Do Not Write on This Check
No Other Accounts
No Cash
No Debit

1299

4-19-05

First Bank

Check 1320 Amount \$1,500.00 Date 5/6/2005

Pay to the order of: [Redacted]

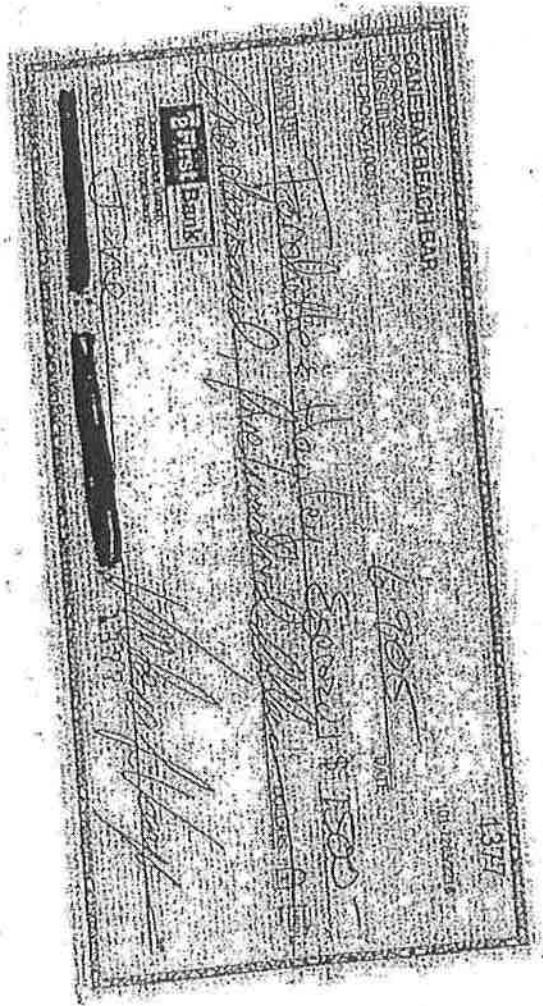
For Deposit Only
Do Not Write on This Check
No Other Accounts
No Cash
No Debit

1320

5/6/05

First Bank

Check 1316 Amount \$397.20 Date 5/22/05



June 2005

RECEIPT

RECEIVED FROM: Chris Long Beach Bar No. 240808 \$1500.00

fifteen hundred & no/100 DOLLARS

FOR check # 1377

ACCOUNT	1500.00	CASH	<input checked="" type="checkbox"/>
PAYMENTS		DEBIT	<input checked="" type="checkbox"/>
BAL. OUR			

DATE: 11/13/97 TIME: 1:30 BY: [Signature]

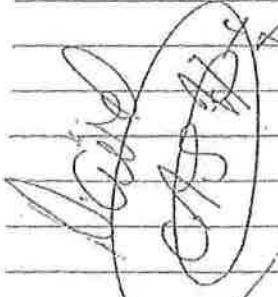
Cane Bay Beach Bar

AA ACCURATE
Keying
Lock & ~~Service~~

P.O. Box 25223
Gallows Bay, St. Croix
USVI-00824-5223

Kate ~~Miller~~ *Owner*

INVOICE No 0918

Description	Date
Service Call to install 4 Key'd Alike Cam locks on Urtio machine	16-Oct-03
S/C	30.00
Labor -	10.00
4 x 7.50 FT Materials	30.00
	
Sub Total	
Tax	
TOTAL DUE	70.00

Please pay from this invoice
No statement rendered.

Thank You



JG000667

Princesse Hardware, Inc.



17 La Grande Princesse

P.O. Box 7215

Sunny Isle, St. Croix, U.S.V.I. 00823

17243

Tel: (340) 713-0377

Fax: (340) 713-1377

CUSTOMER'S ORDER NO.		PHONE		DATE															
				11-20-07															
NAME																			
ADDRESS																			
<table border="1"> <tr> <td>PAID BY</td> <td>CASH</td> <td>C.O.D.</td> <td>CHARGE</td> <td>ON ACCT.</td> <td>MOSE. RET'D.</td> <td>PAID OUT</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>						PAID BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT							
PAID BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT													
QTY.	DESCRIPTION	PRICE	AMOUNT																
1	6" Baycock	6.99	6.99																
1	Toilet Flont	.75	.75																
1	Box Cobas	1.99	1.99																
1	1/4" ball pipe	1.99	1.99																
			9.73																
			TAX																
RECEIVED BY			TOTAL	\$9.73															

All claims and returned goods must be accompanied by this bill.

Thank You

PRINTED BY AHS PRINTING 773 8070

JG000563

JA - 595

Barsotti ReTrige on
 P.O. Box 25955
 CHRISTIANSTED, VI 00824

HVAC SERVICE ORDER INVOICE

4045

Phone/Fax (340) 713-8999

BILL TO Cave Boy Beach Bar.

THIS WORK IS TO BE
 C.O.D. CHARGE NO CHARGE

MAKE	NAME
MODEL	MODEL
SERIAL NUMBER	SERIAL NUMBER

NAME	
STREET	
CITY	DATE <u>2-4-04</u>
PHONE	CALL BEFORE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
TECHNICIAN	AUTHORIZED BY

ENVIRONMENTAL	RECYCLED	RECYCLED	RECYCLED
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL \$			

CONDENSING UNIT	COND'S/ATE DRAINS
LEVELLED	CLEANED MAIN DRAIN
CLEANED COIL	REPAIRED MAIN DRAIN
CHECKED CAPTURE	CLEANED PAN DRAIN
REPAIRED LEAK IN COIL	REPAIRED PAN DRAIN
REPAIRED LEAK IN COPPER	FURN OR FAN COIL
# REF.	REPLACED DELT
CHECKED MOTOR	ADJUSTED DELT
CHANGED MOTOR	REPLACED PULLEY
REPLACED BELT	ADJUSTED PULLEY
ADJUSTED BELT	CLEANED BLOWER
REPLACED CONTACTOR	REPLACED BEARINGS
REPL. START RELAY	OILED MOTOR
REPL. START CONTACTOR	OILED BEARINGS
REPLACED RUN CAPTURE	CLEANED HEAT EXCH.
CLEANED OR ADJ. CONTACTOR	REPLACED HEAT EXCH.
REPAIRED WINDING	CLEANED OR ADJ. PILOT
REPLACED FUSE	REPLACED THERMOCOUPLE
REPLACED COMPRESSOR	REPAIRED VALVE

QTY	MATERIALS & SERVICES	UNIT PRICE	AMOUNT	DESCRIPTION OF WORK PERFORMED
	REFRIGERANT R-134A LBS.			Work on Ice Machine found Sensor out of adj. Re adj. also level Base to help water Drain.
	FILTERS x x			
	FILTERS x x			
	BELTS			
TOTAL MATERIALS				

EVAPORATOR COIL	REPLACED VALVE
REPLACED EXP. VALVE	CLEANED BURNERS
ADJUSTED EXP. VALVE	DUCT
REPLACED CAPTURE	REPAIRED
CLEANED CAPTURE	ADJUSTED
REPAIRED COIL LEAK	THEMOSTAT
REPAIRED COPPER CORN.	REPLACED
CLEANED COIL	ADJUSTED
LEVELLED COIL	
ELECT. HTR.	CLG TOWER
REPLACED LINK	CLEANED
REPLACED KLIX	
REPAIRED WIRE	PUMP(S)
REPLACED CONT.	GREASED
	REPAIRED
FILTERS	<input type="checkbox"/> CLEANED <input type="checkbox"/> REPLACED

DATE	PAID	AMOUNT
1-2-04	PAID	75.00
TOTAL LABOR		75.00

LIMITED WARRANTY: All materials, parts and equipment are warranted by the manufacturers' or suppliers' written warranty only. All labor performed by the above named company is warranted for 30 days or as otherwise indicated in writing. The above named company makes no other warranties, express or implied, and its agents or technicians are not authorized to make any such warranties on behalf of above named company.

TERMS
 I have authority to order the work ordered above which has been satisfactorily completed. I agree that Barsotti ReTrige is the responsible party for the work and that final payment is made if payment is not made as ordered. Barsotti ReTrige and its employees shall not be responsible for any damage resulting from work performed that will be the responsibility of the customer.

[Handwritten signatures and notes]

REGULAR WARRANTY

SERVICE CONTRACT

Thank You

TOTAL MATERIALS	
TOTAL LABOR	75.00
TRAVEL CHARGE	
TAX	
TOTAL	75.00

JG000646

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

Merchant Copy
INVOICE

THIS COPY MUST REMAIN AT
MERCHANT AT ALL TIMES!

Page: 1		Invoice: 10262926	
Special		Time:	15:39:01
Instructions		Ship Date:	02/22/04
		Invoice Date:	02/22/04
Sale rep #: MART02 MARTHA	Acct rep code:	Due Date:	03/25/04
Sold To: CANE BAY REEF CLUB P O BOX 1407 KINGS HILL, VI 00851		Ship To: CANE BAY REEF CLUB (809) 778-2966 P O BOX 1407 KINGS HILL, VI 00851	
Customer #: 7700	Customer PO:	Order By:	

ORDER	SHIP	L	U/M	ITEM#	DESCRIPTION	Alt Price/Uom	PRICE	EXTENSION
10.00	10.00	P	EA	5232277	ROUND PADLOCK KA'd ACE	29.9900 EA	29.9900	299.90
2.00	2.00	P	EA	5232289	ROUND PADLOCK KD ACE	29.9900 EA	29.9900	59.98
3.00	3.00	L	EA	1	dry erase	1.0000 EA	1.0000	3.00

RL Locks

V 6073	362.88	FILLED BY	CHECKED BY	DATE SHIPPED	DRIVER	Sales total	\$362.88
		SHIP VIA	Customer Pickup	RECEIVED COMPLETE AND IN GOOD CONDITION		Taxable	0.00
Total applied:	362.88	X				Non-taxable	362.88
						Tax #	NO TAXES
						Sales tax	0.00

TOTAL \$362.88

1 - Merchant Copy



MIKE'S ELECTRONICS CENTER

48 Estate Castle Coakley
 Christiansburg
 Shenandoah County Virginia 22602
 (310) 778-6655
 FAX (310) 778-0004

CUSTOMER'S ORDER NO. _____ PHONE _____ DATE **04/08/04**
 NAME _____
 ADDRESS _____

SOLD BY MS	CASH ✓	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
-------------------	---------------	--------	--------	----------	-------------	----------

QTY.	DESCRIPTION	PRICE	AMOUNT
1	RF mod RCA		24 95

WARRANTY POLICY
 30 Days Parts And Labor On Factory Defective
 Items Only. We Do Not Warranty Speakers Due
 To Conditions Such As Excessive Loudness And
 Distortion Which Are Beyond Our Control.

STORE POLICY
 No Cash Refunds On Purchases Or Layaways.

RECEIVED BY _____ TAX _____ TOTAL **24 95**

ACCOUNT # **45898** All Items and a Void Check must be accompanied by the bill. **THANK YOU**

JG000569

THE HOME DEPOT
10000 W. WILSON AVENUE
DENVER, CO 80202



Engineering

08/06/2004

36

JG000559

STANDARD RESTAURANT EQUIPMENT CO.
 2922 E McDOWELL ROAD
 PHOENIX, AZ 85008
 PH: (602) 775-8550

INVOICE NUMBER: 67975 PAGE: 1
 INVOICE DATE: 05/07/04

SOLO TO: CANE BEACH BAR
 100 CANE BAY ESTATE
 FRÉDERIKSTED, AZ 85008

SHIP TO: CANE BEACH BAR
 100 CANE BAY ESTATE
 FRÉDERIKSTED, AZ 85008

PH: (340) 778-5669

ORDER #	ORDER DATE	ACCOUNT #	SALES MAN	PURCHASE ORDER #	SHIP VIA	SHIP DATE	TERMS
1372781	05/07/04	121875	DWM/ELAINEB	-1372781	WILL CALL	05/08/04	COO

QTY	CASE	QTY	QTY	ITEM NUMBER	DESCRIPTION	BC#	UNIT	PRICE	% TAX	EXTENDED PRICE
ORD	PACK	SHIP	B/O							
6	1	6	0	STANSH-BC3	3 OZ S/S BELL CREAMER	98749	A	2.10	30.0 Y	8.82
12	1	12	0	UPDSC-25	SAUCE CUP 2 1/2 OZ S/S	55013	A	0.45	20.0 Y	34.32
3	1	3	0	STAN9194	NINTH PAN 4" 22GA	110641	S	5.15	30.0 Y	15.45
6	1	6	0	CMC9004	FOOD BOX, CLEAR 4 QUART (LID)	124458	D	7.44	50.0 Y	22.32
6	1	6	0	CSL10741-05	LID FOR FOOD CONTAINER SQUARE	92441	A	2.67	30.0 Y	11.21
1	1	1	0	STANJCP	JUMBO CAN BLANCH	11052	A	2.10	30.0 Y	1.47

May is Beverage Air Month at Standard!!!
 Ask your sales rep about our specials on Beverage Air refrigeration!!!
 Thanks and come again!

SALE AMOUNT: 58.95
 SALES TAX: 4.77
 SHIPPING & HANDLING: 0.00
 TOTAL AMOUNT: 63.72
 AMOUNT PAID: -63.72
 AMOUNT DUE: 0.00

PAID BY CASH

BUYER AGREES THAT EQUIPMENT LISTED ON THIS INVOICE HAS RECEIVED IN GOOD AND WORKING CONDITION.
 BUYER HEREBY GRANTS UNTO SELLER A SECURITY INTEREST IN ALL MERCHANDISE LISTED ABOVE WHICH SELLER SHALL RETAIN UNTIL SAID MERCHANDISE IS PAID FOR IN FULL.
 SALES AGREEMENT: If not paid by due date, a FINANCE CHARGE of 1.5% per month (18% annually) will accrue from date of invoice.
 NO WARRANTY: As these products will be used under conditions beyond our control, except for express manufacturer's warranty or representation or warranty, express or implied, concerning the results of use or handling of these products is made. THE PURCHASER WARRANTS: that he is financially solvent as of this date; that the undersigned is authorized to receive these goods and sign this agreement; that products received will only be used as per direction of product label and further agrees to all costs incurred in the enforcing of this agreement including reasonable attorney fees. When SERVICE is rendered, BUYER is responsible for travel expenses not covered under factory warranties. RESTOCKING CHARGE OF AT LEAST 15% WILL BE MADE ON ALL ITEMS RETURNED.
 RECEIVED BY: _____ SIGNED: _____

JG000620

IRD RESTAURANT EQUIPMENT CO.
 McDowell Road
 AZ 85008
 (602) 275-2550

INVOICE NUMBER: -679798 PAGE: 1
 INVOICE DATE: 05/07/04

SOLD TO: CANE BEACH BAR
 100 CANE BAY ESTATE
 FREDERIKSTED, AZ 85008

SHIP TO: CANE BEACH BAR
 100 CANE BAY ESTATE
 FREDERIKSTED, AZ 85008

PH#: (340) 778-5669

ORDER #	ORDER DATE	ACCOUNT #	SALESMAN	PURCHASE ORDER #	SHIP VIA	SHIP DATE	TERMS
1372791	05/07/04	121875	DYM/ELAINEB	-1372791	WILL CALL	05/08/04	COD

QTY	CASE	QTY	QTY	ITEM NUMBER	DESCRIPTION	BC#	UNIT PRICE	TAX	EXTENDED PRICE
ORD	PACK	SHIP	B/O						
1	12	1	0	TUXTR-014 SALE	(853) PLATTER OVAL 13 1/4" NAR	109793 A	27.00	0.0 Y	27.00
1	12	1	0	TUXTR-016 SALE	(846) PLATE 10 1/2" NARROW	109790 B	15.48	0.0 Y	15.48
2	12	2	0	TUXTR-013 SALE	(852) OVAL PLATTER 11 1/2" NAR	109792 A	23.40	0.0 Y	46.80

May is Beverage Air Month at Standard!!
 Ask your sales rep about our specials on Beverage Air refrigeration!!!
 Thanks and come again!

SALE AMOUNT: 89.28
 SALES TAX: 7.23
 SHIPPING & HANDLING: 0.00
 TOTAL AMOUNT: 96.51
 AMOUNT PAID: -86.51
 AMOUNT DUE: 10.00

PAID BY CASH

BUYER AGREES THAT EQUIPMENT LISTED ON THIS INVOICE WAS RECEIVED IN GOOD AND WORKING CONDITION.
 BUYER HEREBY GRANTS UNTO SELLER A SECURITY INTEREST IN ALL MERCHANDISE LISTED ABOVE WHICH SELLER SHALL RETAIN UNTIL SAID MERCHANDISE IS PAID FOR IN FULL.
 SALES HEREON: If not paid by due date, a FINANCE CHARGE of 1.5% per month (18% annually) will accrue from date of invoice.
 No merchandise is to be returned for credit without prior written approval subject to restocking charge. NO WARRANTY: As these products will be used under conditions beyond our control, except for express manufacturer's warranty no representation or warranty, express or implied, concerning the results of use or handling of these products is made. THE PURCHASER WARRANTS: That he is financially solvent as of this date; that the undersigned is authorized to receive these goods and sign this agreement; that products received will only be used as per direction of product labels and that all costs incurred in the enforcing of this agreement including reasonable attorney fees. When SERVICE is rendered, BUYER is responsible for all labor and travel expenses not covered under factory warranties. RESTOCKING CHARGE OF AT LEAST 15% WILL BE MADE ON ALL ITEMS RETURNED.
 RECEIVED BY: _____ SIGNED: _____

JG000619

5/15/04

Shipped From
Rob Schmauder
1 Farmhouse DR
Bridge NY 11961

1 flo Air Vent fan - MADE in the USA
1 flo Air Vent fan - MADE in the USA

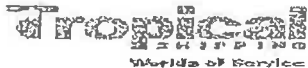
75.⁰⁰
99.⁰⁰

Shipped To
Cane Bay Beach Bar
110 E Cane Bay Estate
Frederickstede, VI 00851

JG000641

JA - 603

Alta Shyla



LCL National Pick Up
Instructions

Reply to: .Created: 05/20/2004
Rosy Morejon - 305-805-7600 Michael Downs - 305-805-7600
Email: Natlpickup@tropical.com Fax: 305-805-7407

Deliver to:
TROPICAL

Shipper:
Shipper's Name: Tha
Phone: 340-778-5669
Contact: Joseph Gerace
Pick Up Address:
City/State/Zip: Ridge, Ny 11961
Port of Dest: ST CROIX

Booking No:
Please have booking number
on freight bill when delivered to
Tropical Shipping.

SB Estimate #: MID02789 SB Estimate Amt: \$26.00 TO
KEARNY 103.00, TO MIAMI, WITH NEMF
SHIPPER LOADED, BUSINESS PICKUP.
NMFC 125 OR LESS.

#259.00

No. of Pieces Supplied	Type of Packaging	Hazard (Y or N) JUN#	Cargo Description Description of Articles, Special Marks and Exceptions	Weight (LBS) Approx.	Cubic Feet	Class
1			VERDERLATION FAN 36X36X36	75		

*** Freight Charges Collect ***

For Local pickups

Please Deliver Today Yes No OK to deliver tomorrow Yes No
If unable to deliver today please inform Rosy or Mike.

Special Services Requested			
Bond Service <input type="radio"/> Yes <input type="radio"/> No	Liftgate Service <input type="radio"/> Yes <input type="radio"/> No	Inside P/U <input type="radio"/> Yes <input type="radio"/> No	Res P/U <input type="radio"/> Yes <input type="radio"/> No

SB Estimate number must be referenced at time of booking for estimate to apply.
This estimate is based on the information provided and expires in 30 days. Any changes in weight, commodity description or services required may result in additional inland charges.

Instructions to Carrier

Carrier's Name: NEMF	Pro #:
Pick Up Time:	Pick Up Date:
Comments:	

JG000642

AMERICAN METAL AIR CONDITIONING

SHEET METAL FABRICATION AND REFRIGERATION

P.O. Box 8416 Sunny Isle
St. Croix, U.S.V.I. 00823

Tel/Fax: (340) 998-3948

11D Estate Thomas
St. Thomas, U.S.V.I. 00802

QUOTATION

DATE JUN 04 - 04

QUOTATION NO. DD 28-2004

CLARE BUSH
ST. CROIX, U.S.V.I.

WILLIAM JOE
778-5669
271-4231 cel.

Dear Sirs: We are pleased to submit the following quotation for your consideration

QUANTITY	DESCRIPTION	PRICE	TOTAL
1-)	INSTALLATION EXHAUST DUCT SYSTEM (KITCHEN HOOD AND FAN =)		\$387
2-)	ELECTRICAL WORK		150
3-)	INSTALLATION KITCHEN HOOD		700.00
4-)	INSTALLATION FANS AND DUCT WORKS		900.00 \$1,650.00
Wee 50% to start.			
			\$1,650.00

Ramundo A. Segura
Signed

Note: 50% to start

JG000638

02

164.00+
269.70+
433.70*
0.*

CANE RAY BEACH BAR
 PO BOX 2307
 KINGSTREE
 SE CROIX MI 00851

672
 10172552216

DATE *4/4/01*

PAY TO THE ORDER OF *Tropical Shipping* \$ *433.70*

Four Hundred Thirty Three and 70/100 DOLLARS

First Bank

BY *[Signature]*

⑆221672051⑆ 72101017570⑆ 0671

JG000633



GEN AGENT: BIRDSALL, INC.
 P.O. Box 10683
 MIAMI BEACH, FL 33419-0683
 (561) 881-3900 or (305) 805-7400

Bill of Lading
 NON-NEGOTIABLE

SHIPPER/EXPORTER 013537189
 CHNAUDER, ROB
 1 FARMHOUSE DR
 RIDGE, NEW YORK
 USA 11961
 CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) 323528590
 CANE BAY BEACH BAR
 110 C CANE BAY ST
 340-778-5669
 ST CROIX
 USVI
 NOTIFY PARTY

DOCUMENT NO. 41436
 04178785 KNV REG 040203 08/15/04
 BOOKING NO.
 E.D.A. 06/14/04
 FORWARDING AGENT - REFERENCES
 EXPORT REFERENCES
 NO REFERENCES PROVIDED
 ALSO NOTIFY:
 FOR CARGO RELEASE CALL 778-8767
 FAX NUMBER 778-9002

EXPORTING CARRIER (VESSEL) TROPIC UNITY
 EXPORT OF RECHARGE & DELIVERY ST. CROIX, U.S.V.I.
 PORT OF LOADING PORT OF PALM BEACH, FLORIDA
 ULTIMATE DESTINATION ST. CROIX, U.S.V.I.

MARKS AND NUMBERS	QUANTITY (NO. OF PACKAGES)	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
	1 SKID	STC: APPLIANCE; VENT FAN VERDELATION FAN	75	37 CF

MISC: SHIPPER'S WEIGHT, CARRIER'S CUBE.
 MARKS: SCHNAUDER, ROB
 CANE BAY BEACH BAR
 SH-04178785
 SED: NO S.E.D. REQUIRED PER SECTION 30.55(H). GENERAL MERCHANDISE VALUED AT LESS THAN \$2500 PER INDIVIDUAL SCHEDULE B NUMBER
 BIRDSALL, INC. AS PARTICIPATING CARRIER
 EQUIPMENT: NUMBER SEAL NBR PIECE TEMP HAZ
 TRIU984464-3 287565 1
 ADVANCE CHARGES: NATIONAL PICKUP 86.00
 CROSS METRO/NATL REF NBR: 219813
 ACCESSORIAL CHARGES: US PORT SECURITY 3.70
 PAYMENT METHOD: CHARGE

ITEM NO.	WEIGHT	CUBIC FEET	RATE	FREIGHT	ACCESSORIAL CHARGES
04			MIN	180.00	
FREIGHT CHARGES 180.00 ACCESSORIAL CHARGES 3.70 ADVANCE CHARGES 86.00					
TOTAL U.S. \$ 269.70					

INSURANCE VALUE CONSIGNEE'S RISK
 (STOWAGE CLAUSE)
 GOODS IN CONTAINERS OR TRAILERS AS WELL AS ANY MOTORIZED VEHICLE MAY BE CARRIED ON DECK AT THE CARRIER'S OPTION IN ACCORDANCE WITH CLAUSE THIRTEEN (13) HEREOF.
 These Commodities, Technology, or Software were exported from the United States for ultimate destination (above) in accordance with the Export Administration regulations. Diversion contrary to U.S. law is prohibited.
 Birdsall Inc. as agent for Carrier Tropical Shipping Company.

JUN 15 2004
 672
 BILL OF LADING
 06/10/04 TU0063 04178785
 PROF. NBR: 41436 SEQ: 41 PG: JG000634

5 0942
 For Tropical Shipping International, Ltd.
 By Agent

Tropical SHIPPING

AGENT: BIRDSALL, INC.
 P.O. BOX 16683
 RIVIERA BEACH, FL 33419-0683
 (561) 881-3900 or (305) 885-7400

Bill of Lading
NON-NEGOTIABLE

SHIPPER/EXPORTER
 013536178
 FLOAIRE
 117 FRANKLIN PARK AVE
 YOUNGVILLE NORTH CAROLINA
 USA 27596
 CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER)
 323528590
 CANE BAY BEACH BAR
 PO BOX 2307
 ST CROIX
 LIST
 NOTIFY PARTY

DOCUMENT NO. 11214
 BOOKING NO. ETL REG
 E. D. A. 05/25/04
 FORWARDING AGENT - REFERENCES

EXPORT REFERENCES
7.0 daily begins 4/2/04

SEE CONSIGNEE FOR INVOICE
 ALSO NOTIFY
 FOR CARGO RELEASE CALL 778-8767
 FAX NUMBER 778-9002

JOE GRACE
 340-778-8669
6/2/04 Joe

EXPORTING CARRIER (VESSEL) TROPIC SUN
 SEAPORT OF DISCHARGE & DELIVERY ST. CROIX, U.S.V.I.

PORT OF LOADING PORT OF PALM BEACH, FLORIDA
 ULTIMATE DESTINATION ST. CROIX, U.S.V.I.

MARKS AND NUMBERS	QUANTITY (NO. OF PACKAGES)	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
-------------------	----------------------------	----------------------	--------------	-------------

1 BD/SKID FANS 150 50 CF
 MISC: SHIPPER'S WEIGHT. CARRIER'S CUBE. RECD BANDED. SHIPPERS COUNT.
 MARKS: 04099426
 SED: NO S.E.D. REQUIRED PER SECTION 30.55(H). GENERAL MERCHANDISE VALUED AT LESS THAN \$2500 PER INDIVIDUAL SCHEDULE B NUMBER
 BIRDSALL, INC. AS PARTICIPATING CARRIER
 EQUIPMENT: NUMBER SEAL NBR PIECE TEMP HAZ
 TTRU482816-7 308201 1
 ACCESSORIAL CHARGES: B/L PROCESSING FEE 40.00
 BUNKER SURCHARGE 14.00 US PORT SECURITY 5.00

DESTINATION ST. CROIX, U.S.V.I.
 FREIGHT COLLECT FREIGHT TO BE PREPAID BILL TO: CANE BAY BEACH BAR
 ACCESSORIAL CHARGES

ITEM NO.	WEIGHT	CUBIC FEET	RATE	FREIGHT
33895	150	50	2.10	105.00

FREIGHT CHARGES	105.00
ACCESSORIAL CHARGES	59.00
TOTAL U.S.	164.00

INSURANCE VALUE
 CONSIGNEE'S RISK
 (STOWAGE CLAUSE)
 GOODS IN CONTAINERS OR TRAILERS AS WELL AS ANY MOTORIZED VEHICLE MAY BE CARRIED ON DECK AT THE CARRIER'S OPTION IN ACCORDANCE WITH CLAUSE THIRTEEN (13) HEREOF.
 These Commodities, Technology, or Software were exported from the United States for ultimate destination (above) in accordance with the Export Administration regulations. Diversion contrary to U.S. law is prohibited.
 Birdsall Inc. as agent for Carrier Tropical Shipping Company.

COLLECTED BY
 JUN 15 2004
 CASH CHECK

05/21/04 150541 04099426
 PROF. NUM: 4114 SBC: 4 PG: JG000635

THIS MEMORANDUM is an acknowledgement that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No. W743
 Carrier's No. _____
 Date 6/17/04

(Name of Carrier)
 to the classification and tariffs in effect on the date of receipt by the carrier of the property described in the Original Bill of Lading.
Bldg. 123, Brooklyn Navy Yard • Brooklyn, NY 11205
From DEALERS INDUSTRIAL EQUIPMENT, LLC

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on its route to said destination. It is, mutually agreed, as to each carrier of all or any portion of said property over all or any portion of said route to destination, and as to each party at any time indicated in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Freight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.
 Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Victoria Woods
 Destination _____ State _____ Zip Code _____ Delivery Address * _____
 Route _____ (To be filled in only when shipper desires and governing tariffs provide for delivery thereat.)

Delivering Carrier _____ Car or Vehicle Initials _____ No. _____

NO. PACKAGES	HAZARDOUS MATERIALS	Kind of Package, Description of Articles, Special Marks, and Exceptions	WEIGHT (SUBJECT TO CORA)	CLASS OR RATE	CHECK COLUMN
①		<u>3/4 HP 1800 RPM Motor</u>	<u>56</u>	<u>56</u>	
		<u>B. Rio</u>			
TOTAL PIECES					

SHIPPER'S CERTIFICATION This is to certify that the above-named materials are properly classified, classified packages, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.
 NOTE - Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____
 Signature: [Signature] Title: _____
 * If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carriage or shipper's weight."
 † Shipper's imprint in lieu of stamp on a part of Bill of Lading approved by the Interstate Commerce Commission.

DEALERS INDUSTRIAL EQUIPMENT, LLC
Bldg. 123, Brooklyn Navy Yard
BROOKLYN, NEW YORK 11205
 permanent post office address of shipper
 Shipper, Per _____ Agent, Per _____

Reorder Item # **76000631**
 Please Call Toll Free 1-800-447-0444
 ©EGI, 1992. Printed in U.S.A.

AC Motors 460V or 230/460V
 Unless Otherwise Noted

HP	RPM	DESCRIPTION	
450	1800	Lincoln,5011	TEFC
450	1800	Lincoln,5011,4160V	TEFC
350	514	Tosh,400-1120(2)	DPBB
300	3600	LA,7108BS,4160V	DPBB
250	1800	Toshiba,447TSSD	DPBB
200	1800	Reliance,445T	TEFC
200	1800	Vanguard,505UZ	TEFC

AC Motors 460V or 230/460V
 Unless Otherwise Noted

HP	RPM	DESCRIPTION	
75	3600	Siemens,365TS	XPFC
60	1200	Delco,404T(4)	TEFC
60	1200	US,404T(2)	TEFC
60	1200	Lincoln,404T(3)	TEFC
60	1200	Lincoln,404T,200V	TEFC
60	1800	Marathon,364T	TEFC
50	1200	Lincoln,365T,200V	TEFC
50	1500	Tosh,364T,50Hz(7)	TEFC
50	1800	Marathon,326T	TEFC
50	3000	US,364TS,50Hz(2)	TEFC
50	3600	US,324JP	DPBB
50	3600	Siemens,250M(2)	TEFC
50	3600	US,326JM,460V(2)	TEFC
40	900	Siemens,365T(3)	TEFC
40	1500	US,326T,50Hz	TEFC
40	1800	Marathon,324T	TEFC
40	3600	GE,324TS,460V	XSD
40	3600	US,324JM(2)	TEFC
30	1800	Marathon,286T	TEFC
30	3000	Rel,286TS,50Hz(2)	TEFC
25	1800	US,286T,460V(2)	TEFC
25	1800	Marathon,284T	TEFC
20	1200	GE,286T(4)	DPBB
20	1800	Marathon,256T	TEFC
20	1800	Marathon,256T	XPFC
20	3600	Marathon,256T	TEFC
15	815	Lincoln,286T(D)	1/4HR
15	900	GE,286T,460V(3)	TEFC
15	1200	US,284T	DPBB
15	1800	Marathon,254T	TEFC
15	1800	Marathon,254T	XPFC
15	3600	ABB,160M(2)	TEFC
15	3600	GE,254T,460V(4)	TEFC
10	1800	Marathon,215T	TEFC
10	3600	Marathon,215T	TEFC
7.5	1800	Lincoln,213T(70)	DPBB
7.5	1800	Lincoln,213TC(50)	DPBB
7.5	1500	Rel,213T,50Hz(8)	TEFC
7.5	1800	Marathon,213T	TEFC
7.5	1800	Marathon,213T	XPFC
7.5	3600	GE,132S(3)	TEFC
7.5	3600	Siemens,213T	TEFC
7.5	3600	BC,213T	Brake

AC Motors 460V or 230/460V
 Flange Mount No Feet

HP	RPM	DESCRIPTION	
125	1800	US,405VPZ	DPBB
125	1800	GE,444HP16(5)	TEFC
75	1800	US,365VP(2)	DPBB
75	3600	US,364VP	DPBB
60	1200	Lincoln,404TC	TEFC
60	1800	Toshiba,364TC	TEAO
50	1800	US,326VP	TEFC
40	1800	US,324TSC(3)	TEFC
40	3600	US,286VP,460V	DPBB
40	3600	US,324LP(2)	TEFC
40	3600	Tosh,324TSC(5)	TEFC
30	1800	US,286LP(2)	TEFC
25	1800	US,284VP(3)	DPBB
25	3600	Leeson,256TC	TEFC
20	1200	Reliance,286LP	TEFC
20	1800	Reliance,256LP	XPFC
20	3600	GE,254HP10	DPBB



Sale! Hitachi L300P Inverter

QTY	HP	VOLTS	MODEL
6	2	460V	015HBRM
8	3	230V	022LBRM
9	3	460V	022HBRM
12	5	230V	037LBRM
17	5	460V	037HBRM
11	7.5	460V	055HBRM
9	10	230V	075LBRM
6	25	460V	185HBRM
3	40	230V	300LBRM
1	125	460V	900HBRM

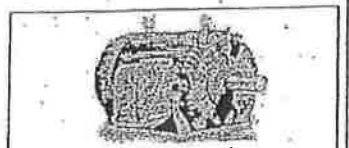
New Surplus Factory Crated
 Toshiba Motors-2300/4160V

HP	RPM	FRAME	ENCL	PRICE
250	900	509US	DPBB	7500.
200	900	315M	DPBB	6250.
200	900	355LL	TEFC	9200.
200	1200	315M	DPBB	5200.

150 1800 Weg,280SM TEFC
 150 3600 Toshiba,405TS DPBB
 150 3600 Toshiba,405TSC DPBB
 125 3600 Teco-West,444TS TEFC
 125 3600 Reliance,444TS TEFC
 125 3600 US,444TS,460V TEFC
 100 900 Toshiba,505U,CT TEBV
 100 1200 Lincoln,444T,CT TEBV
 100 1200 US,444T(2) TEFC

(1) 100HP Reliance, 1200RPM,
 TEFC, 460V, Frame 444T, XEX,
 Space Heaters, New Surplus

100 1800 Marathon,404TS DPBB
 100 1800 Tosh,405TS,200V TEFC
 100 3600 Lincoln,405TS TEFC
 100 3600 Siemens,315M TEFC
 100 3600 Weg,405TS XPFC
 75 1500 US,405T,50Hz(2) XPFC



Teco - Westinghouse
 MAX - HT - 3/60/460
 High Torque Crusher Motor

HP	RPM	ENC	FRAME
600	1200	TEFC	5810C
600	1800	TEFC	5808C
500	1200	TEFC	5808C
500	1800	TEFC	5808C
400	900	TEFC	5808C
400	1200	TEFC	5808C
400	1800	TEFC	5806C
300	900	TEFC	5806C
300	1200	TEFC	5009C
300	1800	TEFC	5007C
250	900	TEFC	5009C
250	1200	TEFC	5007C

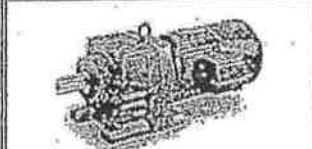
New Surplus Factory Crated
 ABB TEFC -- 230/460V

Close Coupled Pump Motors

QTY	HP	RPM	FRAME
16	20	3600	256JP
19	20	3600	256JM
10	15	3600	254JP
28	15	3600	254JM
30	7.5	3600	213JP
20	3	3600	182JP
18	2	3600	145JM

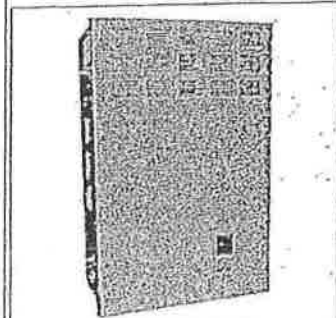
(4) 15HP US, 3600RPM, XPFC,
 460V, Frame 256TCV, #H14462
 Surplus In Cartons Each 300.

10 900 Reliance,284TD(2) DPBB
 10 900 GE,284TP10(4) TEFC
 10 1200 GE,256TD(2) TEFC
 10 1800 Lincoln,215JP DPBB
 10 1800 Lincoln,215JM DPBB
 10 1800 US,215VP(3) DPBB
 10 1800 Rel,210HP,460V XPFC
 3 1800 GE,182HP10(2) TEFC
 1 1200 Baldor,145TC(4) TEFC
 1 1115 Reliance,180TDZ Brake



Sew Eurodrive
 Constant Speed and
 Variable Speed Drives
 Complete Units & Parts

(90) 1.5HP Weg, 1800RPM, TEFC
 Single Phase, Manual Overload,
 Farm Duty, Frame 145T(56HZ)



Closeout Sale!
 Yaskawa GPD 506/P5
 100HP 230V AC Inverter
 Sale \$2900.00

Manufacturers warranty expired,
 parts, technical support available
 Model CIMR-P5U2075
 Protected Chassis Enclosure
 Dimension: H=37", W=23", D=16"
 Weight = 298 lbs.

Teco-Westinghouse FM100
 AC inverter With Marathon
 Totally Enclosed Motor
 10:1 Constant Torque



HP	RPM	FRAME	230V	460V
1	1800	143T	290.	345.
2	1800	145T	385.	406.
3	1800	182T	438.	459.
5	1800	184T	546.	563.
7.5	1800	213T	842.	919.

June 2004 - Partial Listing - We Accept MasterCard - Visa & American Express
 You have received this in error, we apologize. Kindly fax back with your fax number and we will remove your name immediately
 JG000632

FILED

November 02, 2022 12:42 PM

SCT-Civ-2022-0049

VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME II - A

Counsel for Appellants

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2132 COMPANY STREET
CHRISTIANSTED, ST. CROIX
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rhea@rohnlaw.com**

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VOLUME VI

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Trial Transcript Jury Instructions and Verdict Form 2079



0320030 STD

THE NEW PAINT LOCKER
4000 LA GRANDE
PRINCESS
C STED, ST. CROIX 773-0105

INVOICE# 150744
CUST# CASH

BILL-TO: CASH

SHIP-TO: CASH

DATE: 06-17-2004 ORDER NUMBER: 0024017-01 TERMS: CASH

PURCHASE ORDER NUMBER: 0001051-04 ORDER INVOICE: 9710074 SALES PERSON: J.D. ACCOUNT NUMBER: 0150744

QUANTITY ORDERED QUANTITY SHIPPED B.C. ITEM NUMBER DESCRIPTION UNIT PRICE EXTENDED PRICE

06-17-2004

CASH

06-17-2004

J.D.

0150744

QUANTITY ORDERED	QUANTITY SHIPPED	B.C.	ITEM NUMBER	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1.00			0024017-01	WEATHER-TITE SATIN SUPER WHITE H/P	27.50	27.50
1.00			0001051-04	BLP RUSKIL SAFETY ORANGE	9.00	9.00
1.00			9710074	04512 9" ERGO-GRIP SCRAPER	4.70	4.70
2.00			9956010	BF05133 30S FOAM BRUSH 1" 2"	1.42	2.84

SLS-TOTAL: 42.62
TAX: .00
TOTAL: 42.62
CASH: 42.00
CHANGE: .62

"THANK YOU FOR YOUR BUSINESS"
340-773-0105

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

RECEIVED BY: JG000605

SALES COPY

Princesse Hardware, Inc.



17 La Grande Princesse 28273
 P.O. Box 7215

Sunny Isle, St. Croix, U.S.V.I. 00823

Tel: (340) 713-0377

FAX: (340) 713-1377

CUSTOMER'S ORDER NO.		PHONE		DATE 6-17-04															
NAME																			
ADDRESS																			
<table border="1"> <tr> <th>SOLD BY</th> <th>CASH</th> <th>C.O.D.</th> <th>CHARGE</th> <th>ON ACCT.</th> <th>MOSE. RET'D.</th> <th>PAID OUT</th> </tr> <tr> <td><i>[Signature]</i></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>						SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT													
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													
QTY	DESCRIPTION				PRICE	AMOUNT													
4	Screws				.75	3.00													
2	Eye Hook				.45	.90													
2	Turny Hooks				1.50	3.00													
1	Tub stopper				2.25	2.25													
1	Towel Handle				1.25	1.25													
1	Wood bit				2.00	2.00													
1	No. Deck screw				3.50	3.50													
						16.40													
RECEIVED BY						TAX													
						TOTAL \$16.40													

All claims and returned goods must be accompanied by this bill.

Thank You

PRINTED BY ADS PRINTING 713-6070

JG000564

JA - 612

INVOICE

PAGE: 1

DEALERS INDUSTRIAL EQUIPMENT, LLC

BLDG. 123, BROOKLYN NAVY YARD
 BROOKLYN, NY 11205
 PHONE: (718) 522-1110
 FAX: (718) 935-1927

INVOICE NUMBER: 0036576-IN
 INVOICE DATE: 06/18/04
 ORDER NUMBER: W743
 ORDER DATE: 06/18/04
 CUSTOMER NO: V00Y001

SOLD TO: VICTORIA VOOYS
 P.O. BOX 2307
 KINGSHILL
 United States.

SHIP TO: VICTORIA VOOYS
 P.O. BOX 2307
 KINGSHILL

VI. 00851

VI. 00851

CUSTOMER P.O. VERBAL SHIP VIA F.O.B. TERMS
 PAY PAL

QTY.	UNIT	DESCRIPTION	PRICE	AMOUNT
1.000	EACH	3/4 HP 1800 RPM MARATHON 1 PH XFEC FRAME 56	75.000	75.00

NET INVOICE: 75.00
 FREIGHT: .00
 SALES TAX: .00
 INVOICE TOTAL: 75.00
 LESS DEPOSIT: 75.00
 INV. BALANCE: .00

***** WE ACCEPT MASTERCARD, VISA *****
 ***** AND AMERICAN EXPRESS *****

JG000640

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823
 Tel: (340) 778-2331 Fax: (340) 778-1218

0076512

CUSTOMER'S ORDER NO.		PHONE	DATE
			10-18-04
NAME			
ADDRESS			
Cash			
QTY	DESCRIPTION	PRICE	AMOUNT
2	2x4x10	8.50	17.00
		10.00	1.00
			15.20
3	Red Bricks pick up		
<p>PAID</p> <p>RECEIVED</p> <p>15.30</p>		TAX	
RECEIVED BY		TOTAL	15.20

All claims and returned goods MUST be accompanied by this bill.

1.3% per month additional charge if this invoice is not paid within 30 days from **Thank You**

Printed Permits (340) 719-9777

JG000575



Princesse Hardware, Inc.

17 La Grande Princesse **24855**
P.O. Box 7215
Sunny Isle, St. Croix, U.S.V.I. 00823

Tel: (340) 713-0377

FAX: (340) 713-1377

CUSTOMER'S ORDER NO.		PHONE		DATE	
NAME					
ADDRESS					
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOISE. RET'D.
<i>P</i>	<input checked="" type="checkbox"/>				
QTY.	DESCRIPTION			PRICE	AMOUNT
1	Wall Mount Fanout			38.75	38.75
1	Tub. S...			2.25	2.25
				TAX	
RECEIVED BY				TOTAL	<i>\$ 41.00</i>

All claims and returned goods must be accompanied by this bill.

Thank You

PRINTED BY ADS PRINTING 773-6970

JG000567

JA - 615



Princesse Hardware, Inc.

17 La Grande Princesse
P.O. Box 7215
Sunny Isle, St. Croix, U.S.V.I. 00823

34867

Tel: (340) 713-0377

Fax: (340) 713-1377

CUSTOMER'S ORDER NO.		PHONE		DATE <i>2/1</i>	
NAME					
ADDRESS					
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	ADSE. RET'D.
	<input checked="" type="checkbox"/>				
PAID OUT					
QTY	DESCRIPTION	PRICE	AMOUNT		
<i>2</i>	<i>1/2" x 1 1/2" nail blades</i>				
<i>1</i>	<i>2" wide round saw fence</i>				
<i>1</i>	<i>Supply box</i>				
RECEIVED BY		TAX			
		TOTAL <i>1199.50</i>			

All claims and returned goods must be accompanied by this bill.

Thank You

PRINTED BY A&S PRINTING 773 8020

JG000566

JA - 616



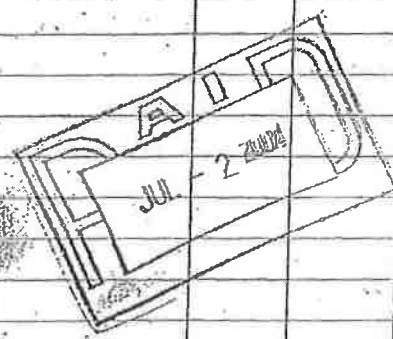
TROPICAL SUPPLY, INC.
 73 Cassava Gardens, Hess Rd., Csted
 P.O. BOX USVI 00820
 (340) 778-3545
 FAX (340) 778-3234

CUSTOMER'S ORDER NO.	PHONE	DATE 07/02/14
----------------------	-------	------------------

NAME _____
 ADDRESS _____

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDGS. RET'D.	PAID OUT
---------	------	--------	--------	----------	--------------	----------

QTY.	DESCRIPTION	PRICE	AMOUNT
2	3/4 x 1/2 coupling Brass	3.15	6.30
3	1/2 x 1 nipple "	1.10	2.20
			8.50
			1.85
NO RETURNS AFTER 30 DAYS FROM DATE OF PURCHASE		TAX	
RECEIVED BY	TOTAL	7.65	



PRODUCT #
68317

All claims and returns must be accompanied by the bill.
 For order call 778-3545 or visit us on www.tropicalsupply.com

THANK YOU

JG000544

- DEALER -

INVOICE 11670

BROWNE'S MAINTENANCE
& REPAIR INC.
P.O. BOX 1601 KINGS HILL
ST. CROIX OREGON
TEL. 773-2333

DATE
PROMISED
COMPLETED

CUSTOMER'S PROPERTY IS NOT INSURED OR PROTECTED BY DEALER FOR ACTUAL CASH VALUE AGAINST LOSS FROM FIRE, THEFT, VANDALISM, OR OTHER CAUSES.

CUSTOMER NAME	Remarks
NAME	
ADDRESS	
CITY	

TERMS	PHONE	
MODEL	SERIAL NUMBER	
QUANTITY	MATERIALS	AMOUNT

QUANTITY	MATERIALS	AMOUNT
	Repair Defective	
1	Knob	15.00
	Labor	5.00
		70.00

LIMITED WARRANTY: Service Dealer's warranty is limited to thirty (30) days replacement without service charge, covering only the specific parts listed above. Manufacturer's product warranty extending beyond this thirty (30) days, remains the responsibility of the manufacturer (unless specifically stated otherwise) and not that of the service dealer. Service Dealer warrants only the parts installed and does not warrant anything else related to the repaired unit. In the event of unsatisfactory performance with the unit, the service dealer must be notified within seven (7) days after acceptance by the customer.

PARTS TOTAL
SERVICE CALL
TECHNICAL CHG.
REMOVE & INSTALL
TAX
CASH PRICE

FORM NO. 888 COPYRIGHT 1978 O.W. DONALD FT. SMITH, ARKANSAS

JG000622

- DEALER -

INVOICE 116670

BROWNE'S MAINTENANCE & REPAIR INC. 20. BOX 1601 KINGS HILL ST. CROIX 00850 TEL. 772-5892

DATE 7/18/58 FROM 58 COMPLETED

CUSTOMER'S PROPERTY IS IS NOT INSURED OR PROTECTED BY DEALER FOR ACTUAL CASH VALUE AGAINST LOSS FROM FIRE, THEFT, VANDALISM, OR OTHER CAUSES

CUSTOMER NAME, ADDRESS, CITY, TERMS, MODEL, MAKE, PHONE, SERIAL NUMBER

Table with columns: QUANTITY, MATERIALS, AMOUNT. Includes handwritten entries for parts and labor.

LIMITED WARRANTY: Service Dealer's warranty is limited to thirty (30) days replacement without service charge, covering only the specific parts listed above.

Parts Total, Service Call, Technical Chg., Remove & Install, Tax, Cash Price

Customer's Signature

FORM NO. 668 COPYRIGHT 1970 - D.W. DONALD - FT. SMITH, ARKANSAS

JG000623

JG000552

GBA

08/13/2009

315
315
315
315
BOX
DAS
DANS
A
St. D

Ticket :

000000

0504

680.47

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51567730

Page: 1

Sales rep #: JANET janet

Terminal # 130

Time: 15:27:38

Invoice Date: 08/14/04

Sold To: Cash Customer

Ship To: Cash Customer

(1)

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popgb01

Thank you for shopping at GBH

ORDER	SHIP	ITEM	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	3990025	BULB INCANDESCENT TEAL	1.49	1.49
1.00	1.00	35702	BULB PARTY RED 25A/IR GE	1.49	1.49
2.00	2.00	3990009	BULB INCANDESCENT FIL PINK	1.49	2.98
1.00	1.00	35703	BULB PARTY YEL 25A/IR GE	1.49	1.49
1.00	1.00	35702	BULB PARTY RED 25A/IR GE	1.49	1.49
1.00	1.00	35704	BULB PARTY GRN 25A/IR GE	1.49	1.49
1.00	1.00	35703	BULB PARTY YEL 25A/IR GE	1.49	1.49
1.00	1.00	35504	BULB SET W/WH 25A/W GE	1.99	1.99
1.00	1.00	35503	BULB SET W/WH 15A/W GE	1.99	1.99
3.00	3.00	30906	FLASHER BUTTON SOCKET	1.49	4.47
2.00	2.00	300019	HEAD TRACK STEER CYL R30	1.99	3.98

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Aca Rental for this advice.

Sales total \$111.80

M 8504 111.80

Total applied: 111.80

TOTAL \$111.80

2 - Customer Copy

JG000583

JA - 621



WJC KNART STORE 7413
 REMAINDER MATRI...
 ST CROIX, VI 00840
 (340)692-5348

** WELCOME TO YOUR **
 ** KNART STORE 7413 **

CASHIER: DANA MCDON
 GENERAL MERCHANDISE
 03885332623 31T WH TRACK
 2 @ 1/6 00 .12.00

*** TAX *** 12.00
 Cash 12.00

TOTAL NUMBER OF ITEMS 1.2



08/15/04 11:52 AM 7413 21 0009 0125

*****XXXXXXXXXXXXXXXXXXXXXXX*****

LAYAWAY

Cash * Check * Credit * Debit

Easy 8 week payment plan

See store for details

*****XXXXXXXXXXXXXXXXXXXXXXX*****

Merchandise included in today's
 transaction may be returned or
 exchanged before 11/13/04 with
 this receipt

The complete return & exchange policy
 is available at the Service Desk

*** THANK YOU FOR ***
 *** SHOPPING YOUR KNART ***

JG000550

***** INVOICE *****

PAGE 1

QUALITY ELECTRIC SUPPLY, INC
6703 PETERS REST
CHRISTIANSTED, VI 00820

(340) 773-4630

INVOICE NUMBER: Q325035-IN
INVOICE DATE: 08/17/04

ORDER NUMBER:
ORDER DATE:
SALESPERSON: AD
CUSTOMER NO: CANEBAY

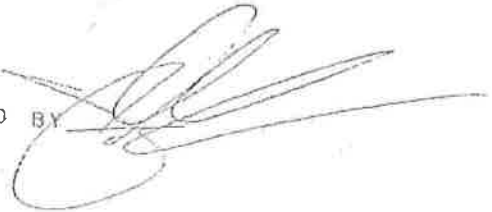
SOLD TO:
BARABUS INC
DBA CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL VI 00851

SHIP TO:
BARABUS INC
DBA CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL VI 00851

REF:

CUSTOMER P.O. SHIP VIA F.O.B. TERMS:
NET DUE ON 10TH

ITEM NO.	QTY ORDERED	SHIPPED	BACK ORD	PRICE	AMOUNT
CONDUIT-PVC	70.00	70.00	0.00	.2800	19.60
49005 NM PLUS 40 - 1/2"	-6000				
RLE943D	EACH 20.00	20.00	0.00	.2500	5.00
1/2" PVC MALE ADAPT	-150				
PECO201	EACH 20.00	20.00	0.00	.0700	1.40
1/2" CONDUIT LOCKNUT (JLN-1)					
CARLE940D	EACH 10.00	10.00	0.00	.2000	2.00
1/2" PVC COUPLING	-150				
CARLE980DF	EACH 3.00	3.00	0.00	7.5500	22.65
FSE-1/2 FS BOX					
LEVI8699-I	EACH 3.00	3.00	0.00	17.9000	53.70
GFI RECEPTICLE - IVORY					
PVC GLUE-PINT	EACH 1.00	1.00	0.00	4.1000	4.10
PVC CEMENT, CLEAR, PINT					
CARLE977DC	EACH 50.00	50.00	0.00	.2300	11.50
1/2" PVC CLAMP	-100				
3MWIRENUT-YE	EACH 100.00	100.00	0.00	.1200	12.00
#20041 WIRENUT 3M YELLOW					
FLUKE-1AC-A1	EACH 1.00	1.00	0.00	22.7500	22.75
AC VOLTAGE DETECTOR, 90V-600V					
LEVI4990	EACH 3.00	3.00	0.00	9.5000	28.50
PLATE-WEATHERPROOF FOR GFI					

REC'D BY 

NET INVOICE: 163.20
LESS DISCOUNT: .00
FREIGHT: .00

INVOICE TOTAL: 163.20
JG000599



10594700 STD

THE NEW PAINT LOCKER
4000 LA GRANDE
PRINCESS
C STED, ST. CROIX 773-0105

INVOICE# 162934

CUST# CASH

BILL-TO: CASH

SHIP-TO: CASH

DATE: JOHNNUMBER: TERMS:

PURCHASE ORDER NUMBER: ORDER DATE: SALES PERSON: OUR ORDER NUMBER:

QUANTITY ITEM DESCRIPTION UNIT PRICE EXTENDED PRICE
ORDERED SHIPPED NUMBER

08-17-2004

CASH

08-17-2004

J.D

0162934

1.00
1.00

0007422-01
985219205

XL STRIPPER
13205 HD FLOOR SCRAP

35.10
29.11

35.10
29.11

SLS-TOTAL
TAX
TOTAL
CHECK

64.21
.00
64.21
64.21

THANK YOU FOR YOUR BUSINESS
340-773-0105

pd
805

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

RECEIVED BY

JG000606

INVOICE COPY

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51569553

Page: 1

Sales rep #: GINELLE Ginelle

Terminal # 133

Time: 14:54:35

Invoice Date: 08/17/04

Sold To: Cash Customer

Ship To: Cash Customer

(1)

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

ppggbh01

Thank you for shopping at GBH

ORDER	QUANTITY	UNIT PRICE	ITEM #	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	33072	WIRE 122 UFWG 25		9.99	9.99
3.00	3.00	31553	BOX WITH PER FCT 164H GRA		5.99	17.97
1.00	1.00	3179082	CONNECTOR SE NM 8		0.39	0.39
			EX100			
1.00	1.00	33342	BODY CONDUIT PVC 1/2		19.99	19.99
1.00	1.00	30500390	XGE 15VIV FCT		19.99	19.99
1.00	1.00	31660	COVER 1M HLD R HND 1111 G		19.99	19.99
1.00	1.00	315567	BOX WITH PER FCT 5HL GBAS		8.99	8.99
1.00	1.00	3179082	CONNECTOR SE NM 3/8		0.39	0.39
			EX100			
1.00	1.00	3093074	STAPLE NM HND (2/31) 2B50		2.99	2.99
40.00	40.00		SCREWS NUTS AND BOLTS		0.10	4.00
1.00	1.00	15916182	1/2 X 10 GALV NIPPLE		2.79	2.79
1.00	1.00	WATER	NATURAL SPRING WATER		1.00	1.00

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$75.98

M 8504 75.98

Total applied: 75.98

TOTAL \$75.98

2 - Customer Copy

JG000584

Gallows Bay Hardware

5020 Anchor Way
 St. Croix, VI 00820
 (340) 773-1034 FAX (340) 778-7457

INVOICE
 Customer Copy

Invoice # 51569496

Page: 1

Sales rep #: JANET janet

Terminal # 139

Time: 14:11:35

Invoice Date: 08/17/04

Sold To: CHECK CUSTOMER
 CHECK CUSTOMER

Ship To: CHECK CUSTOMER

(340) 773-1034

Customer #: CHECK

Customer PO: CHECK

Order By:

Special Instructions:

popbh01

Thank you for shopping at GBH

ORDER	QUANTITY	ITEM	DESCRIPTION	UNIT	EXTENSION
1.00	1.00	BUD	BUDWEISER BOTTLES		1.75
1.00	1.00	HEINEKEN	HEINEKEN BOTTLES		1.75
1.00	1.00	12168	DRIVEWAY SEALER BRUSH 18" W/HANDLE		8.99
1.00	1.00	3118637	16048 8" X 1" MOLDED RUBBER FLOAT		9.99
1.00	1.00	1059492	DECK BRUSH FIC PALMYRA 08750		9.99
1.00	1.00	1139559	FLOOR LEVELER 25LB		14.99
1.00	1.00	36221158	MURIATIC ACID 31.45% SPAL NOME		19.99

Return Policy

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 All returns must be less than 30 days old.
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 Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$47.45

Check # 804 47.45

Total applied: 47.45

TOTAL \$47.45

2 - Customer Copy



Gallows Bay Hardware

5020 Anchor Way
 St. Croix, VI 00820
 {340} 773-1034 FAX {340} 778-7457

CASH INVOICE
 Customer Copy

Invoice # 51571578

Page: 1

Sales rep #: CHRIS Chris

Terminal # 47

Time: 13:28:57

Invoice Date: 08/20/04

Sold To: Cash Customer

Ship To: Cash Customer

(1)

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

pepgh01

Thank you for shopping at GBH

QUANTITY	SHIP	ITEM	DESCRIPTION	PRICE	EXTENSION
1.00		PART	PARTS TOOLS/LAWN MOWERS/APPL	2.99	2.99
1.00		PART	PARTS TOOLS/LAWN MOWERS/APPL	2.99	2.99

Return Policy

All returns must be in original and intact packaging.
 All returns must be less than 30 days old.
 All returns must have receipts.
 Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
 Custom mixed paint is not returnable.
 GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden Appliances or Ace Rental for this advice.

Sales total \$15.98

Cash 20.00

Total applied: 15.98

TOTAL \$15.98

Change 4.02

2 - Customer Copy

JG000586

Invoice Details

340, 778, 3981

Bill- CANE BAY BEACH BAR (KINGSHILL,
 To: VI)
 PO Box 2307
 Kinghill, VI 00851
 Attn:

Ship- Tropical Shipping
 To: 4 E Port Rd
 West Palm Beach Rd, FL
 33404
 Po# JOE CHECK

Job # 270379 - Joe at Cane Bay Sloped

Product	Description	Units	Qty	Unit Price	Total Price
Hood #1	*4512ESX - 12' 0" Long Sloped Exhaust-Only Wall Canopy Hood for Low Ceiling Applications w/ 2 Factory Installed 10 X 16" Exhaust Riser(s)	EACH	1	\$1,327.67	\$1,327.67
	430 SS Where Exposed	EACH	1	\$0.00	\$0.00
	FILTER - 16"x 16" Kleen-Gard Stainless Steel Baffle Filter with Handles, UL Classified	EACH	4	\$11.53	\$46.13
	FILTER - 16"x 20" Kleen-Gard Stainless Steel Baffle Filter with Handles, UL Classified	EACH	4	\$14.42	\$57.68
	Incandescent Light	EACH	4	\$0.00	\$0.00
	1/2 Pint Grease Cup New Style, Flanged	EACH	1	\$0.00	\$0.00
	BACKSPLASH 78.00" High X 144.00" Long 430 SS	SQ. FEET	1	\$337.32	\$337.32
	BACK STANDOFF 3" Wide	FEET	1	\$0.00	\$0.00
	RIGHT SIDESPLASH 120.00" High X 48.00" Long 430 SS	SQ. FEET	1	\$172.99	\$172.99
	LEFT SIDESPLASH 120.00" High X 48.00" Long 430 SS	SQ. FEET	1	\$172.99	\$172.99

Product Total: \$2,114.75
 Freight Type: To be Prepaid
 Freight: \$211.25
 SubTotal: \$2,326.00
 Tax: \$139.56
 Grand Total: \$2,465.56

*Order changed by Admin

<https://www.ventilationdirect.com/OrderTracking/InvoiceDetail.asp?Jobhdrid=144156&S...> 9/20/2004

JG000637

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51572979

Page: 1

Sales rep #: GINELLE Ginelle

Terminal # 133

Time: 15:27:55

Invoice Date: 08/21/04

Sold To: Cash Customer

Ship To: Cash Customer

(1) -

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

peppb01

Thank you for shopping at GBH

ORDER #	SHIP #	ITEM #	DESCRIPTION	PRICE	EXTENSION
8-00	8-00	15321411	BUSHING 3/4" SLP X 1/2" EPT SCH40	3.99	3.99
2-00	2-00	199BIT	1/2" BIT	1.99	3.98
1-00	1-00	33311	BODY CONDUIT PVC LB 3/4"	15.99	15.99
1-00	1-00	3014351	BOX W/HPRE BOLT 1/2" X 3/4"	4.99	4.99
7-00	7-00	31656	BOX W/HPRE BND 5/8" GRAY	29.99	209.93
1-00	1-00	31658	COVER LMPHED END THE GY	24.99	24.99
1-00	1-00	36055	COVER LMPHED RECT THE GY	24.99	24.99
1-00	1-00	15915465	disc 3/4" x 3/4" DUP RECP PLATE 3/4" GANG	6.49	6.49
1-00	1-00	0832924	NIPPLE 1/2" X 5/8" GALV	6.49	6.49
6-00	6-00	3179052	8252924 8 PIN PHIL SMS 10X1-100	6.49	38.94
1-00	1-00	36218	CONNECTOR SL NM 3/8" BX100	2.34	2.34
32-00	32-00	6106603	SWITCH SP W/GD QUIET WHIT	10.99	351.88
6-00	6-00	10210503	1/2" PVC CONDUIT STRAPS	2.48	14.88
2-00	2-00	S	CONDUIT GRAY 3/4" X 1/2" LENGTH PVC	137.4	274.8
1-00	1-00	DASANI	SCREWS NUTS AND BOLTS	18.98	18.98
1-00	1-00	6931513	DANSANI W/5 JER	1.00	1.00
			HR 300 RANDET P HAND 600# PAULETIDE	49.99	49.99

Return Policy

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All returns must have receipts.
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Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$232.16

M 8504 232.16

TOTAL \$232.16

Total applied: 232.16

2 - Customer Copy

JG000587

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
(340) 773-1034 FAX (340) 778-7457

INVOICE
Customer Copy

Invoice # 51572990

Page: 1

Sales rep #: JANET Janet

Terminal # 137

Time: 15:36:11

Invoice Date: 00/21/04

Sold To: Cash Customer

Ship To: Cash Customer

(1) --

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

ppggh01

Thank you for shopping at GBH

ORDER	SHIP	ITEM	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	15917800	3.5" 1/2 GALV TEE (04123)	0.99	3.96
1.00	1.00	15913874	1/2" X CLOSE BRASS NIPPLE	1.99	7.96
1.00	1.00	DASANI	DANSANI WATER	1.00	1.00

Return Policy

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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$12.92

Cash 50.00

Total applied: 12.92

2 - Customer Copy

TOTAL \$12.92
Change 37.08

JG000588

70900090
 CARIBE HOME CENTER INC.
 P.O. BOX 2500
 ST. THOMAS, VI
 01101-9950

SOLD TO: CASH SALES
 SHIP TO: CASH SALES PAID
 AUG 22 2004
 CARIBE HOME CENTER INC.

ACCOUNT #	CUSTOMER P.O. #	TERMS	ORDER #	ORDER DATE	SLSMN	INVOICE #	INVOICE DATE
		CASH SALE	65046	08/22/04	EP		
ORDERED	BACK ORDERED	SHIPPED	U/M	DESCRIPTION	PRICE	AMOUNT	
				MULTI PURPOSE			
				HARDWARE	0.45	0.45	
				HARDWARE	4.80	4.80	
				HARDWARE	0.45	0.45	
				HARDWARE	0.45	0.45	
				WASHER BOLT & NUTS			
				WASHER BOLT & NUTS			
				ELECTRICAL			

RECEIVED
 AUG 22 2004
 BY: *[Signature]*

SUP # 2004 12:22:42	OT: EP	FILED BY 17 0	ORDER BY	DIVISION	MERCHANDISE	254.
* PICK LIST * SHIP: 05/02/04 MERCHANDISE RECEIVED BY:					OTHER	0.
PAGE 2 OF 2					TAX	0.
					FREIGHT	0.
					TOTAL	254.

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51574265

Page: 1

Sales rep #: YOLANDA Yolanda

Terminal # 137

Time: 12:29:45

Invoice Date: 08/23/04

Sold To: Cash Customer

Ship To: Cash Customer

Customer #: 0000001

Customer PO: (1)

Order By:

Special Instructions:

popgh01

Thank you for shopping at GBH.

ORDER #	SHIP #	ITEM #	DESCRIPTION	PRICE	EXTENSION
30.00	30.00	3212	SCREWS NUTS AND BOLTS	0.99	29.70
1.00	1.00	34406	COVER W/HEX BLANK 2GGY	2.99	2.99
1.00	1.00	31653	50 W/HEX RCT 1/4H GRA	0.99	0.99
1.00	1.00	33991	PHOTOCELL SLIDEBAR 2000W	1.99	1.99
4.00	4.00	832067	COUPLER PVC 1/2	0.99	3.96
2.00	2.00	15946174	1/2 X 1/8 GALV NIPPLE	0.99	1.98
2.00	2.00	78922	COUPLING 1/2 HIP BRO	0.99	1.98
2.16	2.16	31825	SCREWS NUTS AND BOLTS	3.30	7.13
2.00	2.00	3084712	BULB 100W 175 CBI HALOGEN	0.99	1.98

Return Policy

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GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$67.36

M 8504 67.36

TOTAL \$67.36

Total applied: 67.36

2 - Customer Copy

JG000589

JA - 638

BLP MOBILE PAINTS

11101300 STD

THE NEW PAINT LOCKER
4200 LA GRANDE
PRINCESS
C' STED, ST. CROIX 773-0105

INVOICE# 163157

CLUST# 16505

BILL-TO: CAVE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX VI 00851

SHIP-TO: CAVE BAY BEACH BAR
P-UP JOSEPH

DATE	ORDER NUMBER	TERMS
08-24-2004		
PURCHASE ORDER NUMBER	SALE PERSON	CUSTOMER NUMBER
00-24-2004	S.W	0163157

QUANTITY	ITEM NUMBER	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
2.00	0007513-04	BLP MIX GLOSS	4.00	9.00
1.00	9959010	12' X 20' X 015 POLY SHEETING	19.30	19.30
4.00	R405	TRAY LINERS	1.00	4.00
SLS-TOTAL				32.90
TAX				.00
TOTAL				32.90
BALANCE				32.90

"THANK YOU FOR YOUR BUSINESS"
340-773-0105



ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

FILE COPY

RECEIVED BY

JG000610

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

Customer Copy

Invoice # 51574837

Age: 1

Sales rep #: GINELLE Ginelle

Terminal # 133

Time: 10:22:13

Invoice Date: 08/24/04

Sold To: Cash Customer

Ship To: Cash Customer

(1) -

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

D09gbh01

Thank you for shopping at GBH

ORDER	SHIP	ITEM#	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	6644926	1P 3086 30" 2SPD PEDESTAL FAN	99.99	99.99
1.00	1.00	34407	BOX WITH PHIL 2C 3HL GY	11.49	11.49
1.00	1.00	36217	A27W 2 SP QUIET SWITCH	0.99	0.99
1.00	1.00	31440	270W DDB RECP WHITE	0.99	0.99
1.00	1.00	36069	30WNG RECP PLATE IVORY	10.99	10.99
2.00	2.00	33239	ELBOW 90D PVC SCD 1/2 IN	0.99	0.99
1.00	1.00	DASANI	DANSANI WATER	1.00	1.00

Return Policy

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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$12

M 8504 1

Total applied: 126.83

TOTAL \$1

2 - Customer Copy

JG000590

JA - 640

BLT PAINTS

INVOICE# 163293 THE NEW PRINT LOCKER 11316293 STD

ADDRESS LA BRUNDE BUSINESS DIST# 10303

CITY ST. CROIX 773-0185 TERMS

DATE JOB NUMBER ORDER NUMBER SALES PERSON ORDER NUMBER

POSTED SHIP TO - CONT. DIV. MEMPHIS SHIP TO - CONT. DIV. MEMPHIS ORDER NUMBER

PO BOX 2387 KINGSHILL ST. CROIX, LA 70601

09-25-2004	08-25-2004	J.D.	0163293
3.00	6025548-05	SMOOTH NOTE EXL. LATEX S/G CLEAN PASTE	109.50
2.00	9904031	FR1034 3" BELUXE HIRE CREW FIVE	1.54
3.00	9718082	H820003 1" HRT CHIPPER BRUSH	.75
2.00	9703124	602 4" HRT CHIPPER BRUSH	2.00
2.00	9718004	H820005 2" HRT CHIPPER BRUSH	.72
3.00	9904035	4" POLYESTER R/COVER BOCS914	1.86
2.00	9040716	0770759-00 3/4" COVER R/L R/DOV	2.00
2.00	8486	T8811 LINES	1.16
1.00	0021016-44	GENRL PAINT WHITE	4.60
1.00	5929285	167L HIRE ROL SP1115	4.09
1.00	0001061-44	RUKAL SURETY GRABE	4.60
333.42		315-TOTAL	333.42
		TAX	.00
		TOTAL	333.42
		DUES	333.42

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

FILE COPY

240-773-0105

THANK YOU FOR YOUR BUSINESS.

JG000608

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823
 Tel: (340) 778-2331 Fax: (340) 778-1218

0080384

CUSTOMER'S ORDER NO.		PHONE	DATE
NAME		8/25/04	
ADDRESS			
CASH			
QTY	DESCRIPTION	PRICE	AMOUNT
5	2x6x14	14.95	74.75
1	1x4x14	8.68	8.68
12	Tap Con Screws	.40	4.80
1	2x9x14	12.60	12.60
S.B. # 2490			178.95
			- 17.89
			161.06
TAX			
TOTAL			
RECEIVED BY			

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days of this date.

Thank You

Discount Printing (340) 719-9727

JG000573

JA - 642

RENTALS

...and sales

Serving the people of St. Croix for over 30 years



YOUR SIGNATURE MEANS THE PERSON WHO SIGNS THIS CONTRACT (OR ARE OBLIGATED UNDER ITS TERMS), WE, OUR AND DEALER REFER TO THE BUSINESS NAMED AT RIGHT.

DEHL • MILWAUKEE • TILTON • BRIGGS & STRATTON • BOSCH • SARLO • MAXIM • MULTI-QUIP
 SAWS • TABLES & CHAIRS • PRESSURE WASHERS • TABLECLOTHS • GENERATORS • CHINA & FLATWARE • BRUSHCUTTERS • TENTS

STIHL *Lumber One Worldwide*

FOR WORK OR PLAY
 ALWAYS-CREATIVE ALWAYS RELIABLE!
 OPEN MONDAY thru SATURDAY 8 to 5
 SERVING THE PEOPLE OF ST. CROIX FOR OVER 30 YEARS

Says David's name because they put it there they think it's important

Customer ID: 785669 Contract Number: 1-435987-01
 RENTAL CONTRACT

08/25/04
 DAVID BENTLEY
 CANE BAY BEACH BAR
 110C CANE BAY
 RR1 BOX 28 KING'S HILL
 ST. CROIX, VI 00850
 778-5669

Out: WED 08/25/04 16:09
 Due: THU 08/26/04 16:09

Item No.	Qty	Description	Rate	Info	Unit	Extended
80-0020	1	AIRLESS PAINT SPRAYER	75.00	Serial number: 413700351	75.00	75.00
		RENTSPRAY 0413700351	75.00/d	300.00/w	900.00/m	

THIS IS A HIGH PRESSURE DEVICE. READ OPERATIONAL INSTRUCTIONS BEFORE USE
 ** *ALWAYS WEAR EYE, FACE, AND BREATHING PROTECTION WHEN USING UNIT* ***
 ** *SPRAYER MUST BE RETURNED CLEAN AND OPERATIONAL!!* ***
 ** *CLEANING DEPOSIT WILL BE LOST IF UNIT IS NOT RETURNED CLEAN!!* ***
 ** *USE WATER FOR CLEANING WATER BASED PAINT AND SOLVENTS FOR OIL BASED!!* ***

80-0025 1 PAINT SPRAYER MANUAL
 ** *THIS MANUAL CONTAINS OPERATIONAL INSTRUCTIONS AND WARNINGS!* ***
 ** *MANUAL IS PROVIDED FOR YOUR SAFETY, PLEASE READ AND UNDERSTAND!!* ***
 ** *MANUAL MUST BE RETURNED WITH UNIT. \$25 CHARGE FOR LOST MANUALS* ***

80-0255 1 EXTENSION CORDS 100 FT

I, the undersigned renter, specifically acknowledge that I have received and understand the instructions regarding use and operation of the rented equipment.
 I further acknowledge that he has read and fully understands the within equipment rental contract and agrees to be bound by all of the terms, conditions and provisions hereof. Renter acknowledges that he has read a true and correct copy of this agreement at the time of execution hereof.

RETURN EQUIPMENT BY: X
 SIGNATURE
 THIS IS YOUR CONTRACT. READ BOTH SIDES BEFORE SIGNING. RENTAL WILL CONTINUE UNTIL LESSOR IS NOTIFIED TO TERMINATE SAID AGREEMENT.

I accept the damage waiver, as provided on the reverse side and agree to pay the above described additional charges therefor.
 IF DECLINED PLEASE INITIAL:

Sales Agent: RICKY SMITH Date: 08/25 Customer: CANE BAY BEACH BAR Contract: 1-435987-01

CUSTOMER COPY

BLP MOBILE PAINTS

12555600 STD

THE NEW PRINT LOCKER
 4086 LA GRANDE
 PRINCESS
 C/STED, ST. CROIX 773-8105

INVOICE# 163272
 CUST# 18585

BILL-TO: CANE BAY BEACH BAR
 PO BOX 2307
 KINGSHILL
 ST. CROIX VI 02851

SHIP-TO: CANE BAY BEACH BAR

DATE: 08-25-2004 ORDER NUMBER: 0163272 TERMS: NET 30

PURCHASE ORDER NUMBER: ORDER DATE: SALES PERSON: YOUR ORDER NUMBER:

08-25-2004

QUANTITY ORDERED	UNIT PRICE	EXTENDED PRICE	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
------------------	------------	----------------	-------------	------------	----------------

10.00			R406 TRAY LINERS	.50	5.00
1.00			9848719 2-70309-00 3/0 (SIX PACK) R/COVER	6.35	6.35

S/S-TOTAL	12.15
TAX	.00
TOTAL	12.15
BALANCE	12.15

"THANK YOU FOR YOUR BUSINESS"
 340-773-8105

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

[Signature]
 JG000611

BLP MOBILE PAINTS
21900091

17070100 STD

THE NEW PAINT LOCKER
4000 LA GRANDE
PRINCESS
C-STED, ST. CROIX 773-0105

INVOICE# 163293

CUST# 10505

BILL-TO: CONE BAY BEACH BAR
PO BOX 2367
KINGSHILL
ST. CROIX VI 00851

SHIP-TO: CONE BAY BEACH BAR
P-UP BEACH

DATE	JOB NUMBER	TERMS
08-26-2004		
PURCHASE ORDER NUMBER	ORDER DATE	SALES PERSON
	08-26-2004	S.H
OUR ORDER NUMBER		
0163293		

QUANTITY	ITEM NUMBER	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1.00	0325540-05	SMOOTH COAT EXT. LATEX S/6 CLEAR BASE	109.50	109.50
			SLS-TOTAL	109.50
			TAX	.00
			TOTAL	109.50
			BALANCE	109.50

Tint 2014C

THANK YOU FOR YOUR BUSINESS
340-773-0105

Edward Grace

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

FILE COPY

BLP MOBILE PAINTS

10322900 STD

THE NEW PAINT LOCKER
 4000 LA GRANDE
 PRINCESS
 CRYSTAL ST. CRYSTAL 773-0105

INVOICE# 163253

CUST# 10565

BILL-TO: CONE BAY BEACH BAR

SHIP-TO: CONE BAY BEACH BAR

DATE: 08-26-2004
 PO BOX 2307
 KINGSHILL
 ST. CROIX VI 00051

QUANTITY: 1 CASES PER ON OUR CHECK NUMBER

QUANTITY ORDERED	QUANTITY SHIPPED	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
------------------	------------------	----------	-------------	------------	----------------

08-26-2004

08-26-2004

J.D.

0163253

2.00
3.00

970002
9703120

01001 1 GAL GLOSS CL WOOD FINISH
4" SINGLE CHIPPER BRUSH

33.90
1.15

67.80
3.45

SLS-TOTAL
TAX
TOTAL
BALANCE

71.25
.00
71.25
71.25

"THANK YOU FOR YOUR BUSINESS"
 340-773-0105

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

RECEIVED BY



FILE COPY

JG000609

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51576272

Page: 1

Sales rep #: YOLANDA Yolanda

Terminal # 138

Time: 10:58:01

Invoice Date: 08/26/04

Sold To: Cash Customer

Ship To: Cash Customer

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popgh01

Thank you for shopping at GBH

ORDER	SLIP	ITEM	DESCRIPTION	PRICE	EXTENSION
3.38	3.38		SCREWS NUTS AND BOLTS	1.49	16.48
1.00	1.00	207124	ACE 4X24 A/O 50 GRIP 2PK	8.99	8.99
2.00	2.00	2071074	ACE ACE 4X24 80 GRIP 2PK	8.99	17.98
1.00	1.00	2071124	ACE 4X24 A/O 50 GRIP 2PK	8.99	8.99
2.00	2.00	1.99BH	1.99BH	8.99	17.98

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$55.12

M 8504 55.12

Total applied: 55.12

TOTAL \$55.12

2 - Customer Copy

JG000591

JA - 647

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823

0080448

Tel: (340) 778-2331 Fax: (340) 778-1218

CUSTOMER'S ORDER NO.		PHONE	DATE
NAME		9/27/04	
ADDRESS			
Cane Bay Club			
QTY	DESCRIPTION	PRICE	AMOUNT
7	2 x 8 x 14	20.80	145.60
2	2 x 6 x 14	14.95	29.90
			175.50
			17.55
	Will come in to pay		157.95
RECEIVED BY		TAX	
		TOTAL	

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days from **Thank You**

Discount Printing (340) 719-9227

JG000572

JA - 648

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51577969

P1

Rep #: JANET Janet

Terminal # 138

Time: 13:59:20

Invoice Date: 08/26/04

Bill To: Cash Customer

Ship To: Cash Customer

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

paggbh01

Thank you for shopping at GBH

ORDER	QTY	PRICE	EXTENSION	DESCRIPTION
				SCREWS, NUTS AND BOLTS
	2.00	1.99	3.98	

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$2

M 8504

Total applied: 22.93

TOTAL

\$:

2 - Customer Copy

JG000592

JA - 649

bb'zlf

noe/3e/80

GRN

JG000557

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51578582

Page: 1

Sales rep #: JANET Janet

Terminal # 138

Time: 13:03:20

Invoice Date: 08/29/04

Sold To: Cash Customer

Ship To: Cash Customer

(1)

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popgh01

Thank you for shopping at GBH

ORDER	PRICE	ITEM	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	5318209	3319PKS UNIVERSAL GATE LATCH	1.00	1.00
1.00	1.00	5039	BOLE CANE TB ADJ THVBS	1.00	1.00
4.00	1.00	9867789	H6762307-12 HEAVY DUTY T HINGE	10.00	40.00
20.00	20.00	S	SCREWS NUTS AND BOLTS	0.43	8.60
20.00	20.00	S	SCREWS NUTS AND BOLTS	0.07	1.40
20.00	20.00	S	SCREWS NUTS AND BOLTS	0.30	6.00
20.00	20.00	S	SCREWS NUTS AND BOLTS	0.30	6.00
20.00	20.00	S	SCREWS NUTS AND BOLTS	0.07	1.40

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Aco Rental for this advice.

Sales total \$86.04

M 0504 86.04

TOTAL \$86.04

Total applied: 86.04

2 - Customer Copy

JG000593

JA - 652

St. Croix Trading Co.

P.O. Box 24265 GBS
Christiansted, VI 00824-0265
340-773-1836 Phone
340-773-5957 Fax

Sales Receipt

Date 8/31/2004 Invoice No. SR6777

Sold To
Cash Sale

Deliver To
PICK UP

Check No. 2503 Payment Method Check Rep APB

Qty 9 Description 1x8x12 D SYP PT 192bdl

Rate 14.00 Amount 126.00

PAYED

Customer pick up.

Total \$126.00

JG000600



THE NEW PAINT LOCKER
4200 LA GRANDE

INVOICE# 163469

PRINCESS
C'STED, ST. CROIX 773-0105

TELE# 10585

1209550 STD 1010 NUMBER PURCHASE ORDER NUMBER ORDER DATE SALES PERSON OUR ORDER NUMBER

QUANTITY ORDERED QUANTITY SHIPPED ITEM NUMBER DESCRIPTION UNIT PRICE EXTENDED PRICE

BILL-TO: CAVE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX VI 00851

SHIP-TO: CAVE BAY BEACH BAR

09-02-2004

09-02-2004

J.D

0163469

2.00
2.00

970002
0407034-01

01001 16L GLOSS CL WOOD FINISH
JACK TAR MARINE VIP-SPAR MARINE VA

33.90
44.10

67.80
88.20

SLS-TOTAL
TAX
TOTAL
BALANCE

20.40
.00
20.40
20.40

"THANK YOU FOR YOUR BUSINESS"
340-773-0105

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

RECEIVED BY  JG000613

Gallows Bay Hardware

5020 Anchor Way
 St. Croix, VI 00820
 (340) 773-1034 FAX (340) 778-7457

INVOICE
 Customer Copy

Invoice # 51581796

Page: 1

Sales rep #: GINELLE Ginelle

Terminal # 133

Time: 13:06:01

Invoice Date: 09/03/04

Sold To: CHECK CUSTOMER
 CHECK CUSTOMER

Ship To: CHECK CUSTOMER

(340) 773-1034

Customer #: CHECK

Customer PO: CHECK

Order By:

Special Instructions:

popgbh01

Thank you for shopping at GBH

ORDER #	SHIP TO	ITEM #	DESCRIPTION	PRICE	EXTENSION
100	100	15514281	RECTO 5H TOILET-FILL VALVE	10.99	10.99
300	300	7470834	HINGE 3 BRIGHT SQUARE CORNER	3.79	11.37
100	100	08210569	PG2001B-A-BK GRILL 24"000BTU	400.00	400.00
			SALE ITEM		

Return Policy

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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$422.36

Check # 825 422.36

Total applied: 422.36

TOTAL \$422.36

2 - Customer Copy



U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823

0080854

Tel: (340) 778-2331 Fax: (340) 778-1218

CUSTOMER'S ORDER NO.		PHONE	DATE
NAME		9/4/04	
ADDRESS			
QTY.	DESCRIPTION	PRICE	AMOUNT
2	3 X 10 X 14	66.77	132.54
2	1/2" Steel Rosal	5.85	11.70
28	Brace + S	.25	7.00
			144.24
			151.24
			13.95
			137.29
RECEIVED BY		TAX	TOTAL

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days from **Thank You**

Discount Printing (340) 719-9727

JG000580

JA - 656

Gallows Bay Hardware
5020 Anchor Way
St. Croix, VI 00820
(340) 773-1034

51583756 Salesperson:marilyn
WS: 129 DRW: 2 09/06/2004 10:54:31

Sold: Cash Customer
To:

ITEM NUMBER	QTY	PRICE	EXTENSION
4782298	3.00	3.49 CG	10.47
.LR055 2.5"ZN.NR LP UTILITY HINGE			

SUBTOTAL \$10.47
0.00
0.00

Ticket # 51583756 SALES TAX 0.00

pos00350 TOTAL \$10.47
Tax# NO. TAXES

Cash: 20.00
Tendered: 20.00
Change : 9.53

Thank you for shopping at GBH

JG000554

JA - 657

Gallows Bay Hardware
5020 Anchor Way
St. Croix, VI 00020
(340) 773-1034

51588064 Salesperson: YVONNE
MS: 130 DRW: 2 09/12/2004 11:21:25

Sold: Cash Customer
To :

ITEM NUMBER	QTY	PRICE	EXTENSION
HL33	3.00	3.99 EA	11.97
HL33 HEAVY ANGLE			
35263	1.00	14.99 EA	14.99
2036 3.5 X 3.5 SS BUTT HINGE			
5119559	1.00	14.29 EA	14.29
TUBE SQUARE 1X4' ALUM			
S	25.00	0.07 EA	1.75
SCREWS NUTS AND BOLTS			K
S	8.00	0.40 EA	3.20
SCREWS NUTS AND BOLTS			K

SUBTOTAL \$46.20
0.00
0.00

Ticket # 51588064 SALES TAX 0.00

pos00300 TOTAL \$46.20
Tax# NO TAXES

MC 8504 46.20
Tendered: 46.20

Receipt # 001

JG000651

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823
 Tel: (340) 778-2331 Fax: (340) 778-1218

0081193

CUSTOMER'S ORDER NO.		PHONE	DATE
		773 1373	9/19/04
NAME MICHAEL A. BERTHIAU			
ADDRESS PO BOX 505 ST CROIX ST CROIX 00821			
QTY	DESCRIPTION	PRICE	AMOUNT
33	2x10x24	66.27	198.81
1	10/11		19.88
			178.93
	# 2512		
RECEIVED BY		TAX	TOTAL
			178.93

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days from **Thank You**
 Discount Printing (340) 719-9727

JG000579

JA - 659

JG000652

8504
 500350
 TOTAL \$33.04
 Tax NO TAXES
 TOTAL \$33.04
 Ticket # 5100019 SALES TAX 0.00
 :TOTAL \$33.04
 SCREENS WITH AMP RM 15 M
 SCREENS WITH AMP RM 15 4.85
 SCREENS WITH AMP RM 15 M
 SCREENS WITH AMP RM 15 10.20
 1 TO 1.99 EA 7.99
 ITEM NUMBER QTY UNIT EXTENSION
 To
 Sold-Cash Receipt
 5100019 Salesperson:Stefanie
 (340) 773 1034
 ST. JOHN, VI 00820
 5030 Anchor Way
 Eastons Bay Hardware
 NO: 175 RM 1 03/15/2004 12:42:31

Generator

THANK YOU FOR SHOPPING
ST. CROIX
COST-U-LESS

RETURNS WITHIN 30
DAYS WITH RECEIPT

YOUR CASHIER TODAY↓↓↓

CHKR#: 24 *[Signature]* NAME: PORTIA
40384 55004 CHAIR 659.99

TOTAL 659.99
CHECK 659.99
CHANGE \$.00

1 ITEMS

9807
0003 2127-0003 5730 THU 9/16/84 5:26PM

THANK YOU FOR SHOPPING
ST. CROIX
COST-U-LESS

RETURNS WITHIN 30
DAYS WITH RECEIPT

YOUR CASHIER TODAY↓↓↓

CHKR#: 42 *[Signature]* NAME: STEPHANIE
10361 OCEAN CHAIR 249.75
25 QTY 69.99

SUBTTL \$249.75
TOTAL 249.75
MSTRCD 249.75
CHANGE \$.00

25 ITEMS

0846
0008 7127-0008 0421 SUN 7/13/85 11:49AM

2004

New Register 234⁹⁵

Sharpening Stone 53-

Both paid by PAYPAL

THANK YOU FOR SHOPPING
ST. CROIX
COST-U-LESS

RETURNS WITHIN 30
DAYS WITH RECEIPT

YOUR CASHIER TODAY↓↓↓

CHKR#: 28 NAME: MITHZA
13951 ROSE CHAIR 79.50
10 QTY 47.95

SUBTTL \$79.50
TOTAL 79.50
MSTRCD 79.50
CHANGE \$.00

10 ITEMS JG000617

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823

0081356

Tel: (340) 778-2331 Fax: (340) 778-1218

CUSTOMER'S ORDER NO.		PHONE	DATE	
NAME		Cash		
ADDRESS		-		
QTY	DESCRIPTION	PRICE	AMOUNT	
4	5/8" T&B	41.95	167.80	
			TAX	
			167.80	
RECEIVED BY		TAX	TOTAL	

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days from **Thank You**

Account Printing (340) 778-9727

JG000578

JA - 662

CARIDE HOME CENTER
 135 WEST CASHWICK ROAD
 P.O. BOX 200 WEST WINDFIELD
 WEST BRITAIN, OHIO 43081-0200

CASH SALES

CASH SALES

ACCOUNT #	CUSTOMER P.O. #	TERMS	ORDER #	ORDER DATE	SLSMN	INVOICE #	INVOICE DATE
1885		CASH SALE	214	09/14/04	KMA		09/14/04

ORDERED	BACK ORDERED	SHIPPED	U/M	DESCRIPTION	PRICE	AMOUNT
27	0	27	EA	HARDWARE 2000 BOLTS	3.10	62.10
8	0	8	EA	1 5/16" FULL ROUND HOLDING UM233	1.50	12.00

THE ORDER TOTALS OK HAS BEEN REDUCED BY THE FOLLOWING DEDUCTIONS:

DESCRIPTION	REFERENCE	EXPR	QUANTITY	DATE	AMOUNT
MASTER CARDS	050	09/05	232	09/14/04	74.10

PAID
 SEP 14 2004

CARIDE HOME CENTER INC.

SEP 14, 2004 12:30:26	OT: RDA	1/ E	MERCHANDISE	74.10
SHIP VIA			OTHER	0.00
PAGE 1 OF 1			TAX	0.00
SHIP: 09/14/04			FREIGHT	0.00
MERCHANDISE RECEIVED BY: _____			TOTAL DUE	0.00

JG000601

labor: Dave Holcomb

9-16 9 $\frac{1}{2}$

9-17 7 hr

9-18 6 $\frac{1}{2}$ hr

9-19 3 hr

25 hrs. @ 15.⁰⁰ = 375.⁰⁰

Redid the bartop

JG000548

JA - 665

JG000570

Thank you

NET 10 Percent
NO 221-0390 or net.com

31263

Product No. 11
All items and returned goods must be accompanied by this bill

RECEIVED BY		TOTAL	
A 1% PER MONTH FINANCE CHARGE WILL BE ADDED TO ANY UNPAID BALANCE AFTER 30 DAYS.		TAX	
PAID		CK 2514	
Wash Sales		600	
of Payment			
PAID BY	CASH	C.O.D.	CHARGE
ON ACCT	MOSE. RETD.	PAID OUT	AMOUNT
DESCRIPTION			
CITY			
ADDRESS			
NAME	PHONE	DATE	
18 Sep 64	Wash	18 Sep 64	

WAISH METAL WORKS, INC.
 14AB Peter's Rest
 ST. CROIX, VI 00820
 (340) 773-8169

BOX 3003
 KINGSHILL, ST. CROIX, U.S.V.I. 00851
 TELE: (809) - 778-8767 TELEX: 3471061 TROPSHIP

9/16/04
 E7

SHIP NO. 13544642
 CANE BAY BEACH BAR
 PO BOX 2307
 KINGSHILL
 ST CROIX USVI

FORWARDING AGENT

CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) 13256961
 CANE BAY DIVE SHOP
 110C CANE BAY
 PO BOX 4510
 KINGSHILL
 ST CROIX UXVI 00851

EXPORT REFERENCES
 DATE 9/1/2004
 REF# 272671
 SHIPMENT FROM ECON AIR

SHIPPER PARTY

ALSO NOTIFY
 DOCUMENT NO. 04305714 STC LTL REG
 SAILING INFORMATION 9/11/04 TSO552 B/L: 022

INTENDED EXPORTING CARRIER (VESSEL)
 M.V. TROPIC SUN VOYAGE#: TSO552
 INTENDED PORT OF DISCHARGE
 ST. CROIX, U.S.V.I.

INTENDED PORT OF LOADING
 PORT OF PALM BEACH, FLORIDA
 ORIGINATING CARRIER

MARKS AND NUMBERS	HAZ	NO. OF PACKAGES	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
		2 PIECES	ON 1 PALLET APPLIANCES	1099	215 CB

NET SHIPPER'S WEIGHT CARRIER'S CUBE. (SEE PLEASE SEE CONSIGNEE FOR INVOICE # 444)

MARKS: 04305714
 EQUIPMENT NUMBER: TREU531950-7
 SEAL NBR: TRA

CUSTOMER RELEASE

DESTINATION: ST. CROIX, U.S.V.I.

HEIGHT TERMS TO BE PREPAID; BILL TO: CANE BAY DIVE SHOP

TOTAL OF LADING TOTALS: 573.20

BALANCE DUE AMOUNT

DELIVERY RECEIPT
 CLEAN ORDER DELIVERY - Received the goods described herein, in addition and piece count final and accepted by the undersigned.
 Date: 09/20/04 FOR CONSIGNEE: *[Signature]*
 Print Name: _____
 Agent or Trucker: _____

ARRIVAL NOTICE
 NOTIFICATION INFORMATION TEL # 3407739913/1785669
 First: TEL # _____ Person: *[Signature]* Date: 9/20/04
 Second: TEL # _____ Person: _____ Date: _____
 Third: TEL # _____ Person: _____ Date: _____
 FINAL WRITTEN NOTIFICATION (ATTACHED) DATE: _____

DELIVERY - Not applicable if clean delivery receipt is described herein received with the following describe in detail.
 DATE: _____
 For Tropical Shipping Agent (Signature)

STORAGE/DEMURAGE INFORMATION
 Free Time starts: _____
 Storage/Demur. starts: _____ Storage/Demur. ends: _____
 Days at \$ _____ per day
 Days at \$ _____ per day
 Days at \$ _____ per day
 TOTAL AMOUNT DUE FOR _____ Days = \$ _____
 NOTICE SENT BY: (TROPICAL SHIPPING AGENT)
 NAME: _____

JG000645

FERROL

0027502

Box 3800 TRUCKING SERVICES, INC.
 Kinghill, St. Croix
 U.S. Virgin Islands 00851

Tel: (340) 778-9602
 Fax: (340) 778-9889

DATE: 9/20/04

CONSIGNEE & DESTINATION				SHIPPERS ADDRESS			
Cone Bay Dock Stago							
Shipping Line: <u>panc</u>		Trailer No. <u>80477</u>		B/L No. <u>22</u>		Voyage No. <u>TS-0552</u>	
No. Pieces:	Description	Seal No.	Weight	Cubic Meas.	Rate	Other Charges	Extension
2 Pcs	appliances		1099	215	\$125	Pan of ch# 9/20/04 849	

YOUR BUSINESS IS APPRECIATED

Driver <u>Toy</u>	Time <u>5:00</u>
	Delivery Date <u>9/20/04</u>

NOTE: Consignee responsible for any tire missing or any additional damage to trailer while on your premises.
 Shipment received in good order except as noted:
 Consignee: [Signature]

PRINTED BY DISCOUNT PRINTING (340) 719-9727

F 30 10

JG000629



P.O. 1 680
 RIVER, BEACH, FL 33419-0680
 (888) 881-3000 or (805) 805-7400

Bill of Lading
NON-NEGOTIABLE

SHIPPER/EXPORTER: 013544642
 CANE BAY BEACH BAR
 PO BOX 2307
 KINGSHILL
 ST CROIX (USVI)
 CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER): 323256961
 CANE BAY DIVE SHOP
 1100 CANE BAY
 PO BOX 4510
 KINGSHILL
 ST CROIX (USVI) 00851

DOCUMENT NO. TROPICAL SHIPPING DELIVERY AUTHORIZATION
 FORWARDING AGENT - REFERENCES: **SEP 20 2004**
 EXPORT REFERENCES: **W/IN THIS RATE ONLY**

DATE: 9/1/2004
 REF#: 272671
 SHIPMENT FROM ECON AIR
 ALSO NOTIFY: **FOR CARGO RELEASE CALL 778-8767**
 FAX NUMBER 778-9002

EXPORTING CARRIER (VESSEL): M.V. TROPIC SUN
 PORT OF LOADING: PORT OF PALM BEACH, FLORIDA
 EXPORT OF CHARGE / DELIVERY: ST CROIX (USVI)
 ULTIMATE DESTINATION: D.A. SEPTEMBER 15, 2004

MARKS AND NUMBERS	QUANTITY	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
	2 PIECES	ON 1 PALLET APPLIANCES	1099	215 CF

MISC: SHIPPER'S WEIGHT, CARRIER'S CUBE. *** PLEASE SEE CONSIGNEE FOR INVOICE ***
 MARKS: 01305714
 SED: NO S.E.D. REQUIRED PER SECTION 30.55(H), GENERAL MERCHANDISE VALUED AT LESS THAN \$2500 PER INDIVIDUAL SCHEDULE B NUMBER
 RDSALL, INC. AS PARTICIPATING CARRIER.

EQUIPMENT: NUMBER	SEAL NBR	PIECE	TEMP	HAZ
TRU531950-7	THA	2		

ACCESSORIAL CHARGES:	B/L PROCESSING FEE	US PORT SECURITY
BUNKER SURCHARGE	60.20	40.00
		21.50

340-778-3981

DESTINATION: ST. CROIX, U.S.V.I.
 FREIGHT COLLECT FREIGHT TO BE PREPAID BILL TO: CANE BAY DIVE SHOP

ITEM NO.	WEIGHT	CUBIC FEET	RATE	FREIGHT
8911	1099	215	2.10	451.50

PAID
 FREIGHT CHARGES 451.50
 ACCESSORIAL CHARGES 121.70
 *TOTAL U.S. 573.20
 COLLECTED BY: [Signature]
 CASH FOR # [Signature]

INSURANCE VALUE: CONSIGNEE'S RISK
 (STOWAGE CLAUSE) GOODS IN CONTAINERS OR TRAILERS AS WELL AS ANY MOTORIZED VEHICLE MAY BE CARRIED ON DECK AT THE CARRIER'S OPTION IN ACCORDANCE WITH CLAUSE FIVE (5) HEREOF.
 These Commodities, Technology, or Software were exported from the United States for ultimate destination (above) in accordance with the Export Administration regulations. Diversion contrary to U.S. law is prohibited.
 Birdsall Inc. as agent for Carrier Tropical Shipping Company.

VOYAGE DATE: 09/11/04
 VOYAGE NUMBER: TSC
 912 1223
 By Birdsall, Inc. FOR THE MASTER

JG000630

DLI PAINTS

16093300 STD

THE NEW PAINT LOCKER
 4000 LA GRANDE
 PRINCESS
 C' STED, ST. CROIX 773-0185

INVOICE# 163982

CUST# 10585

BILL-TO: CANE BAY BEACH BAR

SHIP-TO: CANE BAY BEACH BAR

DATE: FEBRU 20 1984 TERMS:

KINGSHILL

POURCHASE ORDER NUMBER: 00026051 SALES ORDER NUMBER:

QUANTITY ORDERED	QUANTITY SHIPPED	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
------------------	------------------	----------	-------------	------------	----------------

09-20-2034

09-20-2034

J.D

0163982

1.00

0002605-01

HOPACOTE 100% ACRYLIC LATEX PRIMER

27.98

27.98

SLS-TOTAL

27.98

TAX

.89

TOTAL

27.98

BALANCE

27.98

THANK YOU FOR YOUR BUSINESS
 348-773-0185

[Handwritten signature]

4.57 56
 20 40

[Large handwritten signature]

AND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE

FILE COPY

JG000614



1E051200 STD

THE NEW PRINT LOCKER
4000 LA GRANDE
PRINCESS
C STED, ST. CROIX 773-0105

INVOICE# 163901

CUST# 10505

BILL-TO: CAVE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX VI 00851

SHIP-TO: CAVE BAY BEACH BAR

DATE: 09-20-2004 ORDER NUMBER: 09-20-2004 SALES PERSON: J.D. ORDER NUMBER: 0163901

QUANTITY: 3.00 ITEM NUMBER: 0025540-01 DESCRIPTION: SMOOTH-COTE EXT. LATEX S/G CLEAR BASE UNIT PRICE: 22.10 EXTENDED PRICE: 66.30

QUANTITY: 3.00 ITEM NUMBER: 0025540-01 DESCRIPTION: SMOOTH-COTE EXT. LATEX S/G CLEAR BASE UNIT PRICE: 22.10 EXTENDED PRICE: 66.30

QUANTITY: 1.00 ITEM NUMBER: 0407034-01 DESCRIPTION: JACK TAR MARINE VIP-SPAR MARINE VA UNIT PRICE: 44.10 EXTENDED PRICE: 44.10

QUANTITY: 2.00 ITEM NUMBER: 9703124 DESCRIPTION: 602-4"WHT CHIPPER BRUSH UNIT PRICE: 1.40 EXTENDED PRICE: 2.80

QUANTITY: 2.00 ITEM NUMBER: 9703128 DESCRIPTION: 4" SINGLE CHIPPER BRUSH UNIT PRICE: 1.15 EXTENDED PRICE: 2.30

QUANTITY: 2.00 ITEM NUMBER: 9710004 DESCRIPTION: 10200005 2" WHT CHIPPER BRUSH UNIT PRICE: .36 EXTENDED PRICE: .72

QUANTITY: 2.00 ITEM NUMBER: 11406 DESCRIPTION: TRAY LINERS UNIT PRICE: .50 EXTENDED PRICE: 1.16

SLS-TOTAL 183.68
TAX .00
TOTAL 183.68
BALANCE 183.68

THANK YOU FOR YOUR BUSINESS
340-773-0105

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COSTS OF COLLECTING THIS NOTE I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

RECEIVED BY: JG000615

BLP MOBILE PAINTS

15334300 STD

THE NEW PAINT LOCKER
 4000 LA GRANDE
 PRINCESS
 C*STED, ST. CROIX 773-0105

INVOICE# 163934
 CUST# CASH

BILL-TO: CASH

SHIP-TO: CASH

DATE	DESCRIPTION	TERMS
09-21-2004		CASH
09-21-2004	S.W	0163934

QUANTITY	ITEM NUMBER	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1.00	9840719	2-70309-00 3/8 (SIX PACK) R/COVER	7.25	7.25
3.00	9703124	602 4"MT CHIPPER BRUSH	2.20	6.60
2.00	9703128	4" SINGLE CHIPPER BRUSH	1.99	3.98

SLS-TOTAL 17.83
 LESS DISC .72
 SUB-TOTAL 17.11
 TAX .00
 TOTAL 17.11
 CASH 20.00
 CHANGE 2.89

"THANK YOU FOR YOUR BUSINESS"
 340-773-0105

RL

ON DEMAND AFTER ABOVE DATE, WITHOUT GRACE I PROMISE TO PAY THE TOTAL AMOUNT WITH A REASONABLE ATTORNEY'S FEE TOGETHER WITH ALL COST OF COLLECTING THIS NOTE. I WAIVE ALL RIGHTS OF EXEMPTION AS TO PERSONAL PROPERTY UNDER THE LAWS OF ALABAMA OR ANY OTHER STATE.

RECEIVED BY JG000616

INVOICE COPY



Raycon Mechanical, LLC
P.O. Box 600 Kingshill St. Croix, V.I. 00851
340-719-2645 phone/340-719-2640 fax.

September 22, 2004

Attention: Victoria/Cane Bay

Re: Exhaust Hood

Raycon Mechanical is please to provide this quote for installation of an exhaust hood. All labor and Materials-Included.

Field Labor	\$ 1,600.00
Shop Labor	\$ 650.00
Jack Rental	\$ 100.00
Installation of Stainless Steel Ceiling	\$ 400.00
Repair Wood Roof	\$ 250.00
(2) 4x4 to hang Hood	\$ 125.00
Welder	\$ 200.00
Electrical	\$ 1,000.00
Grand Total	\$ 4,325.00

Pd \$ 1000 of
Pd \$ 1000 #1280
Pd \$ ~~1500~~ #1285

JG000649

JA - 673

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51595060

Page: 1

Sales rep #: JANET Janet

Terminal # 137

Time: 13:45:54

Invoice Date: 09/22/04

Sold To: Cash Customer

Ship To: Cash Customer

(1) -

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

poqgb01

Thank you for shopping at GBH

ORDER	SHIP	ITEM	DESCRIPTION	PRICE	EXPENSE
2.00	2.00	074110	ACE 4X24 AVO 40 GRIT 2PK	8.99	17.98
1.00	1.00	0812102	812102 GALV HX PAGES 1/2X3-1/2	2.99	2.99
2.00	2.00	352110	35211 1" NIP BRASS HINGE	1.99	3.98
26.00	26.00	S	SCREWS NUTS AND BOLTS	0.15	3.90
13.00	13.00	31099	SWITCH FEED THRU I/O C BRN	2.49	3.19
31.00	31.00	30665	CAR RUB BR HANDLE 2W 15A	1.29	31.29
11.00	11.00	125104	125104 CANDLE LAB BASE	1.30	13.00
10.00	10.00	2718633	18 W LAMP CORD black	1.25	12.50

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$77.21

M 8504 77.21

TOTAL \$77.21

Total applied: 77.21

2 - Customer Copy

JG000596

JA - 674

10

CARIBE DO-IT CENTER

#35 EST. CASTLE COAKLEY, ST. CROIX, VI.
89/23/04 : EP EP 4565 80463

10:23:11
1 5/16" FULL ROUND HOULDING (WM233)
10 LF @ 1.500 15.00

TOTAL 15.00

CASH -20.00
CHANGE 5.00

THANK YOU FOR YOUR BUSINESS!
C/STED 778-5288 OR F/STED 772-6515

SEP 23 2004
10:23:11
10:23:11

JG000655

Raycon Mechanical LLC

P.O. Box 600 Kingshill
St. Croix, Virgin Islands, 00851

Invoice

Date	Invoice #
9/23/2004	1547

Bill To
CANE BAY BEACH BAR

Job Description:
REPAIR WORK FOR EXHAUST HOOD.

Terms

Due Date
9/23/2004

Item Code	Description	Quantity	Price Each	Amount
22 ga. 4X8	SHEET METAL	2	40.40	80.80
elastomeric	1 GALLON	1	50.75	50.75
Labor	Labor/Supervisor-RAY	7	55.00	385.00
Labor Tech	Labor Tech-DENNIS	7	35.00	245.00
Labor Tech	Labor Tech-HENSON	7	25.00	175.00
<i>PAID 10-1-04</i>				
<i>Thank you</i>				
<i>Ray Walker</i>				
Total				\$936.55

JG000648

WALSH METAL WORKS, INC.

14AB Peter's Rest
ST. CROIX, VI 00820
(340) 773-8169

CUSTOMER'S ORDER NO.		PHONE		DATE		
NAME <i>Mike Belchett</i>						
ADDRESS						
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT
QUANTITY		DESCRIPTION		PRICE	AMOUNT	
1			<i>fast set epoxy @</i>			<i>46.00</i>
SOLD BY <i>Steve / Jackie</i> <i>773-1416</i>						TAX TOTAL <i>46.00</i>
RECEIVED BY						

A 1% PER MONTH FINANCE CHARGE WILL BE ADDED TO ANY UNPAID BALANCE AFTER 30 DAYS.

PRODUCT 610

All claims and returned goods must be accompanied by this bill.

31300

ACEEY To Reorder
800-225-6360 or nubs.com

Thank You

JG000571

JA - 677

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
(340) 773-1034 FAX (340) 778-7457

INVOICE
Customer Copy

Invoice # 51599347

Page: 1

Sales rep #: GINELLE Gincelle

Terminal # 133

Time: 11:59:21

Invoice Date: 09/28/04

Sold To: Cash Customer

Ship To: Cash Customer

(1) -

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popghd1

Thank you for shopping at GBH

ORDER #	SHIP #	ITEM #	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	09022021	SCREWS NUTS AND BOLTS	0.20	0.20
1.00	1.00	09022021	1/2" B HOLDZIT STRAPS 2	2.19	2.19
1.00	1.00	6981526	disc 1/2 BIT EXTENSION	8.99	8.99
1.00	1.00	6201689	8BY10 5/8 2000XL SPEEDBOR	14.99	14.99
3.00	3.00		SCREWS NUTS AND BOLTS	1.20	3.60
3.00	3.00		SCREWS NUTS AND BOLTS	0.25	0.75
1.00	1.00		SCREWS NUTS AND BOLTS	1.99	1.99
3.00	3.00		SCREWS NUTS AND BOLTS	0.25	0.75
15.00	15.00		SCREWS NUTS AND BOLTS	2.20	33.00

Return Policy

All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden Appliances or Ace Rental for this advice.

Sales total \$66.76

M 8504 66.76

Total applied: 66.76

TOTAL \$66.76

- 2 - Customer Copy

JG000595

THE TOOL BOX
 RFD 1, Box 6103
 KINGSHILL, VIRGIN ISLANDS 00850
 Phone 778-0404

SOLD BY		DATE <u>9-11-24</u>	
NAME			
ADDRESS <u>CASH</u>			
CITY			
<input type="checkbox"/> CASH	<input type="checkbox"/> CHARGE	<input type="checkbox"/> MDSE. RETD.	PREVIOUS BALANCE ▶
<input type="checkbox"/> C.O.D.	<input type="checkbox"/> PAID OUT	<input type="checkbox"/> PD. ON ACCT.	
<u>12</u>	<u>F/W</u>		<u>1 80</u>
<u>6</u>	<u>Eye Bolt 85</u>		<u>5 10</u>
<u>10</u>	<u>3/8 x 2 1/2 Bolt Nut</u>		<u>4 50</u>
<u>1</u>	<u>3/8 BIT</u>		<u>4 65</u>
			<u>16 05</u>
Thank You!		RECEIVED BY	

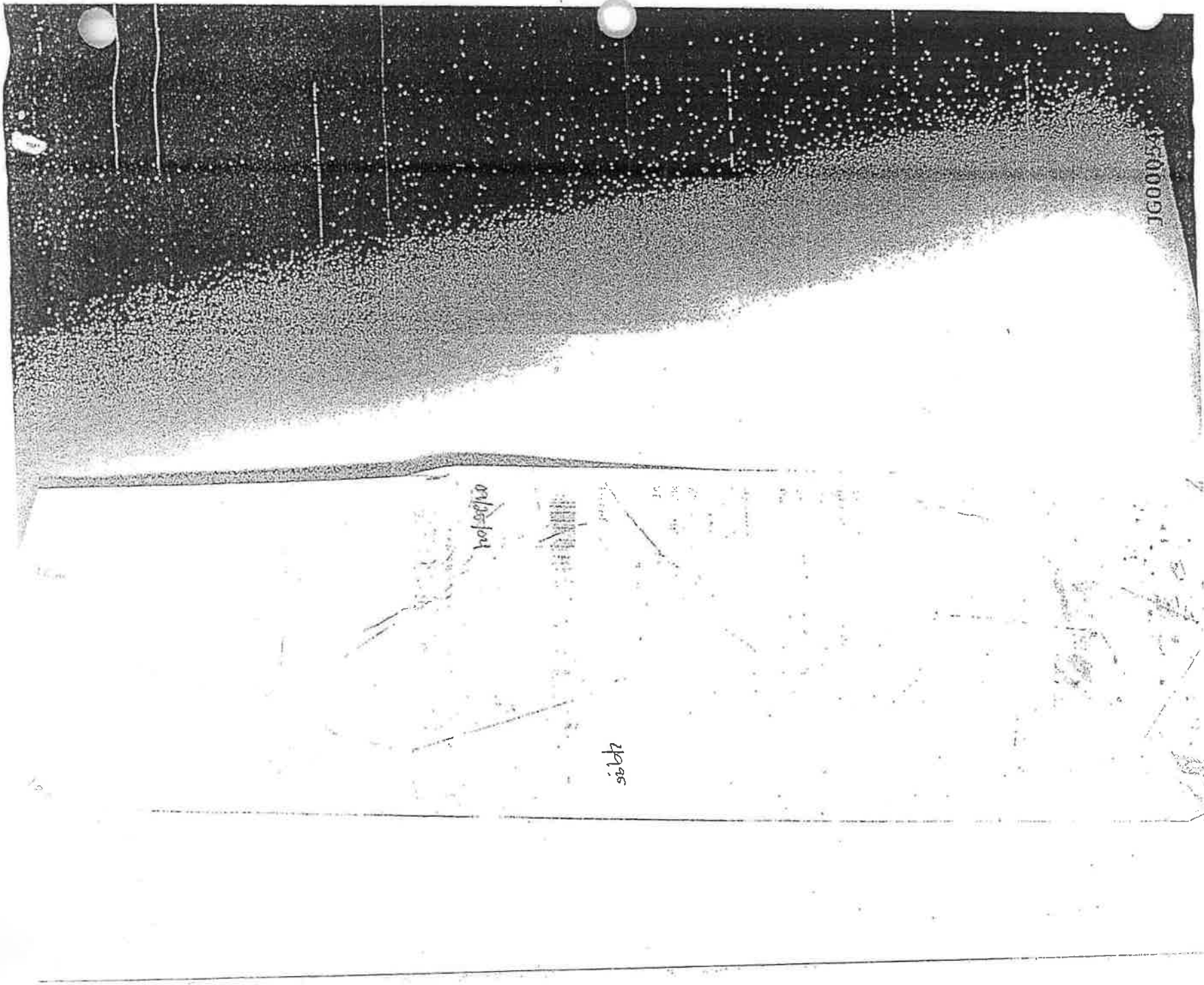
PRODUCT 350

THE TOOL BOX
 RFD 1, Box 6103
 KINGSHILL, VIRGIN ISLANDS 00850
 Phone 778-0404

SOLD BY		DATE <u>9-29-02</u>	
NAME			
ADDRESS <u>CASH</u>			
CITY			
<input type="checkbox"/> CASH	<input type="checkbox"/> CHARGE	<input type="checkbox"/> MDSE. RETD.	PREVIOUS BALANCE ▶
<input type="checkbox"/> C.O.D.	<input type="checkbox"/> PAID OUT	<input type="checkbox"/> PD. ON ACCT.	
<u>6</u>	<u>FT 1/2 Rod</u>		<u>17</u>
			<u>17 00</u>
Thank You!		RECEIVED BY	

PRODUCT 350

JG000546



JG000531

10/20/70

10/20/70

U.D.L. LUMBER YARD

251 Estate Glynne
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00821
 Tel: (340) 778-2331 Fax: (340) 778-1218

0081978

CUSTOMER'S ORDER NO.	PHONE	DATE
		9/27/04
NAME		
ADDRESS		

QTY	DESCRIPTION	PRICE	AMOUNT
1	6 x 6 x 8		
	1 3/4" x 5		3.95
			35.00
RECEIVED BY		TAX	
		TOTAL	

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days of this date.

Thank You

Discount Printing (340) 778-9727

JG000577

JA - 681

AIRS "R" US
 SION FARM SHOPPING CENTER
 ST. CROIX, VI 00820

Tel. (340) 778-2477
 Fax. (340) 778-0054

Invoice No: 31414
 Date: 10/02/04

Page: 1

Sold To: Cash

Customer No: 0
 Phone No:

Ship to:

Cust. Order #:

Salesperson: #3 - LUIS

Product Code	Item Description	Qty	Unit Price	Amount
	COMP. 1/4HP R134A COND UNIT	1	350.00	350.00
C-052-S	FILTER/DRIERS 1/4" SOLDER	1	15.00	15.00
ASD 28S4-VV	SUCTION LINE FILTER DRIER 1/2	1	20.00	20.00

Handwritten notes:
 350
 15
 20
 385

Handwritten notes:
 350
 15
 20
 385

Handwritten notes:
 385
 0000

Sub-Total: 385.00
 Shipping: 0.00
 Tax [0]: EXEMPT
 Total: 385.00
 Check ck 868: 385.00

THANK YOU FOR SHOPPING AT AIRS "R"
 YOUR COMPLETE A/C & REFRIGERATION PARTS
 90 days warranty on compressors

Amount Paid: 385.00
 Amount Due: 0.00
 Change: 0.00

JG000644

Gallows Bay Hardware
5020 Anchor Way
St. Croix, VI 00820
(340) 773-1034

51607822 Salesperson: YVONNE
MS: 130 BRW: 2 10/10/2004 15:06:34

Sold To: Cash/ Customer
To:

QUANTITY QTY PRICE EXTENSION

\$	4.00	2.50 EA	10.00
SCREWS NUTS AND BOLTS M			
0219949	2.00	14.99 BX	29.98
LR717 4.5" FMS COM DOOR HING GR			
\$	48.00	0.23 EA	11.04
SCREWS NUTS AND BOLTS M			

	SUBTOTAL	451.02
Ticket # 51607822	SALES TAX	0.00
pos00759	TOTAL	451.02
	Tax: NO TAXES	

MC 0504
Tendered: 51.02

JOE

Thank you for shopping at GBH

JG000553

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823
 Tel: (340) 778-2331 Fax: (340) 778-1218

0082930

CUSTOMER'S ORDER NO.		PHONE	DATE
NAME		10/16/04	
ADDRESS			
QTY	DESCRIPTION	PRICE	AMOUNT
1	Roof Cement	17.95	17.95
1	Putty Knife	2.95	2.95
1	5/8 BIT	11.95	11.95
1	6 x 6 x 12	54.95	54.95
			87.80
10% /		-	8.80
			79.00
RECEIVED BY		TAX	
		TOTAL	

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days from **Thank You**
 Discard Printing (340) 719-9777

JG000576

JA - 684

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
(340) 773-1034 FAX (340) 778-7457

INVOICE
Customer Copy

REPRINT

Invoice # 51627385

Page: 1

Sales rep #: KENIA kenia

Terminal # 133

Time: 11:34:05

Invoice Date: 11/08/04

Due Date: 11/08/04

Sold To: Cash Customer

Ship To: Cash Customer

(1) -

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popgh01

Thank you for shopping at GBH

ORDER #	QTY	PRICE	EXTENSION	DESCRIPTION
	1.00	1.00	1.00	BOX W/IR PHE 20 3/4 INCS
	2.00	0.99	1.98	270VW DUPLEX OUTLET
	1.00	13.08	13.08	EZSETUP CANDELABRA BASE
	1.00	1.99	1.99	PLUG END 1 CAS 2W BLK 15A
	1.00	10.99	10.99	29 RECEPTACLE PLATE
	1.00	6.49	6.49	PERM FRING INS 16 1/4 65/16 3
	1.00	3.49	3.49	ONE GBH 3/4 BOND EYE BOLT 3/4
	3.00	28.97	86.91	216 ECK 3/8 X EYE BOLT 1/2 SS
	1.00	1.38	1.38	LH372 2 1/2 IN OPEN S HOOK ZINC
	1.00	6.49	6.49	PERM FRING INS 16 1/4 65/16 3
	1.00	14.99	14.99	748995 DELICAT CAT FOOD 10#
	1.00	27.96	27.96	LH28 3/8 X 3/4 EYE BOLT ZINC
	1.00	27.96	27.96	LADLOCK LAM 1 3/4 #KA30
	1.00	0.20	0.20	SCREWS NUTS AND BOLTS
	1.00	0.50	0.50	SCREWS NUTS AND BOLTS

Return Policy

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Custom mixed paint is not returnable.
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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$43.12

M 8504 43.12

Total applied: 43.12

TOTAL \$43.12

Signature _____

2 - Customer Copy

JG000598

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51637593

Page: 1

Sales rep #: JANET Janet

Terminal # 133

Time: 16:21:32

Invoice Date: 11/21/04

Sold To: Cash Customer

Ship To: Cash Customer

(1)

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popgb101

Thank you for shopping at GBH

QTY	SHIP	ITEMS	DESCRIPTION	PRICE	EXTENSION
6.50	6.50	16111668	PIPE PVC 1 1/2 SCH 40	2.75	17.88
1.00	1.00	6270276	CLEANER ALL PURPOSE 30% OATLEY	3.99	3.99
1.00	1.00	6597678	CEMENT PVC HEAVY DUTY 3 OZ OATLEY	5.49	5.49
1.00	1.00	15921893	COUPLING 1 1/2 X 1 1/2 SCH 40	0.79	0.79
3.00	3.00	15923993	FLANGE ADPT 1 1/2 X 1 1/2 COMP DWV	1.49	4.47
3.00	3.00	61315123	ELBOW 90 DEG 1 1/2 X 1 1/2 SCH 40 DWV	1.19	3.57
2.00	2.00	15931203	TEE SANITARY 1 1/2 DWV	1.09	2.18

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Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$29.49

M 8504 29.49

TOTAL \$29.49

Total applied: 29.49

2 - Customer Copy

JG000597

JA - 686

NOTES

G & G Welding Service
P.O. Box 6389 - Sunny 1st
St. Croix, VI 00823
Tel: 515-8366-690-9433

RECEIPT

DATE 11/29/04

NO. 6802

RECEIVED FROM Mike Tolchault

ADDRESS _____

\$ 265.00

FOR Security Brackets

Paul Bolanos
Lead Job

PAY ACCOUNT		HOW PAID	
CASH	265.00	CASH	
CHEQUE	265.00	CHEQUE	<input checked="" type="checkbox"/>
CREDIT CARD		CREDIT CARD	
OTHER		OTHER	

BY [Signature]

© 2001 RECEIPT 11/11/03

JG000560

BYASSEE EQUIPMENT CO.

STOVE DOCTOR
1939 E. Washington
Phoenix, Arizona 85034
PHONE (602) 252-0402 • FAX (602) 340-9299

INVOICE

INVOICE NO. 129422
CUSTOMER NO. COR003
INVOICE DATE 12.08.04
PAGE

BILL TO CORONADO CARE CENTER
11411 N. 19TH AVE.
PHOENIX, AZ

DELIVERED TO CORONADO CARE CENTER
SERVICED AT 11411 N. 19TH AVE.
PHOENIX, AZ

85029

85029

PAGE

1

P.O. NUMBER	TERMS	SHIP VIA	SHIP DATE	DUE DATE	DISC. DATE	SALES
PO 85029	C. O. D.		12.08.04	12.08.04		25
ITEM NUMBER DESCRIPTION	ORDERED BACK ORDERED	SHIPPED	PRICE	TAX	EXTENSION	
IP1175 Thermostat	1.00 0.00	1.00	75.76	Y	75.76	
IP1177 Hi-Limit Thermostat	1.00 0.00	1.00	90.42	Y	90.42	

12-8-04
Pd Ck # 2897

Price shown is your net cost. All returns are
Subject to a 25% restocking fee and must be
accompanied by an RGA #. A 1 1/2% interest per
month will be charged on all past due invoices !

Subtotal	166.18
Sales Tax	13.46
Freight	0.00
TOTAL	179.64

JG000643



4870 N.W. 167 Street Miami, FL 33014
 Phone: (305) 625-5900 Fax: (305) 623-7564
 Website: http://www.budgetsupply.com
 Email: budget@budgetsupply.com

Invoice

Date	Invoice #
1/12/2005	6854

Sold To:

Vooyo, Victoria
 P.O. Box 2307
 Kingshill, VI 00851

Phone:
 Fax:

Ship To:

Customer's P.O.	Sales Rep.	Special Instructions
3852424192, 382126...	EO	

Qty.	Model	Description	Unit	Amount
1	Equipment	New - 36" Radiant Charbroiler	834.00	834.00
2	Smallwares	Used - Melamine Plates/ Pasta Bowls	17.00	34.00
1	Delivery	Delivery Charge	35.00	35.00
	PayPal - Pmt	PayPal Direct Payment	-903.00	-903.00

PAID

CK. NO. _____
 DATE _____

Total	\$0.00
-------	--------

"In the event of default of payment Purchaser agrees to pay all costs of enforcing vendor's rights including reasonable attorney's fees. A service charge of 1 1/2% per month on all past due accounts." Merchandise to remain property of Budget until paid for.

"We Appreciate Your Business"

JG000625



GENI GENT: BIRDSALL, INC.
 P.O. BOX 10683
 RIVERIA BEACH, FL 33419-0683
 (561) 881-3900 or (305) 805-7400

Tropical Shipping International, Ltd.
 Bill of Lading
NON-NEGOTIABLE

PRE/EXPORTER 013112739 JGRET RESTAURANT SUPPLY 4870 NW 167 ST MIAMI FLORIDA USA 33014 INSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) 323512979 VOOYS, VICTORIA PO BOX 2307 KINGSHILL ST CROIX USVI-00851 OFFICE PARTY	DOCUMENT NO. 43470 05009590 MIA REG BOOKING NO. E.D.A. 01/18/05 FORWARDING AGENT - REFERENCES EXPORT REFERENCES INVOICE 6854 ALSO NOTIFY FOR CARGO RELEASE CALL 778-8767 FAX NUMBER 778-9002
--	---

PORTING CARRIER USED TROPIC SUN PORT OF CHARGE DELIVERY ST CROIX, U.S.V.I.	PORT OF LOADING PORT OF PALM BEACH, FLORIDA ULTIMATE DESTINATION ST CROIX, U.S.V.I.
--	--

MARKS AND NUMBERS	QUANTITY (NO. OF PACKAGES)	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
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1 SKID RESTAURANT SUPPLIES 200 16 CF
 MISC SHIPPER'S WEIGHT CARRIER'S CUBE REC'D SHRINKWRAPPED, SHIPPER'S COUNT
 MARKS: VICTORIA VOOYS
 ST CROIX
 SHIP #05009590

NO S.E.D. REQUIRED PER SECTION 30.55(H). GENERAL MERCHANDISE VALUED AT LESS THAN \$2500 PER INDIVIDUAL SCHEDULE B NUMBER

BIRDSALL, INC. AS PARTICIPATING CARRIER
 EQUIPMENT: NUMBER SEAL NBR PIECE TEMP HAZ
 TTR02629-6 318587 318586 1

ACCESSORIAL CHARGES: US PORT SECURITY 1.60
 INSURANCE PREMIUM 20.00

ST. CROIX, U.S.V.I.
 VOOYS, VICTORIA

DESTINATION #

FREIGHT COLLECT FREIGHT TO BE PREPAID BILL TO:

ITEM NO.	WEIGHT	CUBIC FEET	RATE	FREIGHT	ACCESSORIAL CHARGES
1			MIN	75.00	
				INSURANCE VALUE	1,175.52

Accepting this ocean bill of lading the shipper, consignee and owner of the goods agree to be bound by its stipulations, exceptions, and conditions, as written, printed, or stamped on the front or back of, any form, contract, or agreement to the contrary notwithstanding.

If it is agreed between the carrier and the shipper that the goods are to be carried under a bill of lading, the carrier shall issue a bill of lading for the goods and the shipper shall sign and deliver to the carrier a copy of this form and the bill of lading, which being accomplished the carrier shall be bound to transport the goods to the destination, ports and places specified in the bill of lading.

These Commodities, Technology, or Software were exported from the United States for ultimate destination (above) in accordance with the Export Administration regulations. Diversion contrary to U.S. Law is prohibited.

Birdsall Inc. as agent for Carrier Tropical Shipping Company.

01/14/05 TS0576 05009590
 PROE NER: 43 70 SWO: 6 PC: JG000626

PAID

FREIGHT CHARGES 75.00
 ACCESSORIAL CHARGES 21.60
 *TOTAL U.S. 96.60

JAN 19 2005

COLLECTED BY *[Signature]*
 CASH ICK # 1093

TROPICAL SHIPPING CO., LTD
 P.O. BOX 3003
 KINGSHILL, ST. CROIX, U.S.V.I. 00851
 TEL: (809) - 778-8767 TELE: 3471061 TROPSHIP

1/14/05
 B3

REFER EXPORTER 013112739 BUDGET RESTAURANT SUPPLY 4870 NW 167 ST MIAMI FLORIDA USA 33014 <small>INSURANCE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER)</small> 323512979 VOVOYS, VICTORIA PO BOX 2307 KINGSHILL ST. CROIX USVI 00851	FORWARDING AGENT EXPORT REFERENCES INVOICE 6854
ALSO NOTIFY	DOCUMENT NO. 05009590 STC MIA REG SAILING INFORMATION 01/14/05 E/L: 05009590

INTENDED EXPORTING CARRIER (VESSEL) TROPIC SUN INTENDED PORT OF DISCHARGE ST. CROIX, U.S.V.I.	VOYAGE# TS0576 INTENDED PORT OF LOADING PORT OF PALM BEACH, FLORIDA ORIGINATING CARRIER
--	--

MARKS AND NUMBERS	QUANTITY	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
ST. CROIX SHIP # 05009590 EQUIPMENT NUMBER EURO262629 G	1 SKTD 200	RESTAURANT SUPPLIES	16 CB	REC'D SHIRTS NEW WRAPPED SHIPPER'S COUNT

CUSTOMER RELEASE

WEIGHT TERMS: TO BE PREPAID; BILL TO: VOVOYS, VICTORIA

BILL OF LADING TOTALS: 96.60
DELIVERY RECEIPT

CLEAN ORDER DELIVERY - Received the goods described herein, condition and piece count final and accepted by the undersigned:
 Date: 1/14/05
 Signature: [Signature]
 Name: [Name]
 Title: Agent or Truckee

BALANCE DUE AMOUNT

ARRIVAL NOTICE

NOTIFICATION INFORMATION TEL # 3407789252
 First: TEL # _____ Person: _____ Date: _____
 Second: TEL # _____ Person: _____ Date: _____
 Third: TEL # _____ Person: _____ Date: _____
 FINAL WRITTEN NOTIFICATION (ATTACHED) DATE: _____

EXCEPTION DELIVERY - Not applicable if clean delivery receipt signed. Goods described herein received with the following exceptions. Describe in detail.
 STORAGE/OVERAGE: _____
 DATED: _____
 INITIAL DELIVERY: _____ DATE: _____

STORAGE/DEMURAGE INFORMATION
 Free Time starts: _____
 Storage/Demur starts: _____ Storage/Demur ends: _____
 Days at \$ _____ per day
 Days at \$ _____ per day
 Days at \$ _____ per day
 TOTAL AMOUNT DUE FOR _____ Days = \$ _____

For Consignee (Signature) _____
 For Tropical Shipping Agent (Signature) _____
 Name of Agent or Truckee _____

NOTICE SENT BY: (TROPICAL SHIPPING AGENT)
 NAME: _____
 STC: 6 PAGE: JG000627

BTROPFORMA# 43470

THE TOOL BOX
 RFD 1, Box 6103
 KINGSHILL, VIRGIN ISLANDS 00850
 Phone 778-0404

SOLD BY		DATE 1-21-05	
NAME			
ADDRESS CASH			
CITY			
<input type="checkbox"/> CASH	<input type="checkbox"/> CHARGE	<input type="checkbox"/> MDSE. RETD.	PREVIOUS BALANCE
<input type="checkbox"/> C.O.D.	<input type="checkbox"/> PAID OUT	<input type="checkbox"/> PD. ON ACCT.	
1	E.L. Bow		3 10
1	kipper		3 60
1	" "		2 25
1	Bushings		1 70
1	Pipe Dope		2 65
1	Wire Brush		4 70
			18 00
Thank You!		RECEIVED BY	

PRODUCT 350

JG000547

- \$77.21 = LAGS + BELTS FOR SANDEK + HORSE HEAD FLEC
- \$46.90 = RAIT POSIN + JERMITE TREATMENT, WOOD GLUE
- \$15.00 = wood ~~rod~~ DOWL ROD FOR TV CABNETS
- \$167.80 = GROOVED PLY FOR SHUDDERS
- \$69.99 = REMOTE EXTENDERS
- \$191.80 = 4 SHEETS PLY FOR SHUDDERS 5/8THS
- \$16.05 = TV BOX HARDWARE
- \$60.00 = GRATINGS FOR REAR WINDOW
- \$178.93 = 3x10x14 = FOR TV BOXES
- \$74.10 = LAGS + DOWL FOR TV BOXES
- \$33.04 = GLUE + HARDWARE FOR TV + SHUDDERS
- \$10.47 = HINGES FOR IGLOO COOLERS
- \$46.20 = SHUDDER HARDWARE
- \$431.98 = 2 27" TVs + WARRANTY'S
- \$46.00 = 2 PART EPOXY FOR WINDOW GREASE
- \$49.95 = ROPE LIGHT

~~\$22~~
 \$1515.48 TOTAL

- \$35.70 = HARDWARE
- \$66.76 = " "
- \$57.02 = " "
- \$35.00 = 6x6x8 POST
- \$7.80 = RED THEADED ROD
- \$79.00 = ROOF CEMENT - 6x6x18 POST - WOOD BIT
- \$8.74 = HARDWARE
- \$43.12 = " "
- \$79.50 = PLASTIC CHAIRS 10 QTY
- 63 = COFFEE MAKER
- = PLUMBING HARDWARE FOR KITCHEN SINK
- = WOOD FOR FREEZER BOX

- \$249.75 = 25 GREEN CHAIRS COST LESS
- \$18.03 = HARDWARE FOR FREEZER
- \$205.00 = STEEL STRAPS
- \$109.99 = FOR TV BOXES
- \$109.98 = CD PLAYER
- \$25.77 = HARDWARE FOR PROSECTOR
- \$150.23 = K MART PLASTIC CHAIRS GREEN
- \$79.96 = RED TRASH CAN
- \$38.98 = COIL HOSE & SPRAY NOZZLE
- \$328.00 = FREEZER CHEST
- \$146.70 = FREEZER HARDWARE
- \$50.00 = REKEY PUCK LOCKS
- \$28.97 = WOOD FOR PROSECTOR
- \$33.00 = METAL STRAP " " "

JG000665

- \$11.34 = 2x4 LIGHT POST
- \$15.98 = FITTING FOR PRESSURE WASHER
- \$7.50 = ROMEX
- \$11.92 = LIGHT HARDWARE
- \$232.16 = " " + HAND TRUCK
- \$25.62 = " "
- \$75.98 = " "
- \$80.47 = " "
- ~~\$0.00~~
- \$12.99 = SPARE BREAKER
- \$67.36 = ELECTRICAL
- \$120.83 = " "
- \$161.06 = LUMBER FOR DECK
- \$59.78 = 2 EXTRA FLOOD LIGHTS
- \$2.93 = DECK SCREWS
- \$254.36 = FRONT DECK LIGHTING
- \$86.04 = GATE HARDWARE
- \$55.12 = SAND PAPER + DECK SCREWS
- \$150.00 = POWER WASH
- \$37.99 = VOLUME CONTROL SWITCH
- \$497.97 = NEW GRILL, TWO TANK REFILL, ONE NEW TANK W GAS
- \$126.00 = WOOD FOR GATE
- \$137.29 = WOOD + STEEL FOR SAND BOX

Del \$1000
 1/23/05
 # 103

Gallows Bay Hardware

5020 Anchor Way
St. Croix, VI 00820
{340} 773-1034 FAX {340} 778-7457

INVOICE
Customer Copy

Invoice # 51691882

Page: 1

Sales rep #: JANET Janet

Terminal # 137

Time: 11:57:11

Invoice Date: 01/30/05

Sold To: Cash Customer

Ship To: Cash Customer

(1)

Customer #: 0000001

Customer PO:

Order By:

Special Instructions:

popbhd1

Thank you for shopping at GBH

QTY	PRICE	ITEM #	DESCRIPTION	PRICE	EXP
1	79.96	71102	TRASH CAN-22 GAL RED ACE	79.96	

Return Policy
All returns must be in original and intact packaging.
All returns must be less than 30 days old.
All returns must have receipts.
Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
Custom mixed paint is not returnable.
GBH reserves the right to charge a 10% return handling fee.

Warranty
Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total	\$79.96
MC 8504	79.96
TOTAL	\$79.96

Total applied: 79.96

2 - Customer Copy

Michael B. Bell

JG000618

Hollows Bay Hardware
 5020 Anchor Key
 St. Croix, VI 00800
 (340) 773-1034

51694452 Salesperson: Lorie He
 NS: 137 HW: 3 02/02/2005 16:58:49

Sold: Cash Customer
 to :

ITEM NUMBER	QTY	PRICE	TAX/REGION
002001	1.00	3.99 EA	3.99
00790	1.00	1.79 EA	1.79
0167009	1.00	13.99 EA	13.99
CASH			
Ticket # 51694452		SUBTOTAL	\$35.77
pos00350		SALES TAX	0.01
		TOTAL	\$35.77
MC DEBIT		Tax/REG	3.77
		Tax/REG	3.77

JG000558

Princesse Hardware, Inc.



17 La Grande Princesse

P.O. Box 7215

Sunny Isle, St. Croix, U.S.V.I. 00823

34533

Tel: (340) 713-0377

Fax: (340) 713-1377

CUSTOMER'S ORDER NO.		PHONE		DATE		
				2/10/05		
NAME						
ADDRESS						
SOLD BY A.V.	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RETD.	PAID OUT
	/					
QTY	DESCRIPTION			PRICE	AMOUNT	
2	1/2" CPVC female adapter			1.65	3.30	
8	1/2" CPVC 90° elbow			.35	2.80	
1	Charlie Valve 1/2			5.25	5.25	
1	CPVC elbow			3.50	3.50	
1	Teflon tape			1.00	1.00	
10'	CPVC Pipe 1/2			5.50	5.50	
2	Male adapter 3/4 CPVC			.65	1.30	
2	3/4 x 1/2 CPVC Bushing			.50	1.00	
					TAX	
RECEIVED BY					TOTAL	162.65

All claims and returned goods must be accompanied by this bill.

Thank You

TEO BY ABS PRINTING 773-8070

JG000659

JA - 700

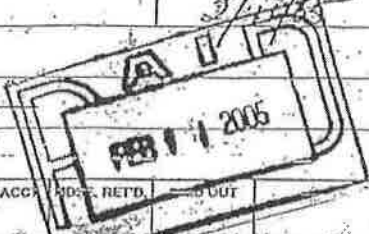
TROPICAL SUPPLY, INC.

#3 Cassava Gardens, Hess Rd., Csted.
 ST. CROIX, USVI 00820
 (340) 778-3545
 FAX (340) 778-3234

CUSTOMER'S ORDER NO. _____ PHONE _____ DATE 2/1/2005

NAME Cash

ADDRESS _____



SOLD BY: CASH C.O.D. CHARGE ON ACC. ADV. RET'D. CREDIT

QTY.	DESCRIPTION	PRICE	AMOUNT
1	Combination Wrench		115.00
2	Spanner	1.50	3.00
1	3ft Supplyline 416C	3.75	3.75
2	1/4 x 2 nipple BRASS	1.45	2.90
			124.65
			12.47
			112.18

NO RETURNS AFTER 30 DAYS FROM DATE OF PURCHASE. TAX _____

RECEIVED BY _____ TOTAL 112.18

180176 All claims and returned goods must be accompanied by this bill. **THANK YOU!**

JG000663

TROPICAL SUPPLY, INC.
 73 Cassava Gardens, Hess Rd.,sted
 St. CROIX (USVI) 00820
 (340) 778-3545
 FAX (340) 778-3234

CUSTOMER'S ORDER NO. _____ PHONE _____ DATE 2/11/05
 NAME _____
 ADDRESS Carl

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MOSE. RET'D.	PAID OUT	
QTY.	DESCRIPTION					PRICE	AMOUNT
1	3ft					3.75	3.75
2						3.50	7.00
1	1/2					.75	1.50
2	1/2					.30	.60
4	1/2					.25	1.00
1	1/2					.20	.20
1	3/4					.45	.45
2	1"					.50	1.00
7	1 1/2					.60	1.20
1	1 1/2					.45	.45
2	1 1/2					.60	1.20
1	1 1/2					2.00	2.00
1	1/2 pt					2.75	2.75
1	1/2 pt					6.50	6.50
1	1/2					4.50	4.50
						TOTAL	39.10
							3.91

All claims and returns must be accompanied by this bill.
 NEED TO REORDER?
 800-275-1390 or ntsa.com

THANK YOU

JG000661

JG000662



CUSTOMER'S ORDER NO. _____ PHONE _____

NAME _____

ADDRESS _____

PAID
 FEB 12 2005

12/05

QTY.	DESCRIPTION	PRICE	AMOUNT
2	1/2 x close Apple Box	89	1.78
2	1/2 STR-90°	35	70
2	M-edge	50	100
			3.08
			- 50
			2.78

JG000561

833 EST. LESLIE CORP., ST. LOUIS, MO.
 807 1/2 S. W. AC. 61790
 86-3173
 ST. LOUIS, MISSOURI
 2 EH 2
 0.500
 1.00
 WASHERS (200)
 9 EH 2
 0.500
 4.00
 WASHERS (200)
 2 EH 2
 0.500
 6.18
 WASHERS (200)
 2 EH 2
 0.500
 1.50
 LASH
 13.00
 3.50
 TOTAL
 28.18
 THANK YOU FOR YOUR BUSINESS!
 L/S'D 7/9-528 OR F/S'D 7/2-413

18 CASH TO IT CENTER

Gallows Day Hardware
 5070 Anchor Way
 St. Croix, VI 00820
 (340) 773-1034

5/17/05 Salesperson: aarti lyn
 WS: 129 DRW: 2 02/18/2005 16:13:09

Sold: Cash Customer
 To:

ITEM NUMBER	QTY	PRICE	EXTENSION
S	8.00	0.70 EA	5.60
SCREWS NUTS AND BOLTS			M
S	5.00	0.05 EA	0.40
SCREWS NUTS AND BOLTS			M
S	9.00	0.33 EA	2.64
SCREWS NUTS AND BOLTS			M
0390211	1.00	9.99 EA	9.99
10" SS GALL. PULL			
		SUBTOTAL	\$18.63
ticket # 51705/05		SALES TAX	0.00
500350		TOTAL	\$18.63
		Tax: NO TAXES	
8504			18.63
		Tendered:	18.63

JG000653

U.D.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823
 Tel: (340) 778-2331 Fax: (340) 778-1218

0000577

CUSTOMER'S ORDER NO.		PHONE	DATE	
			2/19/05	
NAME				
ADDRESS				
QTY	DESCRIPTION	PRICE	AMOUNT	
6	2X10X12	25.00	150.00	
5	2X4X12	9.35	46.75	
1	2X6X8	11.28	11.28	
10 1/2			208.03	
			-20.80	
			187.23	
RECEIVED BY		TAX		
		TOTAL		

All claims and returned goods MUST be accompanied by this bill.

1.5% per month additional charge if this invoice is not paid within 30 days of this date.

Thank You

JG000657

GBH

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Superior Court

Case No. 03-00000000-00000

FILED

FILED

FILED

FILED

FILED

FILED

FILED

FILED

FILED

FILED

\$ 3875

JG000654

JA - 707

JG000656

Brandeis

600-225-6380 or 1-800-391-1000
To Reorder

32143

All claims and returned goods must be accompanied by this bill.

RECEIVED BY		DATE		PHONE		CUSTOMER'S ORDER NO.	
		8-21-05					
NAME							
ADDRESS							
SOLD BY							
CASH							
E.O.D.							
CHANGE							
ON ACCT.							
MISE. NETO.							
PAID OUT							
QTY.		DESCRIPTION		LENGTH		AMOUNT	
4	@ 36"	3/16	1/2				
							12' x 1.80 = \$21.60
1	34"	1/2	1/2				
1	43"	1/2	1/2				
							6.47 x 1.80
							11.57
							33.12
							TAX \$
							TOTAL 33.12

Handwritten: Paid #2157

WALSH METAL WORKS, INC.
144B Peter's Rest
ST. CROIX, VI 00820
(340) 773-8169

Gallows Bay Hardware
 5020 Anchor Way
 St. Croix, VI 00070
 (340) 773-1034

51708975 Salesperson:man11yn
 W: 133 DRW: 2 02/21/2005 11:12:01

Sold: Cash Customer
 to :

ITEM NUMBER	QTY	PRICE	EXTENSION
260000	1.00	3.99 EA	3.99
ACI BEAM AXIAXS/STFP CIR METAL			
100000	1.00	6.99 EA	6.99
PIA034 3/8" HSS DRILL BIT			
2001261	2.00	3.99 EA	7.98
3/16" RECIP BLD 6", 18TPI			
1000275	3.00	8.99 EA	26.97
1000272 10"HW DTY STRAP HINGE			
2000000	1.00	29.99 EA	29.99
ROUND PADLOCK KD ACE			
S	2.00	0.90 EA	1.80
SCREWS NUTS AND BOLTS			M
1.99BIT	1.00	1.99 EA	1.99
1.99BIT			
0401	1.00	19.99 EA	19.99
SHINGLES-SHIMS BUNDLE			
S	16.00	0.90 EA	14.40
SCREWS NUTS AND BOLTS			M
S	20.00	0.07 EA	1.40
SCREWS NUTS AND BOLTS			M
S	18.00	0.10 EA	1.80
SCREWS NUTS AND BOLTS			M
S	17.00	0.10 EA	1.70
SCREWS NUTS AND BOLTS			M
S	8.00	0.90 EA	7.20
SCREWS NUTS AND BOLTS			M
S	8.00	0.07 EA	0.56
SCREWS NUTS AND BOLTS			M
S	8.00	0.10 EA	0.80
SCREWS NUTS AND BOLTS			M
S	1.25	14.99 EA	18.74
SCREWS NUTS AND BOLTS			M

SUBTOTAL \$146.30
 Ticket # 51708975 SALES TAX 0.00
 =====
 DISCOUNT TOTAL \$146.30
 TAX NO TAXES

JG000551

KMPS

2543

JG000555

GBH

84690

JG000556

J.L. LUMBER YARD

251 Estate Glynn
 P.O. Box 6697, Sunny Isle
 St. Croix, U.S. Virgin Islands 00823

Tel: (340) 778-2331 Fax: (340) 778-1218

0001470

DATE 2/22/05
 RECEIVED BY [Signature]

CUSTOMER'S ORDER NO.

NAME

Michael A

ADDRESS

82 Casa Daniel

QTY.	DESCRIPTION	PRICE	AMOUNT
1	2x10 + 10		21.68
1	2x8		4.95
			26.63
			266
			239
			2160

TAX TOTAL 231

RECEIVED BY

All claims and returned goods MUST be accompanied by this bill.
 1.5% per month additional charge if this invoice is not paid within 30 days of this date.

Diamond Printing (340) 719-9727

Tha

JG000658

5020 Anchor W
 St. Croix, VI 00820
 (340) 773-1034 FAX (340) 778-7457

INVOICE
 Customer Copy

Invoice # 51710307

es rep #: TERESA Terminal # 137 Time: 16:03:57 Invoice Date: 02/23/05

Sold To: Cash Customer **Ship To:** Cash Customer

(1)

Customer #: 000001 Customer PO: Order By:

Special Instructions:

popgth01

Thank you for shopping at GBH

ORDER	SHIP	ITEM	DESCRIPTION	PRICE	EXTENSION
1.00	1.00	LS	LOCKSMITH LABOR	50.00	50.00
1.00	1.00	LS	LOCKSMITH LABOR	20.00	20.00

Return Policy

All returns must be in original and intact packaging.
 All returns must be less than 30 days old.
 All returns must have receipts.
 Any cut items such as screen, rope, wire, fencing, etc. are not returnable.
 Custom mixed paint is not returnable.
 GBH reserves the right to charge a 10% return handling fee.

Warranty

Our manufacturers offer a warranty. If you have any questions about the warranty or suitability of a particular product, please contact the manufacturer. Do not rely on Gallows Bay Hardware, Garden, Appliances or Ace Rental for this advice.

Sales total \$50.00

MC 8504 50.00

TOTAL \$50.00

Total applied: 50.00

2 - Customer Copy

man/real

JG000664



P.O. Box 3683
 RIVIERA BEACH, FL 33419-0683
 (561) 881-3000 or (305) 805-7400

**Bill of Lading
 NON-NEGOTIABLE**

SHIPPER/EXPORTER 013515044
 ERACE, JOSEPH
 FREDERIKSTED
 ST CROIX USVI
 CONSIGNEE (NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER) 823512979
 VOOYS, VICTORIA

DOCUMENT NO.

BOOKING NO. TROPICAL SHIPPING

FORWARDING AGENT - REFERENCES
 APR 18 2005

EXPORT REFERENCES
 INV. NO: PAGE #1

ALSO NOTIFY
 FOR CARGO RELEASE CALL 778-8767
 FAX NUMBER 778-9002

FREDERIKSTED
 ST CROIX USVI
 NOTIFY PARTY
 340.778.5889

PORTING CARRIER
 (ISSUED) M. V. TROPIC SUN

PORT OF
 CHARGE
 DELIVERY ST. CROIX, U.S.V.I.

PORT OF
 LOADING PORT OF PALM BEACH, FLORIDA

ULTIMATE
 DESTINATION E.D.A. APRIL 12, 2005

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	QUANTITY	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
	1 CARTON	12" SLICER	75	1 CB
MISC: SHIPPER'S WEIGHT, CARRIER & CUBE.				
MARKS: 05053444				
REMARKS: NO S.E.D. REQUIRED PER SECTION 30.55(H) GENERAL MERCHANDISE VALUED AT LESS THAN \$2500 PER INDIVIDUAL SCHEDULE B NUMBER				
BIRDSALL, INC. AS PARTICIPATING CARRIER				
EQUIPMENT:	NUMBER	SEAL NBR	PIECE	TEMP HAZ
	F80U640485-8	0026284	1	

APR 18 2005

DESTINATION ST. CROIX, U.S.V.I.
 VOOYS, VICTORIA

ITEM NO.	WEIGHT	CUBIC FEET	RATE	FREIGHT
OPER			11N	55.00

ACCESSORIAL CHARGES
 FREIGHT CHARGES 55.00

INSURANCE VALUE CONSIGNEE'S RISK
 (STOWAGE CLAUSE)
 GOODS IN CONTAINERS OR TRAILERS AS WELL AS ANY MOTORIZED VEHICLE MAY BE CARRIED ON DECK AT THE CARRIER'S OPTION IN ACCORDANCE WITH CLAUSE FIVE (5) HEREOF.
 These Commodities, Technology, or Software were exported from the United States for ultimate destination (above) in accordance with the Export Administration regulations. Diversion contrary to U.S. law is prohibited.
 Birdsall Inc, us agent for Carrier Tropical Shipping Company.

VOYAGE DATE
 VOYAGE NUMBER
 BILL OF LADING

By Birdsall, Inc. AGENT FOR THE MASTER

JG000639

- 1040 info attached -

Form 1040 Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return 2003 (99)

Label
 (See instructions.)
Use the IRS label.
 Otherwise, please print or type.
HER E

For the year Jan. 1–Dec. 31, 2003, or other tax year beginning 2003, ending 20

OMB No. 1545-0074

Your first name and initial: Victoria J Last name: Vooyo
 Your social security number: [redacted]

If a joint return, spouse's first name and initial: Last name: Spouse's social security number: [redacted]

Home address (number and street). If you have a P.O. box, see instructions. Apt. no.:
 P.O. Box 2307

City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.
 Kingshill VI 00851

Important!
 You must enter your SSN(s) above.

Presidential Election Campaign (See instructions.) Note. Checking "Yes" will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund?
 You: Yes No Spouse: Yes No

Filing Status

1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately. Enter spouse's SSN above and full name here.
 4 Head of household (with qualifying person). (See instr.) If qualifying person is a child but not your dependent, enter this child's name here.
 5 Qualifying widow(er) with dependent child. (See inst.)

Exemptions

6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a
 b Spouse
 c **Dependents:**

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) X if qualifying child for child tax credit (see instr.)

d Total number of exemptions claimed: 1

Income

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	0
8a	Taxable interest. Attach Schedule B if required	8a	0
b	Tax-exempt interest. Do not include on line 8a	8b	0
9a	Ordinary dividends. Attach Schedule B if required	9a	76
b	Qualified dividends (see instructions)	9b	76
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	0
11	Alimony received	11	15,475
12	Business income or (loss). Attach Schedule C or C-EZ	12	-925
13a	Capital gain or (loss). Attach Schedule D if required. If not required, check here	13a	0
b	If box on 13a is checked, enter post-May 5 capital gain distributions	13b	0
14	Other gains or (losses). Attach Form 4797	14	0
15a	IRA distributions	15a	0
b	Taxable amount (see instructions)	15b	0
16a	Pensions and annuities	16a	2,956
b	Taxable amount (see instructions)	16b	-13,310
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	0
18	Farm income or (loss). Attach Schedule F	18	0
19	Unemployment compensation	19	0
20a	Social security benefits	20a	0
b	Taxable amount (see instructions)	20b	0
21	Other income. List type and amount (see instructions)	21	0
22	Add the amounts in the far right column for lines 7 through 21. This is your total income	22	4,272

Adjusted Gross Income

23	Educator expenses (see instructions)	23	0
24	IRA deduction (see instructions)	24	0
25	Student loan interest deduction (see instructions)	25	0
26	Tuition and fees deduction (see instructions)	26	0
27	Moving expenses. Attach Form 3903	27	0
28	One-half of self-employment tax. Attach Schedule SE	28	1,094
29	Self-employed health insurance deduction (see instructions)	29	0
30	Self-employed SEP, SIMPLE, and qualified plans	30	0
31	Penalty on early withdrawal of savings	31	0
32a	Alimony paid b Recipient's SSN	32a	0
33	Add lines 23 through 32a	33	1,094
34	Subtract line 33 from line 22. This is your adjusted gross income	34	3,178

EXHIBIT 55

Tax and Credits

Standard Deduction for—

• People who checked any box on line 36a or 36b or who can be claimed as a dependent, see instrs.
• All others:

Single or Married filing separately \$4,750

Married filing jointly or Qualifying widow(er), \$9,500

Head of household, \$7,000

35	Amount from line 34 (adjusted gross income)		35	3,178
36a	Check <input type="checkbox"/> You were born before January 2, 1939, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1939, <input type="checkbox"/> Blind. Total boxes checked	0		
36b	If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see instructions and check here			
37	Itemized deductions (from Schedule A) or your standard deduction (see left margin)		37	4,750
38	Subtract line 37 from line 35		38	-1,572
39	If line 35 is \$104,625 or less, multiply \$3,050 by the total number of exemptions claimed on line 6d. If line 35 is over \$104,625, see the worksheet in the instructions		39	3,050
40	Taxable income. Subtract line 39 from line 38. If line 39 is more than line 38, enter -0-		40	0
41	Tax (see instructions). Check if any tax is from a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972		41	0
42	Alternative minimum tax (see instructions). Attach Form 6251		42	0
43	Add lines 41 and 42		43	0
44	Foreign tax credit. Attach Form 1116 if required	44	0	
45	Credit for child and dependent care expenses. Attach Form 2441	45		
46	Credit for the elderly or the disabled. Attach Schedule R	46		
47	Education credits. Attach Form 8863	47		
48	Retirement savings contributions credit. Attach Form 8880	48	0	
49	Child tax credit (see instructions)	49		
50	Adoption credit. Attach Form 8839	50		
51	Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8859	51	0	
52	Other credits. Check applicable box(es): a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Specify	52	0	
53	Add lines 44 through 52. These are your total credits		53	0
54	Subtract line 53 from line 43. If line 53 is more than line 43, enter -0-		54	0

Other Taxes

55	Self-employment tax. Attach Schedule SE	55	0
56	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	56	0
57	Tax on qualified plans, including IRAs, and other tax-favored accounts. Attach Form 5329 if required	57	296
58	Advance earned income credit payments from Form(s) W-2	58	0
59	Household employment taxes. Attach Schedule H	59	0
60	Add lines 54 through 59. This is your total tax	60	296

Payments

If you have a qualifying child, attach Schedule EIC.

61	Federal income tax withheld from Forms W-2 and 1099	61	0
62	2003 estimated tax payments and amount applied from 2002 return	62	0
63	Earned income credit (EIC)	63	
64	Excess social security and tier 1 RRTA tax withheld (see instructions)	64	0
65	Additional child tax credit. Attach Form 8812	65	
66	Amount paid with request for extension to file (see instructions)	66	
67	Other payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4138 c <input type="checkbox"/> Form 8885	67	0
68	Add lines 61 through 67. These are your total payments	68	0

Refund

Direct deposit? See instructions and fill in 70b, 70c, and 70d.

69	If line 68 is more than line 60, subtract line 60 from line 68. This is the amount you overpaid	69	0
70a	Amount of line 69 you want refunded to you	70a	
b	Routing number XXXXXXXXX	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	
d	Account number XXXXXXXXXXXXXXXXXXXX		
71	Amount of line 69 you want applied to your 2004 estimated tax	71	

Amount You Owe

72	Amount you owe. Subtract line 68 from line 60. For details on how to pay, see the instructions	72	296
73	Estimated tax penalty (see instructions)	73	

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? Yes. Complete the following No

Designee's name _____ Phone no. _____ Personal identification number (PIN) _____

Sign Here

Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature: *Victoria J Vooy's* Date: 9/14/04 Your occupation: Free Lancer Daytime phone number: _____

Spouse's signature, if a joint return, both must sign. _____ Date: _____ Spouse's occupation: _____

Preparer's Use Only

Preparer's signature: *Bansal* Date: 9/14/04 Check if self-employed: Preparer's SSN or PTIN: 580-15-7454

Firm's name (or yours if self-employed), address, and ZIP code: Deepak Bansal, CPA, R.O. Box 8639 Sunny Isles St. Croix, VI 00823 Phone no. _____

KIA

Deepak Bansal, CPA
R.O. Box 8639 Sunny Isles
St. Croix, VI 00823
340-719-6464

**SCHEDULE C
(Form 1040)**

Profit or Loss From Business
(Sole Proprietorship)

Department of the Treasury
Internal Revenue Service (99)

Partnerships, joint ventures, etc., must file Form 1065 or Form 1065-B.
Attach to Form 1040 or 1041. See Instructions for Schedule C (Form 1040).

OMB No 1545-0074

2003

Attachment Sequence No. **09**

Name of proprietor
Victoria J Voovs

A Principal business or profession, including product or service (see instructions)

B Enter code from Instructions

C Business name. If no separate business name, leave blank.

D Employer ID number (EIN), if any

E Business address (including suite or room no.)
City, town or post office, state, and ZIP code

F Accounting method: (1) Cash (2) Accrual (3) Other (specify) _____

G Did you "materially participate" in the operation of this business during 2003? If "No," see instructions for limit on losses

H If you started or acquired this business during 2003, check here Yes No

Part I Income

1 Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see instructions and check here	1	22,575
2 Returns and allowances	2	
3 Subtract line 2 from line 1	3	22,575
4 Cost of goods sold (from line 42 on page 2)	4	0
5 Gross profit. Subtract line 4 from line 3	5	22,575
6 Other income, including Federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7 Gross income. Add lines 5 and 6	7	22,575

Part II Expenses. Enter expenses for business use of your home only on line 30.

8 Advertising	8		19 Pension and profit-sharing plans	19	
9 Car and truck expenses (see instructions)	9	3,000	20 Rent or lease (see instructions):		
10 Commissions and fees	10		a Vehicles, machinery, & equipment	20a	0
11 Contract labor (see instructions)	11		b Other business property	20b	
12 Depletion	12		21 Repairs and maintenance	21	
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	0	22 Supplies (not included in Part III)	22	1,000
14 Employee benefit programs (other than on line 19)	14		23 Taxes and licenses	23	100
15 Insurance (other than health)	15		24 Travel, meals, and entertainment:		
16 Interest:			a Travel	24a	
a Mortgage (paid to banks, etc.)	16a		b Meals and entertainment		2,800
b Other	16b		c Enter nondeductible amount included on line 24b (see instructions)		1,400
17 Legal and professional services	17	100	d Subtract line 24c from line 24b	24d	1,400
18 Office expense	18	1,000	25 Utilities	25	500
28 Total expenses before expenses for business use of home. Add lines 8 through 27 in columns	28		26 Wages (less employment credits)	26	
29 Tentative profit (loss). Subtract line 28 from line 7	29		27 Other expenses (from line 48 on page 2)	27	0
30 Expenses for business use of your home. Attach Form 8829	30		31	31	15,475
31 Net profit or (loss). Subtract line 30 from line 29	31				0

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

32a All investment is at risk.

32b Some investment is not at risk.

K1A For Paperwork Reduction Act Notice, see instructions.

Schedule C (Form 1040) 2003

JG000322

Part III Cost of Goods Sold (see instructions)

33 Methods(s) used to value closing inventory: a Cost b Lower of cost or market c Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation Yes No

Table with 3 columns: Description, Line Number, and Amount. Rows include: 35 Inventory at beginning of year, 36 Purchases less cost of items withdrawn for personal use, 37 Cost of labor, 38 Materials and supplies, 39 Other costs, 40 Add lines 35 through 39 (Amount: 0), 41 Inventory at end of year, 42 Cost of goods sold (Amount: 0).

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶

44 Of the total number of miles you drove your vehicle during 2003, enter the number of miles you used your vehicle for:

a Business _____ b Commuting _____ c Other _____

45 Do you (or your spouse) have another vehicle available for personal use? Yes No

46 Was your vehicle available for use during off-duty hours? Yes No

47a Do you have evidence to support your deduction? Yes No

b If "Yes," is the evidence written? Yes No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

Table with 2 columns: Description and Amount. Multiple rows for listing expenses.

48 Total other expenses. Enter here and on page 1, line 27 48 0

JC000323

JA - 719

**SCHEDULE D
(Form 1040)**

Department of the Treasury
Internal Revenue Service (99)

Capital Gains and Losses

▶ Attach to Form 1040. ▶ See instructions for Schedule D (Form 1040).
▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2003

Attachment
Sequence No. 12

Name(s) shown on Form 1040

Victoria J Vooy

Your social security number

■■■■■■■■■■

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see the instructions)	(e) Cost or other basis (see the instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)	(g) Post-May 5 gain or (loss)* (see below)
1						
2 Enter your short-term totals, if any, from Schedule D-1, line 2		2	0		0	0
3 Total short-term sales price amounts. Add lines 1 and 2 in column (d)		3	0			
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824					4	0
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1					5	0
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your 2002 Capital Loss Carryover Worksheet					6	(0)
7a Combine lines 1 through 5 in column (g). If the result is a loss, enter the result. Otherwise, enter -0-. Do not enter more than zero					7a	0
b Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f)					7b	0

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see the instructions)	(e) Cost or other basis (see the instructions)	(f) Gain or (loss) for the entire year Subtract (e) from (d)	(g) Post-May 5 gain or (loss)* (see below)
8 NBT Bancorp, INC.	04/08/02	10/28/03	3,075	4,000	-925	-925
9 Enter your long-term totals, if any, from Schedule D-1, line 9		9	0		0	0
10 Total long-term sales price amounts. Add lines 8 and 9 in column (d)		10	3,075			
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824					11	0
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1					12	0
13 Capital gain distributions. See the instructions				0	13	0
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your 2002 Capital Loss Carryover Worksheet					14	(0)
15 Combine lines 8 through 13 in column (g). If zero or less, enter -0-					15	0
16 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f) Next: Go to Part III on page 2.					16	-925

*Include in column (g) all gains and losses from column (f) from sales, exchanges, or conversions (including installment payments received) after May 5, 2003. However, do not include gain attributable to unrecaptured section 1250 gain, "collectibles gains and losses" (as defined in the instructions) or eligible gain on qualified small business stock (see the instructions).

KIA For Paperwork Reduction Act Notice, see Instructions.

Schedule D (Form 1040) 2003

JG000324

JA - 720

Part III Taxable Gain or Deductible Loss

17a	Combine lines 7b and 16 and enter the result. If a loss, enter -0- on line 17b and go to line 18. If a gain, enter the gain on Form 1040, line 13a, and go to line 17b below	17a	-925
b	Combine lines 7a and 15. If zero or less, enter -0-. Then complete Form 1040 through line 40 Next: • If line 16 of Schedule D is a gain or you have qualified dividends on Form 1040, line 9b, complete Part IV below. • Otherwise, skip the rest of Schedule D and complete the rest of Form 1040.	17b	0
18	If line 17a is a loss, enter here and on Form 1040, line 13a, the smaller of (a) that loss or (b) (\$3,000) (or, if married filing separately, (\$1,500)) (see the instructions) Next: • If you have qualified dividends on Form 1040, line 9b, complete Form 1040 through line 40, and then complete Part IV below (but skip lines 19 and 20). • Otherwise, skip Part IV below and complete the rest of Form 1040.	18	(925)

Part IV Tax Computation Using Maximum Capital Gains Rates

If line 16 or line 17a is zero or less, skip lines 19 and 20 and go to line 21. Otherwise, go to line 19.

19	Enter your unrecaptured section 1250 gain, if any, from line 18 of the worksheet in the instructions	19	
20	Enter your 28% rate gain, if any, from line 7 of the worksheet in the instructions	20	

If lines 19 and 20 are zero, go to line 21. Otherwise, complete the worksheet in the instructions to figure the amount to enter on lines 35 and 53 below, and skip all other lines below.

21	Enter your taxable income from Form 1040, line 40	21	
22	Enter the smaller of line 16 or line 17a, but not less than zero	22	
23	Enter your qualified dividends from Form 1040, line 9b	23	
24	Add lines 22 and 23	24	
25	Amount from line 4g of Form 4952 (investment interest expense)	25	
26	Subtract line 25 from line 24. If zero or less, enter -0-	26	
27	Subtract line 26 from line 21. If zero or less, enter -0-	27	
28	Enter the smaller of line 21 or: • \$56,800 if married filing jointly or qualifying widower(er); • \$28,400 if single or married filing separately; or • \$38,050 if head of household	28	
If line 27 is more than line 28, skip lines 29-39 and go to line 40.			
29	Enter the amount from line 27	29	
30	Subtract line 29 from line 28. If zero or less, go to line 40	30	
31	Add lines 17b and 23*	31	
32	Enter the smaller of line 30 or line 31	32	
33	Multiply line 32 by 5% (.05)	33	
If lines 30 and 32 are the same, skip lines 34-39 and go to line 40.			
34	Subtract line 32 from line 30	34	
35	Enter your qualified 5-year gain, if any, from line 8 of the worksheet in the instructions	35	
36	Enter the smaller of line 34 or line 35	36	
37	Multiply line 36 by 8% (.08)	37	
38	Subtract line 36 from line 34	38	
39	Multiply line 38 by 10% (.10)	39	
If lines 25 and 30 are the same, skip lines 40-49 and go to line 50.			
40	Enter the smaller of line 21 or line 26	40	
41	Enter the amount from line 30 (if line 30 is blank, enter -0-)	41	
42	Subtract line 41 from line 40	42	
43	Add lines 17b and 23*	43	
44	Enter the amount from line 32 (if line 32 is blank, enter -0-)	44	
45	Subtract line 44 from line 43	45	
46	Enter the smaller of line 42 or line 45	46	
47	Multiply line 46 by 15% (.15)	47	
48	Subtract line 46 from line 42	48	
49	Multiply line 48 by 20% (.20)	49	
50	Figure the tax on the amount on line 27. Use the Tax Table or Tax Rate Schedules, whichever applies	50	
51	Add lines 33, 37, 39, 47, 49 and 50	51	
52	Figure the tax on the amount on line 21. Use the Tax Table or Tax Rate Schedules, whichever applies	52	
53	Tax on all taxable income. Enter the smaller of line 51 or line 52 here and on Form 1040, line 41	53	

K1A *If line 23 and 25 are more than zero, see instructions for the amount to enter.

**SCHEDULE E
(Form 1040)**

Supplemental Income and Loss
(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

2003
Attachment
Sequence No. 13

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040 or Form 1041. ▶ See Instructions for Schedule E (Form 1040).

Name(s) shown on return
Victoria J Voys

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). Report farm rental income or loss from Form 4835 on page 2, line 40.

1	Show the kind and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
A			• 14 days or		
B			• 10% of the total days rented at fair rental value?		
C			(See instructions.)		

Income:	Properties			Totals	
	A	B	C	(Add columns A, B, and C.)	
3 Rents received	3			3	0
4 Royalties received	4	0	0	4	0
Expenses:					
5 Advertising	5				
6 Auto and travel (see instructions)	6				
7 Cleaning and maintenance	7				
8 Commissions	8				
9 Insurance	9				
10 Legal and other professional fees	10				
11 Management fees	11				
12 Mortgage interest paid to banks, etc. (see instructions)	12			12	0
13 Other interest	13				
14 Repairs	14				
15 Supplies	15				
16 Taxes	16				
17 Utilities	17				
18 Other (list) ▶	18				
19 Add lines 5 through 18	19	0	0	19	0
20 Depreciation expense or depletion (see instructions)	20			20	0
21 Total expenses. Add lines 19 and 20	21	0	0		
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22	0	0		
23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23	()	()		
24 Income. Add positive amounts shown on line 22. Do not include any losses	24				0
25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25				(0)
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 41 on page 2	26				0

Name(s) shown on return. Do not enter name and social security number if shown on page 1.
 Victoria J Vooyo

Your social security number

Part II **Income or Loss From Partnerships and S Corporations** Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting losses not allowed in prior years due to the at-risk or basis limitations, passive losses not reported on Form 8582, or unreimbursed partnership expenses? Yes No
 If you answered "Yes," see instructions before completing this section.
 Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	Barabus, Inc.	S		66-0629167	X
B					
C					
D					

Passive Income and Loss		Nonpassive Income and Loss			
(f) Passive loss allowed (attach Form 8682 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1	
A		13,310			
B					
C					
D					
29a Totals	0	13,310	0	0	
b Totals	0	13,310	0	0	
30	Add columns (g) and (j) of line 29a			30	0
31	Add columns (f), (h), and (i) of line 29b			31	(13,310)
32	Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32	-13,310

Part III **Income or Loss From Estates and Trusts**

33	(a) Name	(b) Employer identification number
A		
B		

Passive Income and Loss		Nonpassive Income and Loss		
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1	
A				
B				
34a Totals	0	0	0	
b Totals	0	0	0	
35	Add columns (d) and (f) of line 34a		35	0
36	Add columns (c) and (e) of line 34b		36	(0)
37	Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below		37	0

Part IV **Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder**

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b	
38			0	0	0	
39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below				39	0

Part V **Summary**

40	Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	0
41	Total income or (loss). Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17	41	-13,310
42	Reconciliation of Farming and Fishing Income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), line 15b; Schedule K-1 (Form 1120S), line 23; and Schedule K-1 (Form 1041), line 14 (see instructions)	42	
43	Reconciliation for Real Estate Professionals. If you were a real estate professional (see instructions), enter net income or (loss) you reported anywhere on Form 1040 from all rental real estate activities in which you materially participated under passive activity loss rules	43	0

KIA

040INFO

Non-Virgin Islands Source Income of Virgin Islands Residents
 (Attach to Form 1040, Form 1040A, or Form 1040EZ)

2003

tax year beginning 2003, or other tax year beginning _____, 2002, ending _____, 2003

Your first name and initial: Victoria J. Last Name: Voogs Your social security number: - -

If a joint return, spouse's first name and initial: _____ Last Name: _____ Spouse's social security number: _____

Mailing Address: PO Box 2307

City, town, state, and ZIP code: Kingstown, VI 00851

Part I. **100% U.S. Income.** Check this box if 100 percent of your income shown on the attached Form 1040, Form 1040A, or Form 1040EZ is from United States sources and go to Part IV. It is not necessary to complete Parts II and III.

If less than 100 percent of your income is from United States sources, complete Part II.

Part II. Report non-Virgin Islands source income only.

7	Wages, salaries, tips, etc.			7	
8a	Taxable interest income			8a	
b	Tax-exempt interest		8b		
9	Ordinary Dividends			9	76 -
10	Taxable refunds, credits, or offsets of state and local taxes			10	
11	Alimony received			11	
12	Business income or (loss)			12	15,475 -
13	Capital gain or (loss)			13	(925 -)
14	Other gains (or losses)			14	
15a	Total IRA distributions	15a		b Taxable amount	15b
16a	Total pensions and annuities	16a		b Taxable amount	16b 2,956 -
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc.			17	
18	Farm income or (loss)			18	
19	Unemployment compensation			19	
20a	Social security benefits	20a		b Taxable amount	20b
21	Other income. List type and amount.			21	
22	Add the amounts shown in the far right column for lines 7 through 21.			22	17,582 -

**Application for Automatic Extension of Time
 To File U.S. Individual Income Tax Return**
 For calendar year 2003, or other tax year beginning _____, 2003, ending _____

2003

Part I Identification

1 Your name(s) (see instructions)
Victoria J. Voogs

Address (see instructions)
P.O. Box 2307

City, town or post office, state, and ZIP code
Kingshill, VI 00851

2 Your social security number
 [Redacted]

3 Spouse's social security number
 [Redacted]

Part III Individual Income Tax

4 Estimate of total tax liability for 2003 \$ *0*

5 Total 2003 payments *250.00*

6 Balance due. Subtract 5 from 4 *0*

Part IV Gift/GST Tax—If you are not filing a gift or GST tax return, go to Part V now. See the instructions.

7 Your gift or GST tax payment \$ *0*

8 Your spouse's gift/GST tax payment *0*

Part V Total

9 Total liability. Add lines 6, 7, and 8 \$ *0*

10 Amount you are paying *0*

Part II Complete ONLY if Filing Gift/GST Tax Return

Caution:

[Redacted area]

Confirmation Number

If you file electronically, you will receive a confirmation number telling you that your Form 4868 has been accepted. Enter the confirmation number here and keep it for your records.

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Cat. No. 13141W

Form 4868 (2003)

RECEIVED
 PROCESS & ACCT. BRANCH
 APR 15 2004
 VIRGIN ISLANDS BUREAU OF
 INTERNAL REVENUE, ST. CROIX, VI

2/8/03

PROMISSORY NOTE

\$30,000.00

August 7, 2003

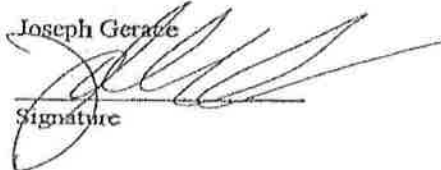
FOR VALUE RECEIVED, Joseph Gerace, of 627 West Sterling Place, Chandler, AZ 85225 (hereinafter referred to as "debtor") does hereby promise to pay to Maria Bentley, of 774 Loretta Street, Tonawanda, NY 14150 (hereinafter referred to as "holder") in the manner and at the place specified in writing by holder, the sum of THIRTY THOUSAND DOLLARS (\$30,000.00), lawful money of the United States of America, together with interest at the rate of six percent (6%) per annum, until the full unpaid principal balance, together with all accrued interest and other costs which may have attached, shall have been fully paid.

The outstanding principal balance and interest shall be payable monthly at the rate of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per month, over a period of TWELVE months, with the first such payment due on September 5, 2003 and continuing with additional consecutive monthly payments due on the 5th day of each succeeding month until September 5, 2004 when the full outstanding principal balance, together with all interest accrued to date, as well as any other charges which may have attached, shall be paid in full. On September 5, 2004, provided that there has been no default or other charges or interest incurred or accrued, debtor shall make a final balloon payment in the amount of \$14,773.14. If other charges or interest have been incurred or accrued, debtor shall add such additional amount to the final balloon payment noted above.

In the event that the holder of this Note shall incur costs or expense, including but not limited to attorney's fees, in attempting to enforce the terms of and to collect upon this Note, the undersigned agrees to fully bear all such costs and expenses which shall be added to the principal sum outstanding of this obligation and shall bear interest according to the terms hereof.

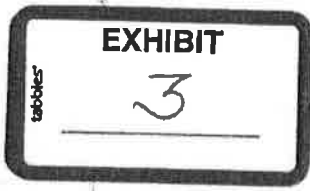
This obligation shall at once become due and payable in full, at the sole option of the holder of this Note, upon the failure of the debtor to make payments when due and to cure any monetary default hereunder within five (5) days of the fifth day of each month that payment is due hereunder or within five (5) days of September 5, 2004 in the instance of the final balloon payment. Without notice, this obligation shall immediately become due and payable in the event of the undersigned's insolvency or commencement of bankruptcy proceedings by or against the debtor or in the event of attachment or execution proceedings against the undersigned by any judgment creditor. Without notice, this obligation shall immediately become due and payable upon sale of the assets of the Cane Bay Beach Bar. Presentment for payment, notice of dishonor and protest for non-payment are hereby expressly waived by the undersigned.

Date: 8/7/03

Joseph Gerace

Signature

WITNESSES AND NOTARY TO SIGN ON PAGE 2

JG0024



Promissory Note
Page 2

IN WITNESS:

Victoria J. Hayes
Jeanne Antkowiak

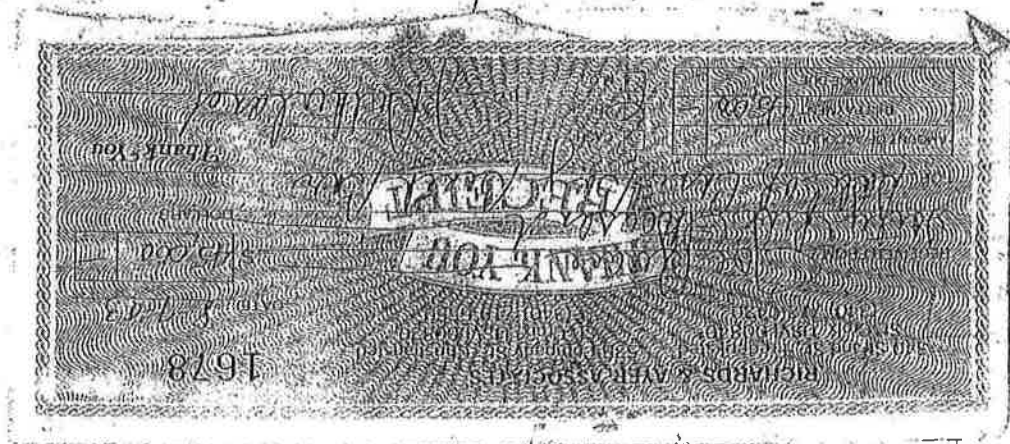
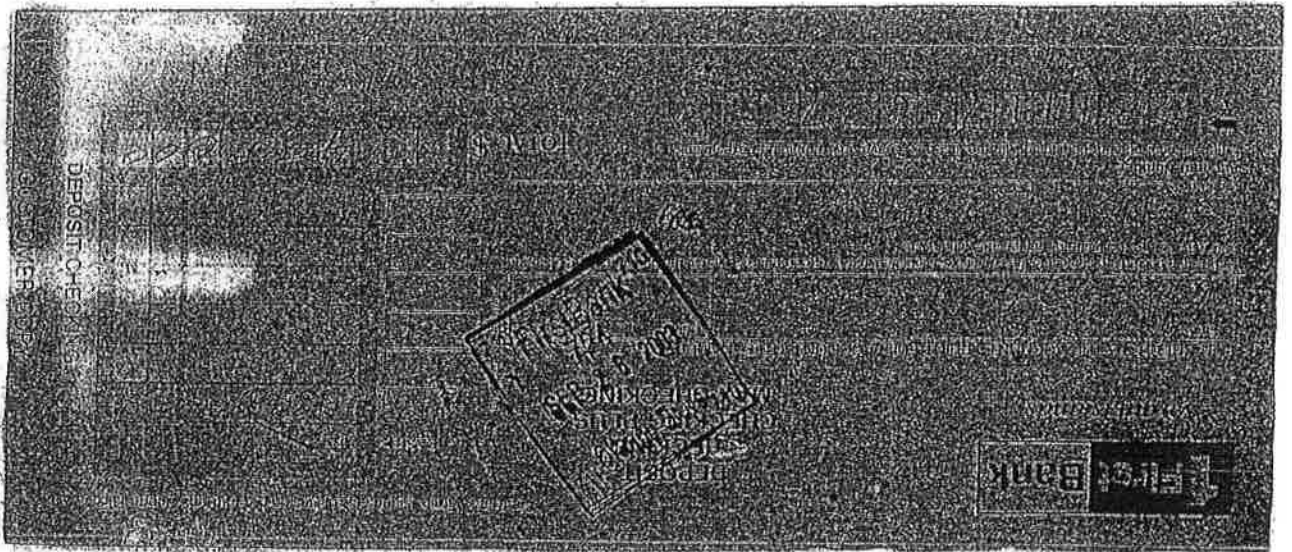
SWORN AND SUBSCRIBED TO
before me this 7th day of August, 2003

Linda Ayer Holt
Notary Public

"NOTARY PUBLIC"
LINDA AYER HOLT
COMMISSION EXPIRES
AUGUST 20, 2005
NOTARY PUBLIC # NP-081-01

JG0025

JG0002



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

CHARLOTTE AMALIE, ST. THOMAS

C-809-2003

To All To Whom These Presents Shall Come:

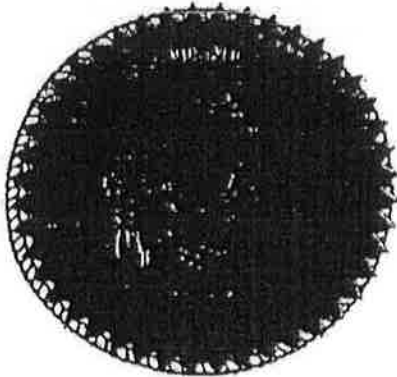
I, the undersigned, LIEUTENANT GOVERNOR, do hereby certify that

BARABUS, INC.

of the Virgin Islands filed in my office on August 12, 2003 as provided
for by law, Articles of Incorporation, duly acknowledged:

WHEREFORE the persons named in the said Articles, and who have
signed the same, and their successors, are hereby declared to be from the
date aforesaid, a corporation by the name and for the purposes set forth in
said Articles, with the right of succession as therein stated.

Witness my hand and the Seal of the Government
of the Virgin Islands of the United States, at Char-
lotte Amalie, St. Thomas, this 15th day of
August, A.D. 2003



Vargrave Richards
VARGRAVE A. RICHARDS

Lieutenant Governor for the Virgin Islands

EXHIBIT

5

Certificate of registration of Trade Name
In accordance with Title 11, Chap. 21, V.I. Code

Know All Men By These Presents

THIS IS TO CERTIFY THAT BARABUS INC.
A corporation, the principal office of which is located at 110c Cane Bay Estate
PO Box 2307 Kinghill VI 00857
is going or intent to do business in the Virgin Islands of the United States; that this business is
known or is to be known by the designation, name or style of CANE BAY BEACH
BAR
that said business is located at 110c Cane Bay, St. Croix, USVI
And that the kind of business to be transacted under said name is BAR & Grill

IN WITNESS WHEREOF, the said BARABUS INC.
Corporation

Has to these presents affixed its corporate seal, and caused the same to be subscribed and
acknowledged by its President
And Secretary at the city of Christianssted
In the state (district) of ST. CROIX on the 11 day of September 2003

BARABUS INC.
Corporation
[Signature]
President or Vice-President
[Signature]
Secretary or Assistant secretary



Acknowledgement

St. Croix
U.S. Virgin Islands) SS

On this the 11 day of September, 2003, before me
Eileen Des Jardins, the undersigned officer, personally
appeared Joseph Gerace Who acknowledged himself/herself to be the (Vice) President of
Barabus, Inc. a corporation, and that he/she as such
President being authorized so to do, executed the foregoing
instrument for the purpose therein contained by signing the name of the corporation by himself/herself
as President

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

OFFICE OF THE GOVERNOR
DIVISION OF
CORPORATIONS AND REGISTRATION
ST. JOHN, VI 00823

2003 AUG 12 PM 3:43

ARTICLES OF INCORPORATION
OF
BARABUS, INC.

We, the undersigned, for the purpose of forming a stock corporation, pursuant to the provisions of Title 13 of the Virgin Islands Code, do hereby under sign and acknowledge the following Articles of Incorporation:

I

The name of the Corporation is

BARABUS, INC.

II

The purpose for which the Corporation is founded is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the Virgin Islands.

III

The total number of shares that the Corporation is authorized to issue is ten thousand (10,000) shares of common stock of no par value.

IV

The amount of capital with which the Corporation should commence business will be one thousand dollars (\$1,000.00).

2003 AUG 12 PM 3:43

V

Express authorization is hereby given pursuant to Section 2 (a) of Title 13 of the Virgin Islands Code, to fix by resolution any other classes of stock that may in the future be deemed desirable provided same are permitted by the provisions of Section 91 of Title 13 of the Virgin Islands Code.

VI

The principal office of the Corporation will be at:

Physical address: Plot No. 110C Estate Cane Bay
Frederiksted, St. Croix
U.S. Virgin Islands

Mailing address: PO Box 2307
Kingshill, VI 00851

VII

The Corporation's registered agent shall be Joseph Gerace.

Physical address: Plot No. 110C Estate Cane Bay
Frederiksted, St. Croix
U.S. Virgin Islands

Mailing address: PO Box 2307
Kingshill, VI 00851

VIII

The existence of the Corporation shall be perpetual.

2:03 AM '12 PM 3:43

IX

The Corporation shall be managed by a board of directors composed of three (3) individuals who shall be elected annually for one year at the annual meeting of stockholders; except that the initial board of directors may be designated at the first meeting of the incorporators, thereof, and said board of directors is authorized to adopt by-laws by resolution adopted with the affirmative vote of a majority of the board, without prejudice, however, to the right conferred by law on the stockholders to amend at any regular meeting or special meeting any by-law so adopted or amended. Meetings of the board of directors and stockholders may be held outside of the Virgin Islands.

X

Cumulative voting is authorized at all meetings of the shareholders.

XI

A director of the Corporation shall not be disqualified by his office from dealing or contracting with the Corporation, either as a vendor, purchaser or otherwise, nor shall any transaction or contract of the Corporation be void or voidable by reason of the fact that any director or any firm of which any director is a member or any corporation of which any director is a shareholder, officer or director, is in any way interested in such transaction or contract, provided that such transaction or contract in or shall be authorized, ratified or approved either (1) by a vote of a majority of a quorum of the board of directors, without including in such majority or quorum any director so interested or member of a firm so interested, or (2) by written consent of the holders of record of a majority of the stock of the Corporation represented at any meeting at which a quorum is present nor shall any director be liable to account to the Corporation for any profits realized by or from or through any such transaction or contract of the Corporation authorized, ratified or approved as aforesaid by reason of the fact that he, or any firm of which he

2603 APR 12 PM 3:43

is a member or any corporation of which he is a shareholder, officer, or director was interested in such transaction or contract.

Nothing herein contained shall create liability in the events above described or prevent the authorized, ratification or approval of such transactions or contract in any other manner permitted by law.

Any contract, transaction or act of the corporation or of the board of directors which shall be ratified by a quorum of the stockholders entitled to vote at any annual meeting or at any special meeting called for this purpose, shall be valid and binding as though ratified by every stockholder of the Corporation; provided, however that any failure of the stockholders of the Corporation to approve or ratify such contract, transaction or act, when and if submitted, shall not be deemed in any way to invalidate the same or to deprive the Corporation, its directors, or officers of their right to proceed with such contract, transaction or action.

XII

In the event of the issuance of any new or additional shares of stock of the Corporation, the stockholders of the Corporation immediately prior to the issuance shall have the preemptive right to acquire all of such new or additional shares in the proportion of their ownership of all of the issued and outstanding stock in the Corporation at that time. The stockholders shall have thirty (30) days after the announcement of such offering of such new stock within which to exercise the said preemptive rights to purchase. This article is intended to eliminate the limitations on preemptive rights set forth at Section 109 of Title 13 of the Virgin Islands Code.

XIII

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil,

2003 AUG 12 PM 3:43

criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if:

1) he acted:

(a) in good faith; and

(b) in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; and

2) with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted:

2003 AUG 12 PM 3:

- (1) in good faith; and
- (2) in a manner he reasonably believed to be in or not opposed to the best interests of the corporation.

No indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case such person is fairly and reasonably entitled to indemnify for such expenses which the court shall deem proper.

(c) To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he had met the applicable standard of conduct set forth in subsections (a) and (b).

(e) Such determination shall be made:

- 1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding;
- 2) by the stockholders.

(f) Expenses incurred in defeating a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as

authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amounts unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(g) The foregoing indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled under any by-law of the corporation, agreement, vote of stockholders of the corporation, or by disinterested directors or otherwise, both as to any action in the person's official capacity and as to any action in another capacity while holding such office, and shall continue as to any such person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his heirs, executors and administrators of such person.

(h) The corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(i) For the foregoing purposes, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director,

RECEIVED GOVERNOR
OFFICE OF
REGISTRATION & TRADEMARKS
AUG 12 2003

2003 AUG 12 PM 3:43

officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

XIV

The names and residential addresses of the incorporators are as follows:

- | | |
|--------------------|--|
| JOSEPH GERACE | Plot 110C Estate Cane Bay (PO Box 2307
Kingshill, St. Croix, USVI 00851 |
| JUNE DAVIS | Plot 9 BD Estate La Grande Princesse (PO Box 224252)
Christiansted, St. Croix, USVI 00822 |
| EILEEN DES JARDINS | Plot 7-F Estate Montpellier (PO Box 223696)
Christiansted, St. Croix, USVI 00822 |

IN WITNESS WHEREOF, we have hereto subscribed our names on August 12, 2003.

IN WITNESS AS TO ALL
THREE INCORPORATORS:

Charles Delacroy
Witness

Victoria [Signature]
Witness

[Signature]
Joseph Gerace

[Signature]
June Davis

[Signature]
Eileen Des Jardins

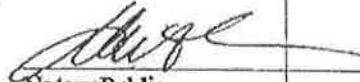
OFFICE OF THE GOVERNOR
SECTION OF
REGISTRATION OF TRADEMARKS
ST. CROIX, U.S. VIRGIN ISLANDS 00823

2003 AUG 12 PM 3:43

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
ISLAND OF ST. CROIX)

The foregoing instrument was acknowledged before me on August 12, 2003 by Joseph Gerace, June Davis and Eileen Des Jardins.



Notary Public

Name:

Notary No. _____ GERALD T. GRONER

Commission Expires: Notary Public #: LNP-011-03

My Commission Expires: 3/4/07

St. Croix, U.S. Virgin Islands

F:\A-win\Gerace\Corp\Articles.doc

OFFICE OF NOT. O.
ST. JOHN CI
CORPORATION
2003 AUG 12 PM

CONSENT OF AGENT FOR SERVICE OF PROCESS
FOR
BARABUS, INC.

This writing witnesseth that the undersigned, JOSEPH GERACE, of:

Physical Address: Plot 110C Estate Cane Bay, Frederiksted, St. Croix, USVI

Mailing Address: PO Box 2307, Kingshill, VI 00851

U.S. Virgin Islands, having been designated by:

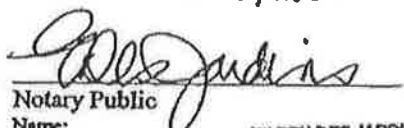
BARABUS, INC.

as agent of the said corporation, upon whom service of process may be made in all suits arising against the said corporation in the Courts of the Virgin Islands, do hereby consent to act as such agent, and that service of process may be made upon me in accordance with Title 13 of the Virgin Islands Code.

IN WITNESS WHEREOF, I have hereunto set my signature this 12 day of August, 2003.


JOSEPH GERACE

SWORN TO AND SUBSCRIBED
before me on August 12, 2003.


Notary Public

Name: EILEEN DES JARDINS
Notary No. Notary Public #NP-071-03
Commission Expires: My Commission Expires 02/24/07
[Seal] St. Croix, U.S. Virgin Islands

[\\VA:\win\Gerace\Corp\Resident-Agent.doc

OFFICE OF THE GOVERNOR
OF THE VIRGIN ISLANDS
ST. JOHN'S, VIRGIN ISLANDS
J0823

GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES
REPORT
OF CORPORATION FRANCHISE TAX DUE
PURSUANT TO TITLE 13, SECTION 531, VIRGIN ISLANDS CODE

2003 AUG 12 PM 3:43

DOMESTIC CORPORATION

(THIS REPORT IS DUE ON OR BEFORE JUNE 30TH OF EACH YEAR)

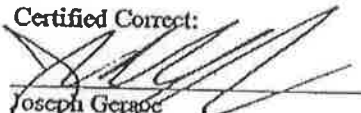
EMPLOYER I.D. NO.
Applied For

DATE OF REPORT: August , 2003
DATE OF LAST REPORT: N/A (This is initial report)
THIS REPORT IS FOR THE PERIOD
ENDED JUNE 30, 2003

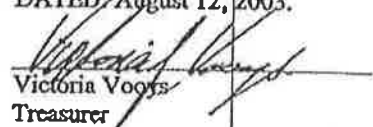
FIRST YEAR: INITIAL PREPAYMENT

- | | | |
|--|--|------------|
| (1) NAME OF CORPORATION: BARABUS, INC. | | |
| (a) Address | Plot 110C Estate Cane Bay, Frederiksted, St. Croix, VI 00820 | |
| (b) Date of Incorporation | August 12, 2003 | |
| (c) Kind of Business | Bar and restaurant | |
| (2) AMOUNT OF CAPITAL AUTHORIZED: | | |
| (a) When last report filed: N/A (This is initial report) | | \$0.00 |
| (b) On Date of this report: | | \$1,000.00 |
| (3) AMOUNT OF PAID-IN CAPITAL STOCK USED IN CONDUCTING BUSINESS: | | |
| (a) As shown on last report filed: N/A (This is initial report) | | \$0.00 |
| (b) Additional capital stock paid in since last report: | | \$1,000.00 |
| (c) Sum of (a) and (b) | | \$1,000.00 |
| (d) Paid-in capital withdrawn since last report: N/A | | \$0.00 |
| (e) Paid-in capital stock at date of this report: | | \$1,000.00 |
| (f) Highest total paid-in capital stock during reporting period | | \$1,000.00 |
| (4) COMPUTATION OF TAX: | | |
| (a) At rate of \$1.50 per M (fractions of a thousand disregarded) on highest total paid-in capital stocks reported on Line 3(f) above | | \$150.00 |
| (b) TAX DUE: (above figure, or \$150.00, whichever is greater) | | \$150.00 |
| (5) PENALTY AND INTEREST FOR LATE PAYMENT: | | |
| (a) Twenty percent (20%) of \$50.00, whichever is more, as penalty for failure to pay by June 30 th | | \$0.00 |
| (b) One percent (1%) interest compounded annually for each month or part hereof by which payment is delayed beyond June 30 th | | \$0.00 |
| (c) TOTAL PENALTY AND INTEREST | | \$0.00 |
| (6) Total due and forwarded herewith (sum of (4)(b) and (5)(c)):
(Attach check payable to The Lieutenant Governor.) | | \$150.00 |

Certified Correct:


Joseph Gerboe
President

DATED: August 12, 2003.


Victoria Voors
Treasurer

ANNUAL REPORT
ON DOMESTIC OR FOREIGN CORPORATIONS
(DUE ON OR BEFORE JUNE 30 OF EACH YEAR)

OFFICE OF THE GOVERNOR
CLERK OF THE COURT
TRADEMARKS
ST. CROIX, VI 00823

2003 AUG 12 PM 3:43

PURSUANT TO SECTIONS 371 AND 373, CHAPTER 1, TITLE 13, OF THE VIRGIN ISLANDS CODE,
REQUIRING THE FILING OF ANNUAL REPORTS BY DOMESTIC AND FOREIGN CORPORATIONS,
THE FOLLOWING STATEMENT IS FILED WITH THE OFFICE OF THE LIEUTENANT GOVERNOR.

NAME OF CORPORATION: BARABUS, INC.

ADDRESS OF MAIN OFFICE: Plot No. 110C Estate Cane Bay, Frederiksted, St. Croix, USVI

PRINCIPAL OFFICE IN THE VIRGIN ISLANDS: 110C Estate Cane Bay, Frederiksted, St. Croix, VI

RESIDENT OR AUTHORIZED AGENT IN THE V.I.: Joseph Gerace

COUNTRY OR STATE IN WHICH INCORPORATED: U.S. Virgin Islands

FISCAL YEAR COVERED BY LAST REPORT FILED¹: N/A (This is initial report.)

FISCAL YEAR COVERED BY THIS REPORT²: December 31, 2003

AMOUNT OF AUTHORIZED CAPITAL STOCK AT CLOSE OF FISCAL YEAR: 10,000

AMOUNT OF PAID-IN CAPITAL AT CLOSE OF FISCAL YEAR: \$1,000.00

AMOUNT OF CAPITAL USED IN CONDUCTING BUSINESS
WITHIN THE VIRGIN ISLANDS DURING THE FISCAL YEAR: \$1,000.00

NAME AND ADDRESSES OF DIRECTORS AND OFFICERS OF THE CORPORATION
AT THE CLOSE OF FISCAL YEAR AND EXPIRATION DATES OF TERMS OF OFFICE

All Terms Indefinite:

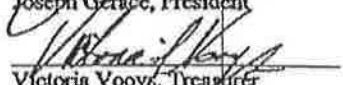
Name	Title	Address
Joseph Gerace	Director-President	Plot No. 110C Estate Cane Bay, Frederiksted, St. Croix, USVI 00840
Edward Gerace	Director- Vice President	Plot No. 110C Estate Cane Bay, Frederiksted, St. Croix, USVI 00840
Victoria Vooy's	Director-Sec./Treas.	Plot No. 110C Estate Cane Bay, Frederiksted, St. Croix, USVI 00840

Mailing Address of Corporation: PO Box 2307, Kingshill, VI 00851

DATED: August 12, 2003.

VERIFIED:


Joseph Gerace, President


Victoria Vooy's, Treasurer

¹ If last report filed does not cover the period immediately preceding the period covered by this report, a supplementary report on the same form must be filed, bridging the gap, if any, between the two reports.

² THIS REPORT IS NOT COMPLETE NOR ACCEPTABLE UNLESS ACCOMPANIED BY GENERAL BALANCE SHEET AND PROFIT AND LOSS STATEMENT FOR THE LAST FISCAL YEAR AS REQUIRED BY THE VIRGIN ISLANDS CODE.

BARABUS, INC.
BALANCE SHEET

ASSETS
12/31/03

OFFICE OF LICIT. GOVERNOR
DIVISION OF
CORPORATION & TRADEMARKS
ST. PAUL, MN 55155-0023

2003 AUG 12 PM 3:43

00000000

Total Assets \$1,000.00

LIABILITIES AND STOCKHOLDERS' EQUITY

Total Liabilities: \$0.00

Stockholders' Equity
Common Stock \$1,000.00
Additional Paid in Capital: \$0.00
Retained earnings [Deficit] \$0.00

Total Stockholders' equity: \$1,000.00

Total liabilities & stockholders equity: \$1,000.00

BARABUS, INC.

INCOME STATEMENT


12/31/03

Total revenues: \$0.00

Total costs and expenses: \$0.00

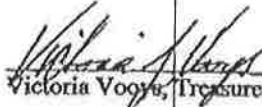
Income [loss] for the year: \$0.00

I hereby certify that this
statement is true and correct
to the best of my belief.


Joseph Gerace, President

Date: august 12, 2003

I hereby certify that this
statement is true and correct
to the best of my belief.


Victoria Voogts, Treasurer

Date: August 12, 2003

F:\A-win\Gerace\Corp\Bal-Sheet.doc



BATES TRUCKING & TRASH REMOVAL INC.
 P.O. BOX 834
 KINGSHILL, ST. CROIX, VI 00851
 (340) 778-1649

Invoice

DATE | **INVOICE #**

11/1/2003 | 20516

BILL TO:

BARABOS INC.
 DBA CANE BAY BEACH BAR
 P.O. BOX 2307
 KINGSHILL, VI 00850

SHIP TO:

BARABOS INC.
 DBA CANE BAY BEACH BAR
 P.O. BOX 2307
 KINGSHILL, VI 00850

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	PROJECT
					for Oct 2003	

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
1	1000	MONTHLY TRASH REMOVAL	250.00	250.00
	1100	LATE FEE CHARGE	2.00	2.00

EXHIBIT
 6

TOTAL \$252.00

J60023

paid 3/3/04

CK# 22324/326
\$ 550.00

ARTICLES OF ORGANIZATION
OF
CHRISMOS CANE BAY LLC

2003 SEP -4 PM 3:33

THE UNDERSIGNED, for the purpose of forming a limited liability company under the laws of the United States Virgin Islands, as the same may be amended from time to time, do hereby make and file these Articles of Organization to transact business for the objects and purposes set forth herein and hereby certifies as follows:

1. The name of the limited liability company shall be "CHRISMOS CANE BAY LLC" ("Company").
2. The physical address of the initial designated office of the Company shall be 52 King Street, Christiansted, VI 00820 and the mailing address of the Company shall be 52 King Street, Christiansted, VI 00820.
3. The name and physical address of the initial agent for service of process on the Company shall be: Caribbean Trust Services Corporation, 5030 Anchor Way, Christiansted, VI 00820.
4. The name and physical address of each organizer of the Company is:

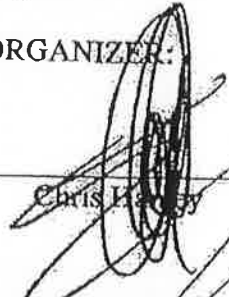
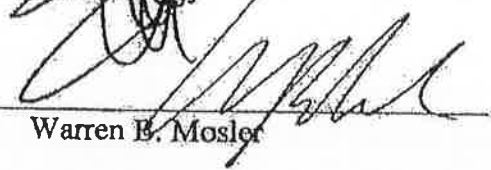
Chris Hanley 52 King Street, Christiansted, VI 00820.

Warren B. Mosler 5007 Chandlers Wharf, Christiansted, VI 00820.
5. The minimum amount of capital with which the Company will commence business is \$1,000.00.
6. The Company shall have perpetual existence.
7. The Company shall be member-managed by its members.
8. None of the members will be liable for the debts and obligations of the company under §1303(c) of Title 13 of the Virgin Islands Code.
9. The Company reserves the right to amend, alter or repeal any of the provisions of this Articles of Organization and to add other provisions authorized by the laws of the United States Virgin Islands at the time in force and in the manner and at the time prescribed by such laws.

tabbles EXHIBIT
D-7 JA - 45

IN WITNESS HEREOF, the undersigned do hereby certify that the facts stated herein are true and correct and have executed these Articles of Organization at Christiansted, St. Croix, United States Virgin Islands this September 3, 2003.

ORGANIZER:


Chris Hanley

Warren B. Mosler

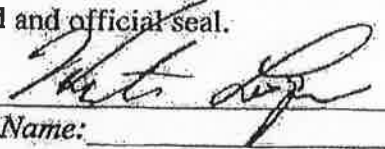
2003 SEP -4 PM 3:33

TERRITORY OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

The foregoing instrument was acknowledged before me this September 3, 2003, by Chris Hanley and Warren B. Mosler.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARY SEAL)


Print Name: _____
Notary Public Territory of the Virgin Islands
No. _____
Qualified in Judicial District of St. Croix
My Commission Expires: _____

\\FILESERVER1\SHARE1\HL DOCS\LLCS\CHRISMOS CANE BAY\ART-ORG.DOC

G. HUNTER LEOPOLD
Notary Public Territory of the Virgin Islands
No. 1007 002 02
Qualified in Judicial District of St. Croix
Commission expires 10/1/05

11K24
1399211
HW 1/4 XAD

12/20/03 1:35:33 PM 9/9/04

57325

WARRANTY DEED

21,000

7000

THIS DEED is executed this September 8th, 2003, by and between IBYMA DEVELOPMENT CORPORATION N.V. a/k/a IBYMA DEVELOPMENT CORP., N.V., a Netherlands Antilles Corporation, whose address is c/o Baris Lampert, 146 Palo Verde Drive, Leesburg, FL 34748 ("Grantor") and CHRISMOS CANE BAY LLC, a U.S. Virgin Islands limited liability company, whose address is c/o Warren B. Mosler, 5000 Estate Southgate, Christiansted, VI 00820 ("Grantee"). (Grantor and Grantee shall include their respective heirs, representatives, successors and assigns when the context requires or permits.)

IN CONSIDERATION of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby sells, grants and conveys unto Grantee the following described real property ("Property"):

Parcel No. 110 of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 61.62 US acres, more or less, as more fully shown on OLG Drawing No. 1670 dated December 8, 1964;

Parcel No. 108-B (1.275 US acres) and Parcel No. 108-C (1.035 US acres) both of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 545 dated December 20, 1956;

Remainder Parcel No. 110-C (5.6133 US acres), Parcel No. 110-M (0.7567 US acres), Remainder Parcel No. 110-AA (0.8115 US acres), Remainder Parcel No. 110-E (3.5667 US acres), Parcel No. 110-L (4.0126 US acres) and Parcel No. 110-N (0.3985 US acres) all of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 965 dated August 30, 1960;

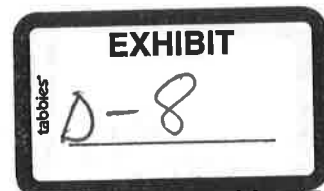
Parcel No. 110-G (0.413 US acres) and Parcel No. 110-F (0.340 US acres) both of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 601 dated June 17, 1957, revised July 10, 1957;

Plot No. 108-D (3.4535 US acres), Plot No. 108-E (4.0201 US acres), Plot No. 108-F (3.0654 US acres), Remainder Plot No. 108 (1.2384 US acres), Remainder Plot No. 110-I (0.7088 US acres) and Plot No. 110-KA (0.9607 US acres) all of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 963 dated August 17, 1960, revised June 21, 1961;

Plot No. 110-J of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 3.5455 US acres, more or less, as more fully shown on OLG Drawing No. 858 dated December 24, 1959;

7000

9006



Plot No. 110-K of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 0.25 US acres, more or less, as more fully shown on OLG Drawing No. 793 dated May 27, 1959, revised February 15, 1960;

Grantor's undivided partial interest in Parcel No. 110-D of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands consisting of 0.16 US acres, more or less, as more fully shown on OLG Drawing No. 532 dated October 10, 1956; and

Plot No. 106-E (1.0408 US acres), Plot No. 106-F (0.1928 US acres), Plot No. 107-C (2.2754 US acres) and Plot No. 106-H (0.3666 US acres) all of Estate Cane Bay, Northside Quarter "B", St. Croix, US Virgin Islands, as more fully shown on OLG Drawing No. 1158 dated January 22, 1962, revised October 20, 1964.

TOGETHER WITH all the tenements, hereditaments, and appurtenances thereunto belonging, and any and all improvements located thereon.

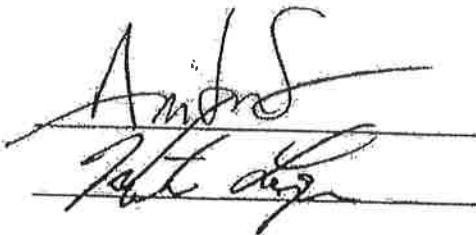
SUBJECT TO all easements, right of ways, conditions, covenants, agreements, and restrictions of public record; all matters which would be disclosed by an accurate survey or inspection of the Property; all zoning, building, environmental and other laws and regulations affecting the use or occupancy of the Property; and real property taxes for the year 2002 and all years thereafter (collectively "Permitted Exceptions").

TO HAVE AND TO HOLD the Property unto Grantee, in fee simple forever.

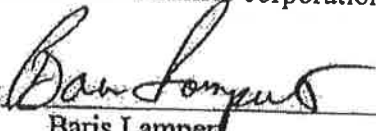
GRANTOR further covenants that Grantor is lawfully seized of the Property and has full right to convey the Property; that the Property is free and clear of all liens and encumbrances except the Permitted Exceptions; that Grantee shall quietly enjoy the Property; and Grantor shall forever warrant and defend the right and title to the Property to Grantee against the lawful claims of all persons, except for claims arising under or by virtue of the Permitted Exceptions.

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

WITNESSES:

Two handwritten signatures, one above the other, each followed by a horizontal line.

Ibyma Development Corporation N.V.,
a Netherlands Antilles corporation

By: 
Baris Lampert
Its Duly Authorized Attorney in Fact

ACKNOWLEDGMENT

TERRITORY OF THE U.S. VIRGIN ISLANDS
STATE OF FLORIDA
COUNTY OF ST. CROIX
Jurisdiction of _____

The foregoing instrument was acknowledged before me this 8th day of September, 2003, by **Baris Lampert**, attorney in fact for **Ibyma Development Corporation, N.V.**, a Netherlands Antilles corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(NOTARY SEAL)

G. HUNTER LOGAN, JR.
Notary Public Territory of the Virgin Islands
No. LNP-038-02
Qualified in Judicial District of St. Croix
Commission expires 10/16/05

[Signature]
Notary Public
My commission expires:

CERTIFICATE OF VALUE

It is hereby certified that the value of the Property described in the foregoing instrument does not exceed \$1,050,000.00.

[Signature]
Baris Lampert, attorney in fact for Grantor

CERTIFICATE OF PUBLIC SURVEYOR

It is hereby certified that according to the records in the Public Surveyor's Office, the Property described in the foregoing instrument has not undergone any change in regard to boundary and area.

Office of the Public Surveyor, Christiansted, St. Croix, U.S. Virgin Islands.

Dated: SEP 11 2003

FEE: 490⁰⁰

\\Fileserver1\share\HLL DOCS\Real Estate\Mosler\MoslerIbyma-WD.doc

[Signature]
Dr. Bernadette C. Williams
Assistant Tax Assessor

Joe# 1-1013-Steve-31742
BOOK: 876
PAGE: 187
Filed & Recorded
09/12/2003 09:50:41 AM
ALL THE PUBLIC RECORDS OF DEEDS
ST. CROIX
RECORDING FEE \$ 1,000.00
PER PAGE FEE \$ 1.00
DEED DUL. SIGN. \$ 21,000.00
Attard & Pels
Recorder

SCHAUS & SCHAUS
ATTORNEYS AT LAW

1925 KENSINGTON AVENUE NEAR HARLEM ROAD
BUFFALO, NEW YORK 14215-1491
TELEPHONE: (716)838-5095
FACSIMILE: (716)838-5120

RICHARD M. SCHAUS
BARBARA A. SCHAUS*
*ALSO ADMITTED IN FLORIDA

OF COUNSEL
ROBERT SCHAUS
MAYNARD C. SCHAUS
1928-2000

January 26, 2004

Mr. Joseph Gerace
PO Box 2307
Kingshill, St. Croix
Virgin Islands, 00851

Re: Maria Bentley - Cane Bay Beach Bar

Dear Mr. Gerace:

We have been retained by Maria Bentley regarding your default under the terms of your Asset Purchase Agreement and the Promissory Notes executed by you pursuant to the agreement.

Our client indicates that you have defaulted on the November, December and January Note payments. In addition, the February payment is due by February 5, 2004. If this deficiency is not brought current immediately, the entire unpaid balance will be called due and payable.

Please be advised that Ms. Bentley fully intends to protect her financial interest. Once a lawsuit is commenced, she is entitled to collect all costs and expenses of the litigation, including attorney's fees.

EXHIBIT

9

JG0021

JA - 750

Gerace, page 2.

Very truly yours,

SCHAUS & SCHAUS



Barbara A. Schaus

BAS/kc

CC: Maria Bentley

JG0022

JA - 751

VICTORIA J. VOOYS
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85018-4133

08-01

355

Date 10/7/03

91-170/1221 AZ
2243

Pay to the
order of

Charlotte & Hanky Brown \$1500.⁰⁰
one thousand five hundred and

Bank of America.

Dollars



ACH R/T 12/01/708

For

Cano Bay Trade Ser oct
03 Victoria J. Vooy

⑆ 22101706⑆ 004677301536⑈ 0355

EXHIBIT
tabbles
14

Beach Bar
New & De on

VICTORIA J. VOOYS
4411 N. 40TH ST. APT. 44
PHOENIX, AZ 85018-4133

08-01

Pay to the order of FARLETTE HANLEY ESCROW

Date 12/19/03

357

91-170/1221 AZ
2243

Three thousand dollars \$ 3000.00
Bank of America

ACK/R/T 122101706

For Nov/Dec

⑆ 122101706⑆ 004677301536⑆ 0357

Victoria J. Vooy

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0438
101-7286/2216

1/5/04 DATE

SAY TO THE ORDER OF FARCHETTE ESCROW \$ 1560⁰⁰

fifteen hundred and DOLLARS

1 First Bank
Orange Grove Branch
St. Croix, Virgin Island

FOR CANE BAY JAN RENT

⑆ 22167285 ⑆ 724 ⑆ 100 ⑆ 74677 ⑆ 0438

Jan 04

FEB 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0482

101-7285/2218

2/1/04 DATE

PAY TO THE ORDER OF

Frederick Amity ESCRO

\$ 1500⁰⁰

Fifteen hundred dollars

XX DOLLARS

1 First Bank

Orange Grove Branch
St. John, Virgin Islands

FOR

FEB 04 CANEBAY [Signature]

⑆ 221672851⑆ 724 1 1 74677⑆ 0482

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0544

101-7285/2218

3/22/04 DATE

PAY TO THE ORDER OF Barchette Hanley

\$ 921⁰⁰

nine hundred Twenty one

DOLLARS



1 First Bank

Orange Grove Branch
St. Croix, Virgin Island

FOR Beach March - Plumben Bills

⑆ 22672851⑆ 724 1 17677⑈ 0544

9

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL, USVI 00851

0534

101-7285/2216

3/26/04 DATE

PAY TO THE
ORDER OF

Farchette Hayley Escrow

\$ 1500

One thousand five hundred dollars

1500 DOLLARS



Orange Grove Branch
St. John, Virgin Island

FOR

March 2004

Victoria J. Gray

⑆ 221672851⑆ 72400100174677⑆ 0534

March 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

772

101-7285/2218

8/2/04

DATE

PAY TO THE
ORDER OF

Archette & Hailey Escrow

\$ 2000

Two thousand

DOLLARS

1 First Bank

Orange Grove Branch
St. Croix, Virgin Island

FOR

Victoria King

⑆ 2221672851⑆ 724⑆ 1⑆ 74677⑆ 0772

Approved
may 04

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1104

101-7285/2218

1-23-05

DATE

PAY TO THE
ORDER OF

Fardelle Hardy Escrow

\$ 3000 -

three thousand and

DOLLARS



Security
Features
100%
Guaranteed

1 First Bank

Orange Grove Branch
St. Croix, Virgin Island

FOR

⑆ 221672851⑆ 724 1 1 74677 1104

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1135

101-7285/2216

2-7-05

DATE

PAY TO THE
ORDER OF

Fardette Hanby Escrow

\$ 4500-

fourty five and

DOLLARS



1 First Bank

Orange Grove Branch
St. Croix, Virgin Islands

FOR

Rent

⑆ 221672851⑆ 724.00 1001746770⑆ 1135



BANK OF ST. CROIX
P.O. Box 24240, Gallows Bay, Christiansted, VI 00824-0240

REALTH DIRECTIONS D/B/A
FARCHETTE & HANLEY REAL ESTATE
#1 QUEEN CROSS STREET
CHRISTIANSTED, VI 00820

Advice of Returned Check / Charge Notice

Checking 0000000022006560

The deposited item(s) listed below have been returned unpaid. The checking account has been debited \$4,500.00 for the item(s) returned. In addition, the checking account has been assessed a fee of \$5.00 plus tax per item for this service. If you have any questions concerning this notice please contact us at (340) 773-8500.

Check Number	Payer/Maker	Reason Returned	Check Amount
1135	CANE BAY BEACH BAR	Insufficient funds	\$4,500.00

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1231

101-7286/2216

3-15-05

DATE

PAY TO THE
ORDER OF:

Farchette Harley Escrow

\$ 3000 -

Three thousand

DOLLARS



Security
Features
Printed on
Back

1 First Bank

Orange Grove Branch
St. Croix, Virgin Islands

FOR

⑆ 221672851⑆ 724 ⑆ 1 ⑆ 174677⑆ 1231

© 1999, 2000

CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1289

101-7285/2216

9-19-05

DATE

PAY TO THE ORDER OF

Fitzchele Hanley Escrow

\$ 1500 -

one thousand five hundred and

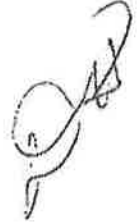
DOLLARS

First Bank

Orange Grove Beach
St. Croix, Virgin Islands

FOR April 05 Rent

⑆ 221672851⑆ 721,000 ⑆ 174677⑆ 1289

Fee
4.14.05
12:45


CANE BAY BEACH BAR
PO BOX 2307
KINGSHILL
ST. CROIX, VI 00851

1377

101-7285/2218

6.9.05

DATE

PAY TO THE
ORDER OF

Fordette & Hayley Escrow \$ 1500-

One thousand, five hundred dollars

DOLLARS

1 First Bank

Orange Grove Branch
St. Croix, Virgin Island

FOR

June

[Signature]

⑆ 221672851⑆ 724 1 174677 1377

01/01/2001

Form **1120S**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has timely filed Form 2553 to elect to be an S corporation.
▶ See separate instructions.

OMB No. 1545-0130

2003

For calendar year 2003, or tax year beginning

A Effective date of election as an S corporation
12/31/2003

Use the IRS label. Otherwise, print or type.

Name
Barabus, Inc.

Number, street, and room or suite no. (If a P.O. box, see page 12 of the instructions.)
P.O. Box 2307

City or town, state, and ZIP code
Kingshill, VI 00851

C Employer identification number
66:0629167

D Date incorporated
08/08/2003

E Total assets (see page 12 of instructions)
\$ **1,000**

F Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return
G Enter number of shareholders in the corporation at end of the tax year

Caution: Include only trade or business income and expenses on lines 1a through 21. See page 12 of the instructions for more information.

Income	1a	1b	1c
1a Gross receipts or sales	38,101		38,101
2 Cost of goods sold (Schedule A, line 8)			30,481
3 Gross profit. Subtract line 2 from line 1c			7,620
4 Net gain (loss) from Form 4797, Part II, line 18 (attach Form 4797)			0
5 Other income (loss) (attach schedule)			7,620
6 Total income (loss). Add lines 3 through 5.			10,000
7 Compensation of officers			
8 Salaries and wages (less employment credits)			
9 Repairs and maintenance			
10 Bad debts			
11 Rents			
12 Taxes and licenses			
13 Interest			
14a Depreciation (Attach Form 4562)			
b Depreciation claimed on Schedule A and elsewhere on return.			
c Subtract line 14b from line 14a			
15 Depletion (Do not deduct oil and gas depletion.)			
16 Advertising			
17 Pension, profit-sharing, etc., plans			
18 Employee benefit programs			
19 Other deductions (attach schedule)			
20 Total deductions. Add the amounts shown in the far right column for lines 7 through 19			16,239
21 Ordinary income (loss) from trade or business activities. Subtract line 20 from line 6.			34,239
22 Tax: a Excess net passive income tax (attach schedule)			
b Tax from Schedule D (Form 1120S)			
c Add lines 22a and 22b (see page 17 of the instructions for additional taxes)			
23 Payments: a 2003 estimated tax payments and amount applied from 2002 return			
b Tax deposited with Form 7004.			
c Credit for Federal tax paid on fuels (attach Form 4136)			
d Add lines 23a through 23c			
24 Estimated tax penalty (See page 17 of instructions). Check if Form 2220 is attached			
25 Tax due. If line 23d is smaller than the total of lines 22c and 24, enter amount owed.			
26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			
27 Enter amount of line 26 you want: Credited to 2004 estimated tax ▶			0

EXHIBIT
15

Signature of officer: Deepak Bansal, CPA Date: 2/14/2004 Title: CPA

Preparer's signature: Deepak Bansal, CPA Date: 2/14/2004 Title: CPA

Firm's name (or yours if self-employed), address, and ZIP code: P.O. Box 8639, St. Croix, VI 00823

Check if self-employed Preparer's SSN or PTIN: 580-15-1454

Phone no.: (340) 719-6464

Cat. No. 11510H

Form 1120S (2003)

JA-765

Schedule A Cost of Goods Sold (see page 18 of the instructions)

1	Inventory at beginning of year	0
2	Purchases	31,481
3	Cost of labor	
4	Additional section 263A costs (attach schedule)	
5	Other costs (attach schedule)	
6	Total. Add lines 1 through 5	31,481
7	Inventory at end of year	1,000
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	30,481

- 9a Check all methods used for valuing closing inventory: (i) Lower of cost or market as described in Regulations section 1.471-4 (ii) Cost as described in Regulations section 1.471-3 (iii) Other (specify method used and attach explanation) _____
- b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c)
- c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)
- d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO _____
- e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation? Yes No
- f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? Yes No

Schedule B Other Information (see page 19 of instructions)

- 1 Check method of accounting: (a) Cash (b) Accrual (c) Other (specify) _____
- 2 See pages 31 through 33 of the instructions and enter the:
 (a) Business activity **Bar Restaurant** (b) Product or service **Food & Beverages**
- 3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing: (a) name, address, and employer identification number and (b) percentage owned Yes No
- 4 Was the corporation a member of a controlled group subject to the provisions of section 1561? Yes No
- 5 Check this box if the corporation has filed or is required to file Form 8264, Application for Registration of a Tax Shelter
- 6 Check this box if the corporation issued publicly offered debt instruments with original issue discount
- If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.
- 7 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years **\$** _____
- 8 Check this box if the corporation had accumulated earnings and profits at the close of the tax year
- 9 Are the corporation's total receipts (see page 19 of the instructions) for the tax year and its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L and M-1.
- Note: If the corporation had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.

Schedule K Shareholders' Shares of Income, Credits, Deductions, etc.

	(a) Pro rata share items		(b) Total amount	
	1	2	1	2
1 Ordinary income (loss) from trade or business activities (page 1, line 21)				
2 Net income (loss) from rental real estate activities (attach Form 8825)				
3a Gross income from other rental activities	3a			
b Expenses from other rental activities (attach schedule)	3b			
c Net income (loss) from other rental activities. Subtract line 3b from line 3a				
4 Portfolio income (loss):				
a Interest income				
b Dividends: (1) Qualified dividends				
c Royalty income				
d Net short-term capital gain (loss): (1) Post-May 5, 2003				
e Net long-term capital gain (loss): (1) Post-May 5, 2003				
f Other portfolio income (loss) (attach schedule)				
5 Net section 1231 gain (loss) (attach Form 4797): (a) Post-May 5, 2003				
6 Other income (loss) (attach schedule)				

Schedule K Shareholders' Shares of Income, Credits, Deductions, etc. (continued)		(a) Pro rata share items	(b) Total amount
Deductions			
7	Charitable contributions (attach schedule)		7
8	Section 179 expense deduction (attach Form 4562)		8
9	Deductions related to portfolio income (loss) (renitize)		9
10	Other deductions (attach schedule)		10
Investment Interest			
11a	Interest expense on investment debts		11a
b (1)	Investment income included on lines 4a, 4b(2), 4c, and 4f on page 2		11b(1)
(2)	Investment expenses included on line 9 above		11b(2)
12a	Credit for alcohol used as a fuel (attach Form 6478)		12a
b	Low-income housing credit:		
(1)	From partnerships to which section 420(f) applies		12b(1)
(2)	Other than on line 12b(1)		12b(2)
c	Qualified rehabilitation expenditures related to rental real estate activities (attach Form 3468)		12c
d	Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities		12d
e	Credits related to other rental activities		12e
13	Other credits		13
Credits			
14a	Depreciation adjustment on property placed in service after 1986		14a
b	Adjusted gain or loss		14b
c	Depletion (other than oil and gas)		14c
d (1)	Gross income from oil, gas, or geothermal properties		14d(1)
(2)	Deductions allocable to oil, gas, or geothermal properties		14d(2)
e	Other adjustments and tax preference items (attach schedule)		14e
Adjustments and Tax Preference Items			
15a	Name of foreign country or U.S. possession		15a
b	Gross income from all sources		15b
c	Gross income sourced at shareholder level		15c
d	Foreign gross income sourced at corporate level:		
(1)	Passive		15d(1)
(2)	Listed categories (attach schedule)		15d(2)
(3)	General limitation		15d(3)
e	Deductions allocated and apportioned at shareholder level:		
(1)	Interest expense		15e(1)
(2)	Other		15e(2)
f	Deductions allocated and apportioned at corporate level to foreign source income:		
(1)	Passive		15f(1)
(2)	Listed categories (attach schedule)		15f(2)
(3)	General limitation		15f(3)
g	Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued		15g
h	Reduction in taxes available for credit (attach schedule)		15h
Foreign Taxes			
16	Section 59(e)(2) expenditures: a Type		16b
17	Tax-exempt interest income		17
18	Other tax-exempt income		18
19	Nondeductible expenses		19
20	Total property distributions (including cash) other than dividends reported on line 22 below		20
21	Other items and amounts required to be reported separately to shareholders (attach schedule)		21
22	Total dividend distributions paid from accumulated earnings and profits		22
23	Income (loss). (Required only if Schedule M-1 must be completed.) Combine lines 1 through 6 in column (b). From the result, subtract the sum of lines 7 through 11a, 15g, and 16b		23

Form 1120S (2003)

-26,619

1GNN0779

Note: The corporation is not required to complete Schedules L and M-1 if question 9 of Schedule B is answered "Yes."

Schedule L. Balance Sheets per Books	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
Assets				
1 Cash				
2a Trade notes and accounts receivable				
b Less allowance for bad debts				1,000
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach schedule)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach schedule)				1,000
15 Total assets				
Liabilities and Shareholders' Equity				
16 Accounts payable				5,619
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach schedule)				20,000
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach schedule)				1,000
22 Capital stock				
23 Additional paid-in capital				-26,619
24 Retained earnings				
25 Adjustments to shareholders' equity (attach schedule)				
26 Less cost of treasury stock				1,000
27 Total liabilities and shareholders' equity				

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return	
1 Net income (loss) per books	-26,619
2 Income included on Schedule K, lines 1 through 6, not recorded on books this year (itemize):	
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 11a, 15g, and 16b (itemize):	
a Depreciation \$	
b Travel and entertainment \$	
4 Add lines 1 through 3	-26,619
5 Income recorded on books this year not included on Schedule K, lines 1 through 6 (itemize):	
a Tax-exempt interest \$	
6 Deductions included on Schedule K, lines 1 through 11a, 15g, and 16b, not charged against book income this year (itemize):	
a Depreciation \$	
7 Add lines 5 and 6	0
8 Income (loss) (Schedule K, line 23; Line 4 less line 7)	-26,619

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see page 29 of the instructions)			
	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	0		
2 Ordinary income from page 1, line 21			
3 Other additions	26,619		
4 Loss from page 1, line 21			
5 Other reductions	-26,619		
6 Combine lines 1 through 5			
7 Distributions other than dividend distributions			
8 Balance at end of tax year. Subtract line 7 from line 6	-26,619		

SCHEDULE K-1 (Form 1120S) Shareholder's Share of Income, Credits, Deductions, etc.

OMB No. 1545-0130
2003

Department of the Treasury Internal Revenue Service

beginning _____, 2003, and ending _____, 2003

Shareholder's identifying number ▶ 454-21-2602

Shareholder's name, address, and ZIP code
Victoria J. Vooy's
P.O. Box 2307, Kingshill
St. Croix, VI 00851

Corporation's identifying number ▶ 66:0629167

Corporation's name, address, and ZIP code
Barabus, Inc.
P.O. Box 2307, Kingshill
St. Croix, VI 00851

- A Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ 50.0 %
- B Internal Revenue Service Center where corporation filed its return ▶ St. Croix, USVI
- C Tax shelter registration number (see instructions for Schedule K-1) ▶
- D Check applicable boxes: (1) Final K-1 (2) Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
Income (Loss)	1 Ordinary income (loss) from trade or business activities	1 -13,310	See page 4 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	2 Net income (loss) from rental real estate activities	2	
	3 Net income (loss) from other rental activities	3	
	4 Portfolio income (loss):	4a	Form 1040, line 8a Form 1040, line 9b Form 1040, line 9a Sch. E, Part I, line 4 Sch. D, line 5, col. (g) Sch. D, line 5, col. (f) Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on applicable line of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on applicable line of your return.)
	a Interest income	4b(1)	
	b (1) Qualified dividends	4b(2)	
	(2) Total ordinary dividends	4c	
	c Royalty income	4d(1)	
	d (1) Net short-term capital gain (loss) (post-May 5, 2003)	4d(2)	
	(2) Net short-term capital gain (loss) (entire year)	4e(1)	
	e (1) Net long-term capital gain (loss) (post-May 5, 2003)	4e(2)	
	(2) Net long-term capital gain (loss) (entire year)	4f	
	f Other portfolio income (loss) (attach schedule)	5a	
5a Net section 1231 gain (loss) (post-May 5, 2003)	5b		
b Net section 1231 gain (loss) (entire year)	6		
6 Other income (loss) (attach schedule)			
Deductions	7 Charitable contributions (attach schedule)	7	Sch. A, line 15 or 16
	8 Section 179 expense deduction	8	See page 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (loss) (attach schedule)	9	
	10 Other deductions (attach schedule)	10	
Investment Interest	11a Interest expense on investment debts	11a	
	b (1) Investment income included on lines 4a, 4b(2), 4c, and 4f above	11b(1)	See Shareholder's Instructions for Schedule K-1 (Form 1120S).
(2) Investment expenses included on line 9 above	11b(2)		
Credits	12a Credit for alcohol used as fuel	12a	Form 6478, line 10
	b Low-income housing credit:	12b(1)	Form 8586, line 5
	(1) From section 42(j)(5) partnerships	12b(2)	
	(2) Other than on line 12b(1)		
	c Qualified rehabilitation expenditures related to rental real estate activities	12c	See pages 6 and 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	12d	
	e Credits related to other rental activities	12e	
13 Other credits	13		

SCHEDULE K-1
(Form 1120S)

Shareholder's Share of Income, Credits, Deductions, etc.

OMB No. 1545-0130

2003

Department of the Treasury
Internal Revenue Service

beginning

▶ See separate instructions.
For calendar year 2003 or tax year
, 2003, and ending

, 20

Shareholder's identifying number ▶ 058-64-8827

Corporation's identifying number ▶ 66:0629167

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

Joseph J. Gerace
P.O. Box 2307, Kingshill
St. Croix, VI 00851

Barabus, Inc.
P.O. Box 2307, Kingshill
St. Croix, VI 00851

- A Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) 50.0 %
 B Internal Revenue Service Center where corporation filed its return ▶ St. Croix, USVI
 C Tax shelter registration number (see instructions for Schedule K-1)
 D Check applicable boxes: (1) Final K-1 (2) Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
Income (Loss)	1 Ordinary Income (loss) from trade or business activities	1 -13,309	See page 4 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	2 Net Income (loss) from rental real estate activities	2	
	3 Net Income (loss) from other rental activities	3	
	4 Portfolio Income (loss):	4a	Form 1040, line 8a Form 1040, line 9b Form 1040, line 9a Sch. E, Part I, line 4 Sch. D, line 5, col. (g) Sch. D, line 5, col. (f) Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on applicable line of your return.)
	a Interest Income	4a	
	b (1) Qualified dividends	4b(1)	
	(2) Total ordinary dividends	4b(2)	
	c Royalty Income	4c	
	d (1) Net short-term capital gain (loss) (post-May 5, 2003)	4d(1)	
	(2) Net short-term capital gain (loss) (entire year)	4d(2)	
	e (1) Net long-term capital gain (loss) (post-May 5, 2003)	4e(1)	
	(2) Net long-term capital gain (loss) (entire year)	4e(2)	
	f Other portfolio income (loss) (attach schedule)	4f	
5a Net section 1231 gain (loss) (post-May 5, 2003)	5a	See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on applicable line of your return.)	
b Net section 1231 gain (loss) (entire year)	5b		
6 Other Income (loss) (attach schedule)	6		
Deductions	7 Charitable contributions (attach schedule)	7	Sch. A, line 15 or 16
	8 Section 179 expense deduction	8	See page 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (loss) (attach schedule)	9	
	10 Other deductions (attach schedule)	10	
Investment Interest	11a Interest expense on investment debts	11a	Form 4952, line 1
	b (1) Investment income included on lines 4a, 4b(2), 4c, and 4f above	11b(1)	See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	(2) Investment expenses included on line 9 above	11b(2)	
	12a Credit for alcohol used as fuel	12a	Form 6478, line 10
	b Low-income housing credit:		Form 8586, line 5
	(1) From section 42(f)(5) partnerships	12b(1)	
(2) Other than on line 12b(1)	12b(2)		
Credits	c Qualified rehabilitation expenditures related to rental real estate activities	12c	See pages 6 and 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	12d	
	e Credits related to other rental activities	12e	
	13 Other credits	13	

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Cat. No. 115200

Schedule K-1 (Form 1120S) 2003

Barabus, Inc.
EIN #66-0629167
2003

Form 1120S, Line 19, Other Deductions:

Utilities	\$ 5,000.00
Miscellaneous	<u>\$ 11,239.00</u>
<u>TOTAL:</u>	\$ 16,239.00

Form **1120S**

U.S. Income Tax Return for an S Corporation

OMB No. 1545-0130

Department of the Treasury
Internal Revenue Service

Do not file this form unless the corporation has timely filed Form 2553 to elect to be an S corporation.
See separate instructions.

2004

For calendar year 2004, or tax year beginning

2004, and ending

20

A Effective date of S election 12/31/2003	Use the IRS label. Otherwise, print or type.	Name Barabus, Inc.	C Employer identification number 66:1629167
B Business code number (see pages 36-38 of the Insts.) 722210		Number, street, and room or suite no. (If a P.O. box, see page 12 of the instructions.) P.O. Box 2307	D Date incorporated 08/08/2003
		City or town, state, and ZIP code Kingshill, VI 00851	E Total assets (see page 12 of instructions) \$ 1,000

F Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return
G Enter number of shareholders in the corporation at end of the tax year: 2

Caution: Include only trade or business income and expenses on lines 1a through 21. See page 13 of the instructions for more information.

Income	1a	Gross receipts or sales	168,584	b	Less returns and allowances	0	c	Bal	1c	168,584
	2	Cost of goods sold (Schedule A, line 8)			2	120,386			3	48,198
	3	Gross profit. Subtract line 2 from line 1c			4	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			4	
	4	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			5	Other income (loss) (attach schedule)			5	0
	5	Other income (loss) (attach schedule)			6	Total income (loss). Add lines 3 through 5.			6	48,198
	6	Total income (loss). Add lines 3 through 5.							7	
Deductions (see page 14 of the instructions for limitations)	7	Compensation of officers			7				8	
	8	Salaries and wages (less employment credits)			8				9	20,120
	9	Repairs and maintenance			9				10	
	10	Bad debts			10				11	18,000
	11	Rents			11				12	
	12	Taxes and licenses			12				13	
	13	Interest			13				14a	
	14a	Depreciation (attach Form 4562)			14a				14b	
	14b	Depreciation claimed on Schedule A and elsewhere on return			14b				14c	
	14c	Subtract line 14b from line 14a			14c				15	
	15	Depletion (Do not deduct oil and gas depletion.)			15				16	10,000
	16	Advertising			16				17	
	17	Pension, profit-sharing, etc., plans			17				18	
	18	Employee benefit programs			18				19	28,314
	19	Other deductions (attach schedule)			19	Utilities			20	76,434
20	Total deductions. Add the amounts shown in the far right column for lines 7 through 19			20				21	-28,236	
21	Ordinary business income (loss). Subtract line 20 from line 6			21						
Tax and Payments	22	a Excess net passive income tax (attach schedule)	22a							
	22	b Tax from Schedule D (Form 1120S)	22b							
	22	c Add lines 22a and 22b (see page 18 of the instructions for additional taxes)	22c							
	23	a 2004 estimated tax payments and amount applied from 2003 return	23a							
	23	b Tax deposited with Form 7004.	23b							
	23	c Credit for Federal tax paid on fuels (attach Form 4136)	23c							
	23	d Add lines 23a through 23c	23d							
24	Estimated tax penalty (see page 18 of instructions). Check if Form 2220 is attached. <input type="checkbox"/>	24								
25	Tax due. If line 23d is smaller than the total of lines 22c and 24, enter amount owed.	25							0	
26	Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid.	26								
27	Enter amount of line 26 you want refunded to 2005 estimated tax <input type="checkbox"/>	27								

EXHIBIT
tabblier
16

Sign Here
Under penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Structure of officer	Date	Title	May the IRS discuss this return with the preparer shown below (see instructions)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Preparer's signature <i>Doopak Bansal</i>	Date 11/10/2005	Check if self-employed <input checked="" type="checkbox"/>	Preparer's SSN or PTIN 580-15-1454
Preparer's name (or yours if self-employed), address, and ZIP code Doopak Bansal, CPA P.O. Box 8639, Christiansted, VI 00823	EIN	Phone no. (340) 719-6464	

JG000771-772

Schedule A Cost of Goods Sold (see page 18 of the instructions)

1	Inventory at beginning of year	1	1,000
2	Purchases	2	120,386
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	121,386
7	Inventory at end of year	7	1,000
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	120,386

9a Check all methods used for valuing closing inventory: (i) Lower of cost or market as described in Regulations section 1.471-4 (ii) Cost as described in Regulations section 1.471-3 (iii) Other (specify method used and attach explanation) _____

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c)

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d _____

e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation? Yes No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? Yes No If "Yes," attach explanation.

Schedule B Other Information (see page 19 of instructions)

	Yes	No
1 Check method of accounting: (a) <input type="checkbox"/> Cash (b) <input type="checkbox"/> Accrual (c) <input type="checkbox"/> Other (specify) _____		
2 See pages 36 through 38 of the instructions and enter the: (a) Business activity _____ (b) Product or service _____		
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing: (a) name, address, and employer identification number and (b) percentage owned		<input checked="" type="checkbox"/>
4 Was the corporation a member of a controlled group subject to the provisions of section 1561?		<input checked="" type="checkbox"/>
5 Check this box if the corporation has filed or is required to file Form 8264, Application for Registration of a Tax Shelter <input type="checkbox"/>		
6 Check this box if the corporation issued publicly offered debt instruments with original issue discount. If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments. <input type="checkbox"/>		
7 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation, and (b) has not unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years _____ \$ _____		
8 Check this box if the corporation had accumulated earnings and profits at the close of the tax year <input type="checkbox"/>		
9 Are the corporation's total receipts (see page 19 of the instructions) for the tax year and its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L and M-1. <input checked="" type="checkbox"/>		

Note: If the corporation had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.

Schedule K Shareholders' Shares of Income, Deductions, Credits, etc.

Shareholders' Pro Rata Share Items		Total amount	
1	Ordinary business income (loss) (page 1, line 21)	1	-28,236
2	Net rental real estate income (loss) (attach Form 8825)	2	
3a	Other gross rental income (loss)	3a	
b	Expenses from other rental activities (attach schedule)	3b	
c	Other net rental income (loss). Subtract line 3b from line 3a	3c	
4	Interest income	4	
5	Dividends: a Ordinary dividends	5a	
b	Qualified dividends	5b	
6	Royalties	6	
7	Net short-term capital gain (loss)	7	
8a	Net long-term capital gain (loss)	8a	
b	Collectibles (28%) gain (loss)	8b	
c	Unrecaptured section 1250 gain (attach schedule)	8c	
9	Net section 1231 gain (loss) (attach Form 4797)	9	
10	Other income (loss) (attach schedule)	10	

Note: The corporation is not required to complete Schedules L and M-1 if question 9 of Schedule B is answered "Yes."

Schedule L Balance Sheets per Books

	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
Assets				
1 Cash				
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories		1,000		1,000
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach schedule)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach schedule)				
15 Total assets		1,000		1,000
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year		6,619		0
18 Other current liabilities (attach schedule)				
19 Loans from shareholders		20,000		54,855
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach schedule)				
22 Capital stock		1,000		1,000
23 Additional paid-in capital				
24 Retained earnings		-26,619		-54,855
25 Adjustments to shareholders' equity (attach schedule)				
26 Less cost of treasury stock		()		()
27 Total liabilities and shareholders' equity		1,000		1,000

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

1 Net income (loss) per books	-28,236	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12, and 14l or (14m) (itemize):		6 Deductions included on Schedule K, lines 1 through 12, and 14l or (14m), not charged against book income this year (itemize):	
a Depreciation \$		a Depreciation \$	
b Travel and entertainment \$		7 Add lines 5 and 6.	0
4 Add lines 1 through 3.	-28,236	8 Income (loss) (Schedule K, line 17c), Line 4 less line 7	-28,236

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see page 32 of the instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	-26,619		
2 Ordinary income from page 1, line 21			
3 Other additions			
4 Loss from page 1, line 21	(28,236)		
5 Other reductions	()	()	
6 Combine lines 1 through 5	-54,855		
7 Distributions other than dividend distributions			
8 Balance at end of tax year. Subtract line 7 from line 6	-54,855		

2004

Tax year beginning Jan 1 2004
and ending Dec 31 2004

Final K-1 Amended K-1

6711
OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc.
▶ See back of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
660629167

B Corporation's name, address, city, state, and ZIP code
BARABUS, INC.
P.O. BOX 2307
KINGSHILL, VI 00851

C IRS Center where corporation filed return
Sl. Croix, USVI

D Tax shelter registration number, if any

E Check if Form 9271 is attached

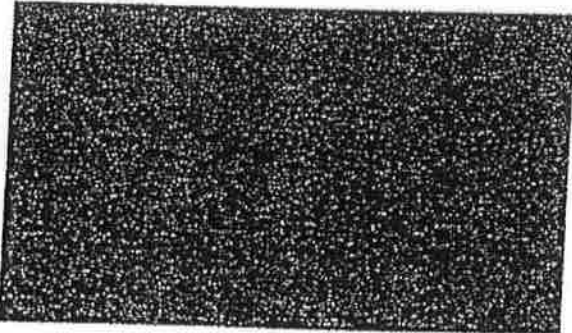
Part II Information About the Shareholder

F Shareholder's identifying number
454212602

G Shareholder's name, address, city, state and ZIP code
VICTORIA J. VOOYS
P.O. BOX 2307
KINGSHILL, VI 00851

H Shareholder's percentage of stock ownership for tax year 50.000 %

For IRS Use Only



Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	13	Credits & credit recapture
	-14,118		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
8	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
11	Section 179 deduction	16	Items affecting shareholder basis
12	Other deductions		
		17	Other information

* See attached statement for additional information.

Schedule K-1 (Form 1120S) Department of the Treasury Internal Revenue Service

2004

Tax year beginning Jan 1 2004 and ending Dec 31 2004

Final K-1 Amended K-1 OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc. See back of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number 660629167
B Corporation's name, address, city, state, and ZIP code BARABUS, INC. P.O. BOX 2307 KINGSHILL, VI 00851
C IRS Center where corporation filed return St. Croix, USVI
D Tax shelter registration number, if any
E Check if Form 8271 is attached

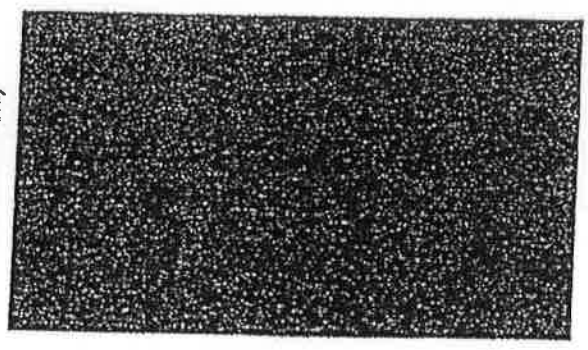
Part II Information About the Shareholder

F Shareholder's identifying number 058648827
G Shareholder's name, address, city, state and ZIP code JOSEPH J. GERACE P.O. BOX 2307 KINGSHILL, VI 00851
H Shareholder's percentage of stock ownership for tax year 50.000 %

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 17 rows and 2 columns. Row 1: Ordinary business income (loss) -14,118. Row 13: Credits & credit recapture. Row 15: Alternative minimum tax (AMT) items. Row 17: Other information.

For IRS Use Only



* See attached statement for additional information.

Form **1120S**

U.S. Income Tax Return for an S Corporation

OMB No. 1545-0130

▶ Do not file this form unless the corporation has filed

Form 2553 to elect to be an S corporation.

2005

Department of the Treasury
Internal Revenue Service

For calendar year 2005, or tax year beginning , and ending

A Effective date of S election 12/31/2003	Use the IRS label. Otherwise, print or type.	Name BARABUS INC.	C Employer identification number 66-1629167
B Business code number (see instructions) 722210		Number, street, and room or suite no. If a P.O. box, see instructions. P.O. BOX 2307	D Date incorporated 08/08/2003
		City or town, state, and ZIP code KINGSHILL, ST. CROIX, VI 00851	E Total assets (see instructions) \$ 0.

F Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return

G Enter number of shareholders in the corporation at end of the tax year ▶ 2

Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1 a Gross receipts or sales	92,418	b Less returns and allowances		1c	92,418.
	2 Cost of goods sold (Schedule A, line 8)				2	46,973.
	3 Gross profit. Subtract line 2 from line 1c				3	45,445.
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)				4	
	5 Other income (loss) (attach statement)				5	
	6 Total income (loss). Add lines 3 through 5				6	45,445.
Deductions (See instructions for limitations)	7 Compensation of officers				7	
	8 Salaries and wages (less employment credits)				8	
	9 Repairs and maintenance				9	
	10 Bad debts				10	
	11 Rents				11	7,500.
	12 Taxes and licenses				12	
	13 Interest				13	
	14 a Depreciation (attach Form 4562)		14a			
	b Depreciation claimed on Schedule A and elsewhere on return		14b			
	c Subtract line 14b from line 14a				14c	
	15 Depletion (Do not deduct oil and gas depletion.)				15	
16 Advertising				16	4,000.	
17 Pension, profit-sharing, etc., plans				17		
18 Employee benefit programs				18		
19 Other deductions (attach statement)			Statement 1	19	26,050.	
20 Total deductions. Add the amounts shown in the far right column for lines 7 through 19				20	37,550.	
21 Ordinary business income (loss). Subtract line 20 from line 6				21	7,895.	
Tax and Payments	22 a Excess net passive income tax (attach statement)		22a			
	b Tax from Schedule D (Form 1120S)		22b			
	c Add lines 22a and 22b				22c	
	23 a Payments: a 2005 estimated tax payments and amount paid on return		23a			
	b Tax deposited with Form 7004		23b			
	c Credit for Federal tax paid on fuels (attach Form 736)		23c			
	d Add lines 23a through 23c				23d	
24 Estimated tax penalty. Check if Form 2220 is attached <input type="checkbox"/>				24		
25 Tax due. If line 23d is smaller than the total of lines 22a, 22b, and 23d, enter amount owed.				25		
26 Overpayment. If line 23d is larger than the total of lines 22a, 22b, and 23d, enter amount overpaid				26		
27 Enter amount of line 26 you want: Credited to 2006 estimated tax ▶ Refunded ▶				27		

EXHIBIT
17

RECEIVED
PROCESSING & ACCOUNTS NO. 9
JUN 18 2007
VIRGIN ISLANDS BUREAU OF
INTERNAL REVENUE, ST. CROIX, VI

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here ▶ Signature of officer _____ Date _____ Title _____

May the IRS discuss this return with the preparer shown below (see instr.)?
 Yes No

Paid Preparer's Use Only

Preparer's signature: *James P. Sheets* Date: 06/14/07 Check if self-employed:

Firm's name (or yours if self-employed), address, and ZIP code: James P. Sheets C.P.A., P.O. Box 222755, Christiansted, St. Croix, U.S. Virgin Islands 00822

EIN: 66-0481149 Phone no.: 340-773-7510

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	46,973.
3	Cost of labor	3	
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement)	5	
6	Total. Add lines 1 through 5	6	46,973.
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	46,973.

9 a Check all methods used for valuing closing inventory: (i) Cost as described in Regulations section 1.471-3
 (ii) Lower of cost or market as described in Regulations section 1.471-4
 (iii) Other (specify method used and attach explanation) _____

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) _____

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) _____

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO _____

e If property produced or acquired for resale, do the rules of Section 263A apply to the corporation? _____ Yes No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? _____ Yes No
 If "Yes," attach explanation.

Schedule B Other Information (see instructions)

	Yes	No
1 Check method of accounting: (a) <input checked="" type="checkbox"/> Cash (b) <input type="checkbox"/> Accrual (c) <input type="checkbox"/> Other (specify) _____		
2 See the instructions and enter the: (a) Business activity RESTUARANT (b) Product or service FOOD AND BEVERAGE		
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: (a) name, address, and employer identification number and (b) percentage owned		X
4 Was the corporation a member of a controlled group subject to the provisions of section 1561?		X
5 Has this corporation filed, or is it required to file, a return under Section 6111 to provide information on any reportable transaction?		X
6 Check this box if the corporation issued publicly offered debt instruments with original issue discount. If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
7 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years \$ _____		
8 Check this box if the corporation had accumulated earnings and profits at the close of the tax year _____ <input type="checkbox"/>		
9 Are the corporation's total receipts (see instructions) for the tax year and its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L and M-1	X	

Note: If the corporation had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.

Schedule K Shareholders' Shares of Income, Deductions, Credits, etc.

	Shareholders' Pro Rata Share Items		Total amount	
1 Ordinary business income (loss) (page 1, line 21)			1	7,895.
2 Net rental real estate income (loss) (attach Form 8825)			2	
3a Other gross rental income (loss)	3a			
b Expenses from other rental activities (attach statement)	3b			
c Other net rental income (loss). Subtract line 3b from line 3a			3c	
4 Interest income			4	
5 Dividends: a Ordinary dividends			5a	
b Qualified dividends	5b			
6 Royalties			6	
7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))			7	
8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))			8a	
b Collectibles (28%) gain (loss)	8b			
c Unrecaptured section 1250 gain (attach statement)	8c			
9 Net section 1231 gain (loss) (attach Form 4797)			9	
10 Other income (loss) (see instructions) Type _____			10	

		Shareholders' Pro Rata Share Items (continued)	Total amount		
Deductions	11	Section 179 deduction (attach Form 4562)	11		
	12a	Contributions	12a		
		b	Investment interest expense	12b	
		c	Section 59(e)(2) expenditures (1) Type ▶ (2) Amount ▶	12c(2)	
		d	Other deductions (see instructions) Type ▶	12d	
Credits & Credit Recapture	13a	Low-income housing credit (section 42(j)(5))	13a		
	b	Low-income housing credit (other)	13b		
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	13c		
	d	Other rental real estate credits (see instructions) Type ▶	13d		
	e	Other rental credits (see instructions) Type ▶	13e		
	f	Credit for alcohol used as fuel (attach Form 6478)	13f		
	g	Other credits and credit recapture (see instructions) Type ▶	13g		
Foreign Transactions	14a	Name of country or U.S. possession ▶			
	b	Gross income from all sources	14b		
	c	Gross income sourced at shareholder level	14c		
		Foreign gross income sourced at corporate level:			
	d	Passive	14d		
	e	Listed categories (attach statement)	14e		
	f	General limitation	14f		
		Deductions allocated and apportioned at shareholder level:			
	g	Interest expense	14g		
	h	Other	14h		
		Deductions allocated and apportioned at corporate level to foreign source income:			
	i	Passive	14i		
	j	Listed categories (attach statement)	14j		
k	General limitation	14k			
	Other information:				
l	Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued	14l			
m	Reduction in taxes available for credit (attach statement)	14m			
n	Other foreign tax information (attach statement)				
Alternative Minimum Tax (AMT) Items	15a	Post-1986 depreciation adjustment	15a		
	b	Adjusted gain or loss	15b		
	c	Depletion (other than oil and gas)	15c		
	d	Oil, gas, and geothermal properties - gross income	15d		
	e	Oil, gas, and geothermal properties - deductions	15e		
	f	Other AMT items (attach statement)	15f		
Items Affecting Shareholder Basis	16a	Tax-exempt interest income	16a		
	b	Other tax-exempt income	16b		
	c	Nondeductible expenses	16c		
	d	Property distributions	16d		
	e	Repayment of loans from shareholders	16e		
Other Information	17a	Investment income	17a		
	b	Investment expenses	17b		
	c	Dividend distributions paid from accumulated earnings and profits	17c		
	d	Other items and amounts (attach statement)			
	e	Income/loss reconciliation. (Required only if Schedule M-1 must be completed.) Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14i	17e		

Note: The corporation is not required to complete Schedules L and M-1 if question 9 of Schedule B is answered "Yes."

Schedule L	Balance Sheets per Books	Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)
Assets					
1	Cash				
2 a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. Government obligations				
5	Tax-exempt securities				
6	Other current assets (att. stmt.)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (att. stmt.)				
10 a	Buildings and other depreciable assets				
b	Less accumulated depreciation				
11 a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13 a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (att. stmt.)				
15	Total assets				
Liabilities and Shareholders' Equity					
16	Accounts payable				
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (att. stmt.)				
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (att. stmt.)				
22	Capital stock				
23	Additional paid-in capital				
24	Retained earnings				
25	Adjustments to shareholders' equity (att. stmt.)				
26	Less cost of treasury stock				
27	Total liabilities and shareholders' equity				

Schedule M-1		Reconciliation of Income (Loss) per Books With Income (Loss) per Return
1	Net income (loss) per books	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest \$ _____
2	Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize): _____	6 Deductions included on Schedule K, lines 1 through 12 and 14i, not charged against book income this year (itemize): a Depreciation \$ _____ b Travel and entertainment \$ _____
3	Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14i (itemize): a Depreciation \$ _____ b Travel and entertainment \$ _____	7 Add lines 5 and 6 _____
4	Add lines 1 through 3 _____	8 Income (loss) (Schedule K, line 17c), Line 4 less line 7 _____

Schedule M-2			
Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)			
	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1	Balance at beginning of tax year	<54,855.>	
2	Ordinary income from page 1, line 21	7,895.	
3	Other additions		
4	Loss from page 1, line 21	()	
5	Other reductions	()	
6	Combine lines 1 through 5	<46,960.>	
7	Distributions other than dividend distributions		
8	Balance at end of tax year. Subtract line 7 from line 6	<46,960.>	

66-1629167

RABUS INC.

Form 1120S Other Deductions Statement 1

Description

Amount

INSURANCE
UTILITIES
CONTRACT LABOR

1,450.
16,342.
8,258.

26,050.

Total to Form 1120S, Page 1, Line 19

Schedule K-1 (Form 1120S)

Department of the Treasury Internal Revenue Service

2005

For calendar year 2005, or tax year beginning ending

Final K-1 Amended K-1 OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc. See separate instructions.

Table with 2 columns and 17 rows. Row 1: 1 Ordinary business income (loss) 3,948. Row 2: 2 Net rental real estate income (loss). Row 3: 3 Other net rental income (loss). Row 4: 4 Interest income. Row 5: 5a Ordinary dividends. Row 6: 5b Qualified dividends. Row 7: 6 Royalties. Row 8: 7 Net short-term capital gain (loss). Row 9: 8a Net long-term capital gain (loss). Row 10: 8b Collectibles (28%) gain (loss). Row 11: 8c Unrecaptured sec 1250 gain. Row 12: 9 Net section 1231 gain (loss). Row 13: 10 Other income (loss). Row 14: 11 Section 179 deduction. Row 15: 12 Other deductions. Row 16: 13 Credits & credit recapture. Row 17: 14 Foreign transactions. Row 18: 15 Alternative min tax (AMT) items. Row 19: 16 Items affecting shareholder basis. Row 20: 17 Other information.

Part I Information About the Corporation

A Corporation's employer identification number 66-1629167
B Corporation's name, address, city, state, and ZIP code BARABUS INC. P.O. BOX 2307 KINGSHILL, ST. CROIX, VI 00851
C IRS Center where corporation filed return St. Thomas, VI
D Tax shelter registration number, if any
E Check if Form 8271 is attached

Part II Information About the Shareholder

F Shareholder's identifying number 454-21-2602
G Shareholder's name, address, city, state and ZIP code VICTORIA J VOOYS P.O. BOX 2307 KINGSHILL, ST. CROIX, VI 00851
H Shareholder's percentage of stock ownership for tax year 50.000000%

For IRS Use Only

*See attached statement for additional information.

671105

Schedule K-1 (Form 1120S)

2005

Department of the Treasury Internal Revenue Service

For calendar year 2005, or tax year beginning ending

Final K-1 Amended K-1 OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc.

Part I Information About the Corporation

A Corporation's employer identification number 66-1629167

B Corporation's name, address, city, state, and ZIP code BARABUS INC. P.O. BOX 2307 KINGSHILL, ST. CROIX, VI 00851

C IRS Center where corporation filed return St. Thomas, VI

D Tax shelter registration number, if any E Check if Form 8271 is attached

Part II Information About the Shareholder

F Shareholder's identifying number 058-64-8827

G Shareholder's name, address, city, state and ZIP code JOSEPH J GERACE P.O. BOX 2307 KINGSHILL, ST. CROIX, VI 00851

H Shareholder's percentage of stock ownership for tax year 50.000000%

Table with 2 columns: Item description and Amount. Rows include: 1 Ordinary business income (loss) 3,947.; 2 Net rental real estate income (loss); 3 Other net rental income (loss); 4 Interest income; 5a Ordinary dividends; 5b Qualified dividends; 6 Royalties; 7 Net short-term capital gain (loss); 8a Net long-term capital gain (loss); 8b Collectibles (28%) gain (loss); 8c Unrecaptured sec 1250 gain; 9 Net section 1231 gain (loss); 10 Other income (loss); 11 Section 179 deduction; 12 Other deductions; 13 Credits & credit recapture; 14 Foreign transactions; 15 Alternative min tax (AMT) items; 16 Items affecting shareholder basis; 17 Other information.

*See attached statement for additional information.

For IRS Use Only

Gregory C. Williams, Jr.

P.O. Box 5217

Christiansted, VI 00823-5217

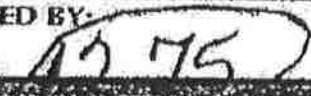
Tel.: (340) 713-9933 ~ Cell: 277-1888

NO.  8005

NAME: Chris Hanley	DATE: 3/1/05
ADDRESS: Cane Bay	
CITY, STATE, ZIP	

SOLD BY:	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RTD.	PAID OUT
----------	------	--------	--------	----------	-----------	----------

QUAN.	DESCRIPTION	AMOUNT
	1/19/05 Repair Well pump	200.00
	2/24/05 Clear and repair grease trap	375.00
	2/25/05 Repair soakaway for grease trap and material	300.00
	Backhoe service	300.00
	One way transportation	100.00

CUSTOMER'S ORDER NO.	RECEIVED BY: 
----------------------	--

TOTAL 1275

KEEP THIS COPY FOR YOUR RECORDS

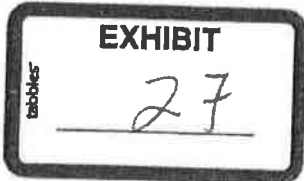
5L250 ©2001 REDIFORM®

EXHIBIT

22

JA - 784

- > From: jim@jordanlandmanagement.com <jim@jordanlandmanagement.com>
- > Subject: beach bar
- > To: mosler@rocketmail.com
- > Date: Sunday, May 1, 2005, 11:24 AM
- >
- >
- >
- >
- >
- >
- >
- >
- > Warren, I wanted to drop
- > you a line and see if we
- > could start moving forward on the lease paper work for the
- > bar. Chris told
- > me to try and work with you directly and if need be I can
- > coordinate everything
- > with Hunt.
- >
- > I need the lease completed
- > in order to offer the
- > current owners a buy out. I've offered them
- > \$50,000 to leave quietly and
- > without disrupting the business....they've agreed to
- > this and said they'd be
- > gone by June first. Once the lease is finished Hunt
- > will draft the
- > buy/sell I need and I'll inventory everything and they
- > should just walk away and
- > hand me the keys.
- >
- > I've already
- > approached some of the employees about
- > staying and plan on being able to actually have a smooth
- > transition....will
- > still shut portions of the operation down for the remodel
- > but there will be
- > enough continuity in that I think we'll keep the bar



- > open in order to maintain
- > the employees.
- >
- > I am also waiting on the
- > hotel
- > license....technically this is required in order to obtain
- > the night club
- > permit. So there is a succession of paperwork
- > necessary in order to
- > move forward and I'd like to get Hunt started on it if
- > your agreed?
- >
- > I've also informed the
- > current owners that anymore
- > public controversy is only going to disrupt this process
- > and they need to stay
- > out of the media, they've agreed to this themselves but
- > said other factions
- > might try and make some more noise...but that they would
- > try and put a lid on
- > this also.
- >
- > If for some reason a
- > forced eviction becomes
- > necessary we're still willing to follow through but in
- > the interest of avoiding
- > a full scale confrontation that may well damage the
- > business I'd like to try the
- > buy out first. With that in mind I'd like to firm
- > up the lease so we can
- > get started.
- >
- > I'm in Montana till
- > the 16th, my number here is
- > 406-259-4332 or use my direct e-mail at jlmilo@msn.com.
- > I'll try and call you on
- > Monday....just talked to one of the Marshals that saw you
- > coming out of the
- > water at the triathlon and they said you were looking
- > strong, hope it went
- > well....tear'm up.
- >
- > Jim
- >
- >
- >
- >

- > offers for 3 weeks and
- > have tried to mislead us on several points it's made it
- > difficult to proceed
- > because we've had to research all of their responses
- > and the threat of burning
- > things down has caused quite a bit of concern.
- > I'll let you know what I
- > learn.
- >
- > Thanks,
- >
- > Jim
- >
- >
- >

>>>

>>> --- Original Message ---

>>> From: "Warren Mosler" <mosler@rocketmail.com>

>>> To: "JIM JORDAN" <jlmlc@msn.com>

>>> Cc: "Chris Hanley" <hanley@islands.vi>

>>> Sent: Monday, May 30, 2005 9:19 AM

>>> Subject: Re: beach bar progress

>>>

>>>

>>>>

>>>> --- JIM JORDAN <jlmlc@msn.com>

> wrote:

>>>>> Warren, I've made offers to Joe

> and Vick that

>>> allow

>>>>> them to leave quietly...

>>>>

>>>>> Very good. I heard they are already

> moving stuff

>>> out.

>>>>

>>>>

>>>>> I'll try to finish setting

>>>>>> it up on Tuesday....there are several

>>>> outstanding

>>>>> bills and one position against the

> bar. We've

>>> told

>>>>> them that we'll continue to pursue the

> buy out

>>> IF

>>>>> they'll agree that the monies are

> placed in

>>> escrow

>>>>> with Hunt till all debts are satisfied

> and that

>>> any

>>>>> violence against the business will

> result in

>>>>> nullifying the contract. I'm

> waiting for their

>>>>> response on this.

>>>>

>>>>> Good move!

>>>>

>>>>>

>>>>>> They still have the option to remove

> everything

>>> by

>>>>>> the first if they choose....if they go

> that

>>> route

>>>>> we'll just start over from scratch,

> I've already

>>>>> coordinated this with Johnnie.

>>>>

>>>>> Good.

>>>>

>>>>>

>>>>>> These are my current thoughts and

> they'll need

>>> to be

>>>>> agreed to by my partners,

> they've been waiting

>>> to

> > > > see how these kids handle it....how
> they leave
> > > and
> > > > the level of violence. They've
> had the offers
> > > for 3
> > > > weeks and have tried to mislead us on
> several
> > > points
> > > > it's made it difficult to proceed
> because we've
> > > had
> > > > to research all of their responses and
> the
> > > threat of
> > > > burning things down has caused quite a
> bit of
> > > > concern. I'll let you know what I
> learn.
> > > >
> > > > thanks!

> > > >
> > > > warren
> > > >
> > > > Thanks,
> > > >
> > > > Jim
> > > >
> > > >
> > > > Warren Mosler
> > > > Valance Co. Inc.
> > > > 5000 Estate Southgate
> > > > Christiansted, USVI 00820
> > > > 340-692-7710 office phone, 7715 fax
> > > > Primary email contact: wmosler@valance.us
> > > > www.mosler.org
> > > >
> > > > Associate Fellow
> > > > Cambridge Centre for Economic and Public
> Policy
> > > > Downing College, Cambridge, UK
> > > >
> > > >
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> > Associate Fellow
> > Cambridge Centre for Economic and Public Policy
> > Downing College, Cambridge, UK
> >
>
>

— On Wed, 6/1/05, JIM JORDAN <jimilc@msn.com> wrote:

> From: JIM JORDAN <jimilc@msn.com>
> Subject: Re: beach bar progress
> To: "Warren Mosler" <mosler@rocketmail.com>
> Date: Wednesday, June 1, 2005, 11:35 AM
> Can't keep the bar open....their
> taking everything....so they say... will
> have to start from scratch....but considering keeping
> Johnnie on to
> help....in order to stay open they needed to take the but
> out. I'll let you
> know what I learn.
>
> Jim
>
>
>
>

> — Original Message —

> From: "Warren Mosler" <mosler@rocketmail.com>
> To: "JIM JORDAN" <jimilc@msn.com>
> Sent: Wednesday, June 01, 2005 9:00 AM
> Subject: Re: beach bar progress
>
>
>

> > — JIM JORDAN <jimilc@msn.com>
> wrote:
> > Warren,
> > >
> > > Joe and Vick turned down all our offers....seems
> > > they don't want to have to
> > > honor the promissory note with the previous
> > > owner,
> > > do to some
> > > disagreements...they've informed me they're
> > > removing
> > > all of their things as
> > > of today, the 1st. It might be advisable to go
> ahead



JA - 791

> > > and change the locks as
 > > > of tomorrow morning or sooner?
 > >
 > > Works for me.
 > >
 > > And maybe have Dick
 > > > monitor the removal of
 > > > items to insure they do as little damage as
 > > > possible?
 > >
 > > It will probably cost more to pay Dick than any
 > > damage
 > > they may do?
 > >
 > > >
 > > > I'll be on Island on Monday and would like to go
 > > > over the property and
 > > > assess the situation and any damage...I'm in
 > > > contact
 > > > with John Ried and he
 > > > has a set of keys that currently work and could
 > > > be
 > > > available to help.
 > >
 > > Good, maybe put John in charge/on your payroll
 > > as of
 > > today and just have him keep the bar open?
 > >
 > > warren
 > > >
 > > > Thanks,
 > > >
 > > > Jim
 > > >
 > > >
 > > > — Original Message —
 > > > From: "Warren Mosler" <mosler@rocketmail.com>
 > > > To: "JIM JORDAN" <jim1lc@msn.com>
 > > > Co: "Chris Hanley" <hanley@islands.vi>
 > > > Sent: Monday, May 30, 2005 9:19 AM
 > > > Subject: Re: beach bar progress
 > > >
 > > >
 > > > > — JIM JORDAN <jim1lc@msn.com>
 > > > > wrote:
 > > > > Warren, I've made offers to Joe
 > > > > and Vick that
 > > > > allow
 > > > > them to leave quietly...
 > > > >
 > > > > Very good. I heard they are already
 > > > > moving stuff
 > > > > out.
 > > > >
 > > > >
 > > > > I'll try to finish setting
 > > > > it up on Tuesday...there are several
 > > > > outstanding
 > > > > bills and one position against the
 > > > > bar. We've

ASSET PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is executed effective June 17, 2005, by and between Joe Gerace and Victoria Vooyo (collectively "Seller"), and James Jordan ("Purchaser"), and Nichols Newman Logan & D'Eramo, PC ("Escrow Agent").

WITNESSETH:



A. Seller is the owner of all the furniture, furnishings, equipment, inventory, goodwill and other personal property ~~and the trade name~~ Cane Bay Beach Bar (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. Seller desires to sell the Property to Purchaser and to assign all of its right, title and interest in the verbal lease agreement with Chrismos Cane Bay LLC ("Landlord"), as lessor ("Lease") pertaining to the current location of the Business pursuant to the provisions contained herein.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 Sale and Purchase of Property. Subject to and on the terms and conditions provided herein, Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Property.

2.0 Purchase Price; Escrow.

2.1 The purchase price ("Purchase Price") for the Property and for the assignment of the Lease shall be **Thirty Thousand Dollars (\$30,000.00)**. The Purchase Price after deducting the Earnest Money and subject to such other credits, proration and adjustments as are provided herein, shall be paid at closing by certified or cashier's check or other funds acceptable to Seller.

2.2 Contemporaneously with the execution of this Agreement, Purchaser shall pay to Escrow Agent the sum of \$1,000.00 as earnest money ("Earnest Money") under this Agreement. Escrow Agent shall hold the Earnest Money pursuant to the provisions of this Agreement. Escrow Agent acknowledges receipt of the Earnest Money. If the closing is consummated, then the Earnest Money shall be paid to Seller and credited towards the Purchase Price at the Closing. If the closing is not consummated, then the Earnest Money shall be paid to Seller or Purchaser as provided in Sections 10.0 or 11.0 hereof.

2.3 Purchaser shall not hereby, or in connection herewith, whether by implication or otherwise, assume or become obligated or liable for any liability, indebtedness or other obligation of Seller of any nature whatsoever, whether now or hereafter existing, due or to



become due, absolute or contingent, or otherwise, whether or not any such liability, indebtedness or other obligation was disclosed to Purchaser, including, without limitation, any contracts, mortgages, liens, leases, charges, or encumbrances affecting the Seller, the Property or the Business, except the Lease.

2.4 At the Closing, Seller shall deposit into escrow with Nichols Newman Logan & D'Eramo, P.C. as escrow agent the sum of \$3,000.00 which shall be held in escrow under the terms of the Escrow Agreement attached hereto. The funds are being held in escrow as a means to guarantee and be collateral for the indemnification obligations of the Seller contained in Section 22 hereof. Seller grants Purchaser a first priority perfected security interest in such funds.

3.0 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Up to and including the date of the closing, no one will modify or remove any of the personal property comprising the Property, except that inventory may be sold in the ordinary course of business.

3.3 Seller will not execute any new lease, service contract, employment agreement, or enter into any other agreement concerning the Property or the Business without Purchaser's prior written consent, unless such agreement shall terminate prior to the effective date of the Closing.

3.4 The Property and the premises to be leased pursuant to the Lease shall be in the same condition as it is on the effective date of this Agreement.

3.5 Seller owns and will convey to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances. There are no unsatisfied judgments against Seller or the Property.

3.6 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.7 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

4.0 Conditions Precedent To Purchaser's Obligation. The obligations of Purchaser hereunder are subject to the satisfaction, at or prior to the Closing, of the following conditions:

4.1 All representations and warranties made by Seller shall be true and correct as of the date of closing as though they were made again on such date.

4.2 Seller shall have complied with all its obligations under this Agreement.

4.3 There is no material change in the physical condition of the leased premises or the Property or the financial condition of the Business between the effective date of this Agreement and the Closing.

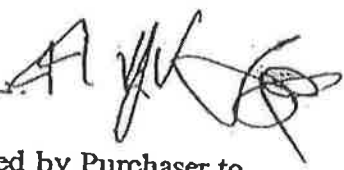
4.4 Purchaser entering into a new written lease agreement with the Landlord on terms and conditions acceptable to the Purchaser in its discretion.

4.4 Purchaser is able to obtain property and liability insurance for the Property and the leased premises (including without limitation coverage against loss or damage by fire, windstorm, earthquake and against other risks now embraced by the so-called broad form extended coverage endorsement) from a company licensed to do business in the United States Virgin Islands acceptable to Purchaser for a premium not to exceed 2.75% of the amount of the insurance.

5.0 Title Examination. Purchaser shall have until Closing to examine the title to the Property and to notify Seller of any title objections Purchaser may find. Seller shall then have until the Closing to cure any valid title objections raised by Purchaser. Seller shall, at or prior to Closing, pay all taxes and assessments which constitute a lien upon the Property (other than those not then due and payable) and pay all indebtedness secured by the Property. If Seller fails or is unable to cure such valid title objections, then Purchaser shall have the following alternatives: (1) to cure any such valid title objections which are a mortgage, judgment lien, mechanic's or materialman's lien or tax lien, to deduct from the Purchase Price the amount paid to cure such liens or mortgages, and to close the transaction contemplated hereby; (2) to waive such title objections and to close the transaction contemplated hereby without any deduction in the Purchase Price; (3) to terminate this Agreement in accordance with Section 10.0 hereof or to declare a default pursuant to Section 11.0 hereof or both; or (4) to extend the date of Closing for an additional thirty (30) days to allow Seller to try to cure such objections. Purchaser shall have five (5) days from the date of notice by Seller that Seller is unable to cure any such title objections in which to elect one of the options set forth above in this Section 5.0, and Purchaser may extend the time for Closing to the extent necessary to provide such five (5) day period. If Purchaser elects option (4) above and if at the end of such thirty (30) day period Seller has not cured such objection, then Purchaser shall have the right to elect one of options (1) through (3) above.

6.0 **Closing.** The closing ("Closing") of the transaction contemplated herein shall occur on or before **June 30, 2005**, on a date and time acceptable to Seller and Purchaser and shall be held at the law offices of Nichols Newman Logan & D'Eramo, P.C., 1131 King Street, Christiansted, St. Croix, U.S.V.I. If Purchaser and Seller are unable to agree upon a time and date for Closing, then such Closing shall be held at 10:00 AST on **June 30, 2005**, at the law offices of Nichols Newman Logan & D'Eramo, P.C.

6.1 At the closing Seller shall deliver or cause to be delivered the following documents:

- (a) A bill of sale conveying the Property to the Purchaser, in a form satisfactory to Purchaser's counsel, together with a warranty of title and a certificate that there are no liens or other encumbrances against the Property.
- (b) An assignment of the Lease, in a form satisfactory to Purchaser's counsel.
- (c) A Closing Statement and the Escrow Agreement.
- (d) ~~An assignment of the trade name Cane Bay Beach Bar.~~ 
- (e) Any other documents necessary and reasonably requested by Purchaser to consummate the transaction contemplated herein.

6.2 At the Closing, Purchaser shall deliver or cause to be delivered the following items:

- (a) The Lease Assignment.
- (b) A Closing Statement and the Escrow Agreement.
- (c) Any other documents necessary and reasonably requested by Seller to consummate the transaction contemplated herein.

6.3 Possession of the Property shall be delivered to the Purchaser at Closing.

6.4 Seller shall pay the cost of the recording fees for any documents needed to provide clear title to the Property as required under this Agreement. Purchaser shall pay the costs for any title examination obtained by Purchaser. Each party shall pay its own attorney's fees.

6.5 All of Seller's accounts payable shall be paid by the Seller.

7.0 **Real Estate Brokers.** Purchaser and Seller hereby represent and warrant to the other party that it has not dealt with any real estate agent or broker in connection with the transaction contemplated herein.

8.0 Casualty. If, prior to the Closing, the Property or any improvements comprising the leased premises are destroyed or damaged by fire or other casualty and such repairs or replacements have not have been completed by Seller at Seller's expense prior to the Closing to Purchaser's reasonable satisfaction, then Purchaser shall have the right and option to terminate this Agreement in accordance with Section 10.0 hereof. If Purchaser does not terminate this Agreement, then all insurance money payable as a result of such casualty shall be paid to Purchaser for the purpose of making the required repairs or replacements.

9.0 Condemnation. If any action or proceeding is filed (or notice of such action or proceeding given) under which all or any portion of the leased premises where the Business is located may be taken by condemnation or other right of eminent domain, then, Seller shall immediately notify Purchaser, and at the option of Purchaser, either (a) Purchaser may terminate this Agreement in accordance with Section 10.0 hereof, or (b) the transaction contemplated hereby shall be closed as provided herein, and Seller shall assign to Purchaser all its rights in the condemnation proceeds.

10.0 Right to Terminate Agreement In addition to Purchaser's other rights set forth in this Agreement, Purchaser, at Purchaser's sole election, may terminate this Agreement by written notice to Seller, if any one or more of the following conditions or state of facts shall exist:

(a) Purchaser is entitled to terminate this Agreement pursuant to Sections 5.0, 8.0, 9.0 or 19.2 hereof.

(b) The failure of Seller to satisfy the conditions precedent contained in Section 4.0 hereof.

10.2 If Purchaser elects to terminate this Agreement pursuant to the provisions of this Section 10.0, then this Agreement shall be terminated, and no party shall have any further rights or obligations under this Agreement, except that if the Seller is in default of its obligations under this Agreement, then Purchaser shall also have the rights and remedies provided in Section 11.0 hereof. Purchaser's rights and remedies under Sections 10.0 and 11.0 hereof shall be cumulative.

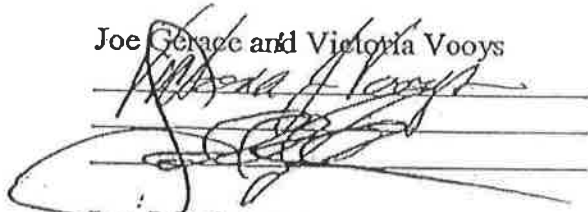
11.0 Default. If Seller defaults in the performance of any of its obligations under this Agreement, through no fault of Purchaser, then Purchaser shall be entitled to pursue any and all remedies available to it at law or in equity, including without limitation an action for specific performance. In the event the transaction contemplated herein is not closed by reason of Purchaser's default or refusal to perform Purchaser's obligations hereunder, through no fault of Seller, then this Agreement shall be terminated, and no party shall have any further rights or obligations under this Agreement and the Earnest Money will be kept by the payees, and Seller hereby agrees that Purchaser shall have no further liability hereunder or by reason of Purchaser's breach hereof. Purchaser and Seller recognize that it would be difficult to ascertain the actual

damages suffered by Seller as a result of such failure to close, it being specifically acknowledged and agreed by Seller and Purchaser that the payment of the Earnest Money to the payees constitutes liquidated damages and such amount is reasonable.

12.0 **Notices.** All notices, demands, or requests (collectively "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent through the United States Postal Service, by express mail or certified mail, return receipt requested, to the parties at the following addresses:

SELLER:

Joe Gerace and Victoria Voors

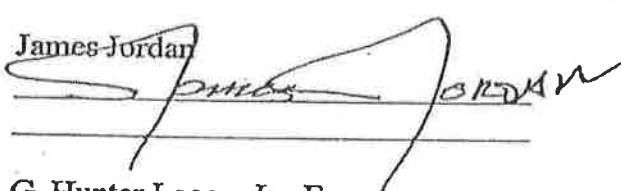


w/ a copy to:

Lee J. Rohn, Esq.
Rohn and Cameron, LLC
1101 King Street
Christiansted, VI 00820

PURCHASER:

James Jordan



w/ a copy to:

G. Hunter Logan, Jr., Esq.
Nichols Newman Logan & D'Eramo, PC
1131 King Street, Suite 204
Christiansted, VI 00820

All Notices shall be deemed effective upon being hand delivered, or if sent by mail, upon the date deposited with the United States Postal Service; provided, however, the time period in which a response to any Notice must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given shall constitute receipt of the Notice. Either party shall have the right to change its address for Notice hereunder by giving two (2) days prior notice thereof to the other party in the manner set forth above.

13.0 **Binding Effect, Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Purchaser shall have the right to assign this Agreement to another person or entity without the consent of Seller.

14.0 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

15.0 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Territory of the United States Virgin Islands.

16.0 Prior Discussions and Amendments. This Agreement supersedes all prior discussions and agreements between the parties hereto with respect to the transactions contemplated herein and constitutes the sole and entire agreement between the parties hereto with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

17.0 Judicial Interpretation. If any provision of this Agreement requires judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. It is agreed that the agents of all parties participated in the preparation hereof.

18.0 Survival of Agreement. All agreements, representations, and warranties shall survive the Closing and shall not be merged into the documents executed and delivered at Closing.

19.0 Access, Inspection and Cooperation.

19.1 During the period from the date of this Agreement through the date of Closing, Purchaser and Purchaser's agents, employees, independent contractors, engineers, surveyors and other representatives shall have the right to enter the Property at any time for the purposes of inspecting the Property; performing all activities relating to any of the foregoing in any respect, and for any other reasonable purposes related to the transaction contemplated herein. Purchaser agrees that the entry permitted by this section shall not injure or damage the Property so as to materially decrease its value or reduce its salability, result in injury or damage to the real property adjoining the Property or cause injury or damage to persons or personal property lawfully upon the Property. Purchaser indemnifies and holds harmless Seller against any such injury or damage caused by Purchaser's entry.

19.2 During the period from the Date of this Agreement through fifteen (15) days thereafter ("Due Diligence Period"), if Purchaser shall be, for any reason, in Purchaser's sole opinion, dissatisfied with any aspect of the Property, or for any other reason specified elsewhere in this Agreement, Purchaser shall be entitled to terminate this Agreement by sending written notice to Seller at or before the expiration of the Due Diligence Period and this Agreement shall be terminated, the Earnest Money shall be returned to Purchaser and no party will have any further rights, obligations or other liabilities under, arising out of or resulting from this Agreement. If Purchaser does not exercise this right of termination as set forth above, then this right shall expire and the Closing shall be consummated pursuant to the other terms contained herein.

20.0 **Captions.** All captions, headings, and section numbers are solely for the purpose of convenience and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

21.0 **Attorneys' Fees.** In the event of litigation between the parties hereto, declaratory or otherwise, in connection with this Agreement, the non-prevailing party shall pay the costs thereof and attorneys' fees actually incurred by the prevailing party, which shall be determined and fixed by the court as part of the judgment.

22.0 **Indemnification By Seller.**

22.1 Seller, jointly and severally, hereby indemnifies and holds Purchaser and its managers, members, officers, directors, employees and agents harmless from and against any and all claims, demands, obligations, damages, recoveries, liabilities, losses or deficiencies, whether accrued, absolute, contingent, known, unknown, or otherwise (including, without limitation, any and all penalties, interest, costs of investigation and defense, attorneys' fees and other costs and expenses relating to any and all actions, suits, proceedings, demands, assessments, and judgments), which arise out of, result from or relate to any one or more of the following, whether or not involving a third-party claim (collectively "Damages"):

- (a) any breach of any representation or warranty made by Seller (i) in this Agreement; (ii) any certificate delivered pursuant hereto, (iii) any transfer instrument or (iv) any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;
- (b) any breach of any covenant or obligation of Seller in this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;
- (c) any liability arising out of or resulting from the ownership or operation of the Business prior to the Closing other than any liabilities expressly assumed by Seller in this Agreement; or
- (d) any environmental, health and safety liabilities arising out of or relating to: (i) the ownership or operation by any person or entity at any time on or prior to the Closing Date of any of the Business, or (ii) any hazardous materials or other contaminants that were present on the leased premises at any time on or prior to the Closing Date.


Purchaser shall be entitled to be represented by counsel of its choice.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

SELLER:



Joe Gerace



Victoria Vooy

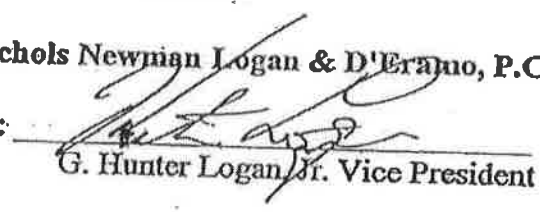
PURCHASER:



James Jordan

ESCROW AGENT:

Nichols Newman Logan & D'Eramo, P.C.


By: 

G. Hunter Logan, Jr. Vice President

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into effective June 2005 between Joe Gerace and Victoria Vooyo, as Assignor, whose address is P.O. B 2307, KUPHALI AVE ("Seller") and James Jordan, as Assignee, whose address is POB 24503, CSTRO DR 24 ("Buyer").

RECITALS:

 A. Seller has contemporaneously with the execution hereof sold and conveyed to Buyer all the furniture, furnishings, equipment, inventory, goodwill and other personal property and ~~the trade name Cane Bay Beach Bar~~ (collectively "Property") which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

B. In connection with the sale of the Property, Seller has agreed to assign to Buyer the existing "Verbal Tenancy" with Chrismos Corporation, as Landlord, pertaining to the use of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands, and Buyer has agreed to assume Seller's obligations under such Verbal Tenancy from and after the date hereof.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, Seller and Buyer hereby agree as follows:

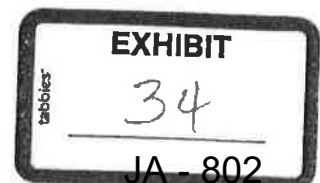
1.0 Seller does hereby transfer, assign and convey to Buyer all of Seller's right, title and interest in and to the Verbal Tenancy, including all rights, duties, obligations, powers and privileges conferred by the Verbal Tenancy upon Seller.

2.0 Buyer hereby accepts this assignment of the Verbal Tenancy from and after the date hereof, and assumes and agrees to be bound by and timely perform all of Seller's agreements, duties, obligations, covenants and undertakings under the Verbal Tenancy arising from and after the date hereof.

3.0 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows:

3.1 There are no actions, suits or proceedings threatened or pending against, by or affecting Seller, the Business or the Property, which question the validity of this Agreement or question or impair Seller's title to the Property or of any action to be taken by Seller pursuant to or in connection with this Agreement, or for any other reason, in any court or before any governmental agency.

3.2 Seller has executed any new lease, service contract, employment agreement, or entered into any other agreement concerning the Property.



ASSIGNMENT AND ASSUMPTION AGREEMENT

Page 2

3.3 The Property and the premises is in the same condition as it was on the effective date of the Asset Purchase Agreement between the parties.

3.4 Seller owns and has conveyed to Purchaser good and marketable title to the Property, free and clear of all liens, chattel mortgages, retention of title contracts and any other encumbrances. There are no unsatisfied judgments against Seller or the Property.

3.5 Seller has exclusive possession and occupancy of the Property free and clear of all tenants, licensees or persons or entities in possession or occupancy.

3.6 Seller shall not take any action, omit to take any action, or permit the taking or omission of any action which would make any of the foregoing representations or warranties untrue in any respect on and as of the date of Closing.

4.0 Seller hereby indemnifies and agrees to hold harmless Buyer from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Buyer may incur or which may be asserted against Buyer, arising out of the Verbal Tenancy, prior to the date hereof. If Buyer believes that any claim has been asserted which is covered by this indemnity provision, then Buyer shall immediately provide written notice to the Seller to afford the Seller the right and opportunity to defend such claim.

5.0 Buyer hereby indemnifies and agrees to hold harmless Seller from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, but without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Seller may incur or which may be asserted against Seller, arising out of the Verbal Tenancy, after the date hereof. If Seller believes that any claim has been asserted which is covered by this indemnity provision, then Seller shall immediately provide written notice to the Buyer to afford the Buyer the right and opportunity to defend such claim.

6.0 This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns.

7.0 Neither this Agreement nor any term, provision or condition hereof may be changed, amended or modified, and no obligation, duty or liability of any party hereto may be released, discharged or waived, except in a writing signed by all parties hereto.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the date first above written.

ASSIGNMENT AND ASSUMPTION AGREEMENT

Page 3

WITNESSES:

Andi By
[Signature]

ASSIGNEE / BUYER:

[Signature]
James Jordan
Dated: 7/1/05

WITNESSES:

Andi B
[Signature]

ASSIGNOR / SELLER:

[Signature]
Joe Gerace
Dated: 7-1-05
[Signature]
Victoria Vooy
Dated: 7-1-05

\\NFPCserver\share\NL_DCS\and\Bates\Jordan\One Bay Beach Bar\Assign-Assume Verbal.doc

BILL OF SALE AND CERTIFICATION

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned, Joe Gerace and Victoria Vooyo ("Seller"), has effective June 30, 2005, sold to and transferred to James Jordan ("Purchaser") the following :

JG
All the furniture, furnishings, equipment, inventory, goodwill and other personal property ~~and the trade name Cane Bay Beach Bar~~ (collectively "Property"), which Property is located at and/or used in connection with the operation of the restaurant/bar known as Cane Bay Beach Bar located in Estate Cane Bay, St. Croix, U. S. Virgin Islands ("Business"); and

Seller does hereby certify that the Personalty has been fully paid for and that there are no unpaid liens, retention of title contracts, or any other form of encumbrance against the title to the Personalty other than as described on Exhibit "C" attached hereto and made a part hereof by this reference.

N/A
[Signature]

Seller and its heirs, personal representatives, successors, and assigns shall warrant and forever defend the right and title to the Personalty unto Purchaser, its heirs, personal representatives, successors, and assigns, against the lawful claims of all persons whomsoever.

Seller and Purchaser agree that the purchase price for the Property is **Thirty Thousand and NO/100 Dollars (\$30,000.00)**

Seller is executing this Bill of Sale for the purpose of consummating the sale of the Property and is fully aware that the statements contained herein may be relied upon by the Purchaser.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale hereto effective the day and year first above written.

SELLER:
[Signature]

Joe Gerace
[Signature]

Victoria Vooyo

and\\fileserver\share\TVE_DOCS\Real Estate\Verde\Cane Bay Beach Bar\BILL of SALE.doc

SUBSCRIBED T SWAN
TU BEFORE ME THIS
1st of July 2005

[Signature]

Anita M. Baron
Notary Public, Territory of the Virgin Islands
No. NP042-04
Qualified in Judicial District of St. Croix
Commission expires: 04/22/2008



CLOSING STATEMENT

SELLER: JOE GERACE & VICTORIA VOOYS
PURCHASER: JAMES JORDAN
PROPERTY: PERSONALTY-PROPERTY AT CANE BAY BEACH BAR
St. Croix, VI
CLOSING DATE: JUNE 30, 2005

	A. Credits to Purchaser	B. Due Seller
Sales Price		\$30,00
Deposit	\$1,000.00	
Escrow for Pending Bills	\$3,000.00	
<hr/>		
TOTALS	\$4,000.00	
Column B Less Column A		\$ 30,00 (\$4,00)
BALANCE DUE SELLER FROM PURCHASER		\$26,00
<u>Plus Deposit held by Nichols, Newman, Logan & D'Eramo</u>		<u>\$1,00</u>
AMOUNT DUE TO SELLER AT CLOSING		\$27,00

Seller and Purchaser have read, checked and approved the figures set forth above and hereby authorize disbursement of the funds in accordance with this Closing Statement.

APPROVED FOR SELLER:

SELLER
APPROVED FOR PURCHASER:

6593-4 hl
and\W\k\cc\ver\l\ubarc\THE DO\5\Fical Estate\Jordan\Cane Bay Beach Bar\CLOSING.doc

APPROVED FOR PURCHASER



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

MARIA BENTLEY, DAVID BENTLEY,
CB3, WARREN MOSLER, CHRIS
HANLEY, and CHRISMOS CANE BAY,
LLC.,

Defendant.

CIVIL NO. 368/2005

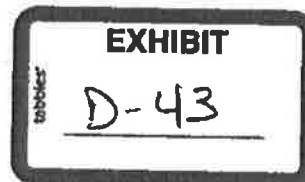
ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**JOSEPH GERACE'S RESPONSE TO CHRISMOS CANE BAY'S
INTERROGATORIES**

PLEASE TAKE NOTICE that Plaintiff, JOSEPH GERACE, has filed his Response to Defendant CHRISMOS CANE BAY's Interrogatories through his respective counsel and that said documents were served upon the Defendant in the original.

This notice is being given pursuant to LRCi 33.1, LRCi 26.1, and made applicable to this court by Superior Court Rule 7.



INTERROGATORY NO. 10:

Please identify each alleged misrepresentation referenced in Count VIII of the complaint and for each such misrepresentation, please provide as follows:

- a. The person who made the statement.
- b. The person to whom the statement was made.
- c. The date and place the statement was made.
- d. What was said which you allege constitutes a misrepresentation.

RESPONSE:

Hanley and Mosler stated several times to us around early March of 2005 that once certain improvements to the building were finished, that they were going to give us a lease.

INTERROGATORY NO. 14:

Please list all repairs or improvements made by you at the Cane Bay Beach Bar after you took possession of the property from Maria Bentley and/or CB3 until the time you left the premises and for each such repair and/or improvement, please answer as follows:

- a. The nature of the repair/improvement
- b. The date of said repair/improvement
- c. The cost of the repair/improvement
- d. The person who did the repair/improvement

RESPONSE:

Exhaust hood & fans

About May 2004

\$ 1,650.00 for labor to fabricate mounting brackets for hood; \$3,585 for the hood;

\$175 for shipping of the parts

American Metal Works

Raycon Mechanical

Gas manifolds

About July 2004

Approximately \$350.00

Browne Maintenance

Bathroom & kitchen faucets

About February 2005 and July 2004

Approximately \$250.00

Princesse Hardware & Tropical Supply

Mike Belcheff and Joseph Gerace installed

Plumbing – sink drains and water supply lines had to be repaired

About February 2005

Approximately \$200.00 for supplies

Princesse Hardware & Tropical Supply

Plaintiff Gerace and Mike Belcheff did repairs

TV housings and cooler housings

About August 2004

Approximately \$1,250.00

Plaintiff and Mike Belcheff did labor

Grease Trap
About April 2004
Approximately \$579.00
Defendant contracted company to repair

Mahogany Bar
About September 2004
Dave Holcomb did repairs (\$375.00 labor, \$130.00 in material)

Painted entire premises
About September 2004 and 2005
Approximately \$1,300.00
Plaintiffs did painting

Replaced exterior lighting
About August 2004
Approximately \$ 250.00
Plaintiff Gerace did repairs

Replaced Hurricane Shutters
About September 2004
Approximately \$400.00
Mike Belcheff and Plaintiff Gerace did labor

Replaced Security Brackets
About November 2004
Approximately \$270.00
Plaintiff and Mike Belcheff did repairs.

Roof patched
About August 2004
Approximately \$1,000.00
Raycon Mechanical & defendant brought in contractor to repair...

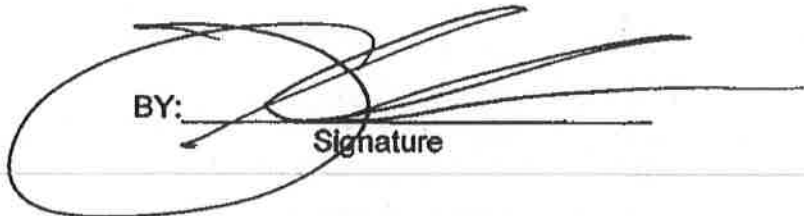
Screens
About September 2004
Approximately \$500.00
Kokomos and Glass 2000 installed

CERTIFICATION

I HEREBY SWEAR AND AFFIRM THAT THE ANSWERS TO THE ABOVE INTERROGATORIES ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED: 8/7/09

BY: _____



Signature

Title

JOSEPH GERACE
Print Name

Sworn to and Subscribed to Before Me
this 7 day of August, 2009.


Notary Public

MALINDA K. VIGILANT
Notary Public, St. Croix, VI. U.S.A.
My Comm. #NP-190-07
Expires September 13, 2011

Attorney for the Plaintiff:

Dated: _____

BY: _____

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPH GERACE, VICTORIA VOOYS
d/b/a CANE BAY BEACH BAR,

Plaintiff,

vs.

MARIA BENTLEY, DAVID BENTLEY,
CB3, WARREN MOSLER, CHRIS
HANLEY, and CHRISMOS CANE BAY,
LLC.,

Defendant.

CIVIL NO. 368/2005

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFF VICTORIA VOOYS' RESPONSE TO CHRISMOS CANE BAY, LLC'S
INTERROGATORIES**

PLEASE TAKE NOTICE that Plaintiff, VICTORIA VOOYS, has filed her Response to Defendant CHRISMOS CANE BAY's Interrogatories through her respective counsel and that said documents were served upon the Defendant in the original.

This notice is being given pursuant to LRCi 33.1, LRCi 26.1, and made applicable to this court by Superior Court Rule 7.



INTERROGATORY NO. 10:

Please identify each alleged misrepresentation referenced in Count VIII of the complaint and for each such misrepresentation, please provide as follows:

- a. The person who made the statement.
- b. The person to whom the statement was made.
- c. The date and place the statement was made.
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Hanley and Mosler stated several times to us around early March of 2005 that once certain improvements to the building were finished, that they were going to give us a lease.

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Approximately \$350.00

Browne Maintenance

Bathroom & kitchen faucets

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About August 2004
Approximately \$1,000.00
Raycon Mechanical & defendant brought in contractor to repair...

Screens
About September 2004
Approximately \$500.00
Kokomos and Glass 2000 installed

CERTIFICATION

I HEREBY SWEAR AND AFFIRM THAT THE ANSWERS TO THE ABOVE INTERROGATORIES ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED: 8/7/09

VICTORIA J VOOKS

BY: *Victoria J Vooks*
Signature

Title
Victoria J Vooks
Print Name

Sworn to and Subscribed to Before Me
this 7th day of August, 2009.

MALINDA K. VIGILANT
Notary Public

MALINDA K. VIGILANT
Notary Public, St. Croix, V.I. U.S.A.
My Comm. #NP-190-07
Expires September 13, 2011

Attorney for the Plaintiff:

Dated:

BY: _____

Form 1040

U.S. Individual Income Tax Return

2005

(99)

IRS Use Only - Do not write or staple in this space

Label (See instructions on page 16.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign

Label Here

For the year Jan. 1-Dec. 31, 2005, or other tax year beginning 2005, ending 20. OMB No. 1545-0074. Your first name and initial: VICTORIA J. Last name: VOOYS. If a joint return, spouse's first name and initial: Last name: Home address (number and street). If you have a P.O. box, see page 16. P.O. BOX 2307. Apt. no.: You must enter your SSN(s) above. City, town or post office, state, and ZIP code. If you have a foreign address, see page 16. KINGSHILL, ST. CROIX, VI 00851. Checking a box below will not change your tax or refund.

Filing Status

Check only one box.

1 [X] Single. 2 [] Married filing jointly (even if only one had income). 3 [] Married filing separately. Enter spouse's SSN above and full name here. 4 [] Head of household (with qualifying person). If the qualifying person is a child but not your dependent, enter this child's name here. 5 [] Qualifying widow(er) with dependent child (see page 17).

Exemptions

If more than four dependents, see page 19.

6a [X] Yourself. If someone can claim you as a dependent, do not check box 6a. 6b [] Spouse. c Dependents: (1) First name, Last name, (2) Dependent's social security number, (3) Dependent's relationship to you, (4) If qualifying child for child tax credit (see page 19). No. of children on 6c who: lived with you, did not live with you due to divorce or separation (see page 20). Dependents on 6c not entered above. Add numbers on lines above. Total number of exemptions claimed: 1.

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 22.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2. 7 8a Taxable interest. Attach Schedule B if required. 8a b Tax-exempt interest. Do not include on line 8a. 8b 9a Ordinary dividends. Attach Schedule B if required. 9a b Qualified dividends (see page 23). 9b 10 Taxable refunds, credits, or offsets of state and local income taxes. 10 11 Alimony received. 11 12 Business income or (loss). Attach Schedule C or C-EZ. 12 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here. 13 14 Other gains or (losses). Attach Form 4797. 14 15a IRA distributions. 15a b Taxable amount (see page 25). 15b 16a Pensions and annuities. 16a b Taxable amount (see page 25). 16b 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E. 17 1,843. 18 Farm income or (loss). Attach Schedule F. 18 19 Unemployment compensation. 19 20a Social security benefits. 20a b Taxable amount (see page 27). 20b 21 Other income. List type and amount (see page 29). NOL Carryover to 2005 <15,690.> 21 <15,690.> 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. <13,847.> 22 <13,847.>

Adjusted Gross Income

23 Educator expenses (see page 29). 23 24 Certain business expenses of reservists, performing artists, and fee-based government officials. Attach Form 2106 or 2106-EZ. 24 25 Health savings account deduction. Attach Form 8889. 25 26 Moving expenses. Attach Form 3903. 26 27 One-half of self-employment tax. Attach Schedule SE. 27 28 Self-employed SEP, SIMPLE, and qualified plans. 28 29 Self-employed health insurance deduction (see page 30). 29 30 Penalty on early withdrawal of savings. 30 31a Alimony paid. b Recipient's SSN. 31a 32 IRA deduction (see page 31). 32 33 Student loan interest deduction (see page 33). 33 34 Tuition and fees deduction (see page 34). 34 35 Domestic production activities deduction. Attach Form 8903. 35 36 Add lines 23 through 31a and 32 through 35. 36 37 Subtract line 36 from line 22. This is your adjusted gross income. <13,847.> 37 <13,847.>



610001 11-06-05

Tax and Credits

38 Amount from line 37 (adjusted gross income) 38 <13,847.>

39a Check You were born before January 2, 1941. Blind } Total boxes checked ... 39a
 if: Spouse was born before January 2, 1941. Blind }
 b If your spouse itemizes on a separate return or you were a dual-status alien, see page 35 and check here 39b

40 Itemized deductions (from Schedule A) or your standard deduction (see left margin) 40 5,000.

41 Subtract line 40 from line 38 41 <18,847.>

42 If line 38 is over \$109,475, or you provided housing to a person displaced by Hurricane Katrina, see page 37. Otherwise, multiply \$3,200 by the total number of exemptions claimed on line 6d 42 3,200.

43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- 43 0.

44 Tax. Check if any tax is from: a Form(s) 8814 b Form 4972 44 0.

45 Alternative minimum tax. Attach Form 6251 45

46 Add lines 44 and 45 46 0.

47 Foreign tax credit. Attach Form 1116 if required 47

48 Credit for child and dependent care expenses. Attach Form 2441 48

49 Credit for the elderly or the disabled. Attach Schedule R 49

50 Education credits. Attach Form 8863 50

51 Retirement savings contributions credit. Attach Form 8880 51

52 Child tax credit (see page 41). Attach Form 8801 if required 52

53 Adoption credit. Attach Form 8839 53

54 Credits from: a Form 8396 b Form 8859 54

55 Other credits. Check applicable box(es): a Form 3800 55
 b Form 8801 c Form

56 Add lines 47 through 55. These are your total credits 56

57 Subtract line 56 from line 46. If line 56 is more than line 46, enter -0- 57 0.

Other Taxes

58 Self-employment tax. Attach Schedule SE 58

59 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 59

60 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required 60

61 Advance earned income credit payments from Form(s) W-2 61

62 Household employment taxes. Attach Schedule H 62

63 Add lines 57 through 62. This is your total tax 63 0.

Payments

64 Federal income tax withheld from Forms W-2 and 1099 64

65 2005 estimated tax payments and amount applied from 2004 return 65

66a Earned income credit (EIC) 66a

b Nontaxable combat pay election 66b

67 Excess social security and tier 1 RRTA tax withheld (see page 59) 67

68 Additional child tax credit. Attach Form 8812 68

69 Amount paid with request for extension to file (see page 59) 69

70 Payments from: a Form 2439 b Form 4136 c Form 8885 70

71 Add lines 64, 65, 66a, and 67 through 70. These are your total payments 71

Refund

72 If line 71 is more than line 63, subtract line 63 from line 71. This is the amount you overpaid 72 0.

73a Amount of line 72 you want refunded to you 73a

74 Amount of line 72 you want applied to your 2006 estimated tax 74 0.

Amount You Owe

75 Amount you owe. Subtract line 71 from line 63. For details on how to pay, see page 60 75 0.

76 Estimated tax penalty (see page 60) 76

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 61)? Yes. Complete the following. No

Designee's name _____ Phone _____
 Personal identification number (PIN) _____

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature _____ Date _____ Your occupation _____ Daytime phone number _____

Spouse's signature, if a joint return, both must sign. Date _____ Spouse's occupation _____

Paid Preparer's

Preparer's signature _____ Date 6/15/07 Check if self-employed Preparer's SSN or PTIN 239-15-9611

Use Only

Firm's name (or yours if self-employed), address, and ZIP code James P. Sheets C.P.A.
 P.O. Box 222755, Christiansted
 St. Croix, U.S. Virgin Islands 00822

Phone no 340-773-7510

510002 11-05-05

Name(s) shown on return. Do not enter name and social security number if shown on page 1.

Your social security number

VICTORIA J VOOYS

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check column (e) on line 28 and attach Form 6198. See page E-1.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? Yes No

Table with 5 columns: (a) Name, (b) Enter P for partnership, S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if any amount is not at risk. Rows include BARABUS INC. and BIZEL INC.

Table with 5 columns: (f) Passive loss allowed, (g) Passive income from Schedule K-1, (h) Nonpassive loss from Schedule K-1, (i) Section 179 expense deduction from Form 4562, (j) Nonpassive income from Schedule K-1. Includes Totals and line 32 Total partnership and S corporation income or (loss).

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A and B.

Table with 4 columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Includes Totals and lines 35-37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Includes line 39 Combine columns (d) and (e) only.

Part V Summary

Summary table with 2 columns: Description, Amount. Includes lines 40-43 for net farm rental income, total income, and reconciliations.

2005 Income from Passthroughs

BARABUS INC.
I.D. Number: 66-1629167
Type: S Corporation

Activity Information:

BARABUS INC.

Trade or business - Material participation

Ordinary income (loss)	3,948
Schedule E activity income (loss)	<u>3,948</u>

2005 Income from Passthroughs

BIZEL INC.
I.D. Number: 66-0665404
Type: S Corporation

Activity Information:

BIZEL INC.

Trade or business - Material participation

Ordinary income (loss) -2,105

Schedule E activity income (loss) -2,105

Tax Preference Items:

Depreciation adjustment for post-1986 property 587

Worksheet for NOL Carryover

2005

Name(s) as shown on return
VICTORIA J VOOYS

Social Security Number

USE YOUR 2005 FORM 1040 TO COMPLETE THE WORKSHEET:

1. Enter as a positive number your NOL deduction from line 21, Form 1040.
2. Enter taxable income without the NOL.
3. Enter as a positive number any net capital loss deduction.
4. Enter as a positive number any gain excluded on the sale of qualified small business stock.
5. Enter any adjustments to adjusted gross income.
6. Enter any adjustments to itemized deductions from line 31 or line 41 below.
7. Enter deduction for personal exemptions from line 42, Form 1040.
8. **Modified taxable income.** Combine lines 2 through 7 and enter the result (but not less than zero) ...
9. **NOL carryover to 2006.** Subtract line 8 from line 1 and enter the result (but not less than zero)

	15,690.
<6,357.	
3,200.	
	0.
	15,690.

ADJUSTMENTS TO ITEMIZED DEDUCTIONS (Individuals Only).

10. Enter adjusted gross income without the NOL deduction.
11. Combine lines 3, 4, and 5 above.
12. **Modified adjusted gross income.** Combine lines 10 and 11 above.

ADJUSTMENT TO MEDICAL EXPENSES:

13. Enter medical expenses from Schedule A (Form 1040), line 4.
14. Enter medical expenses from Schedule A (Form 1040), line 1.
15. Multiply line 12 by .075.
16. Subtract line 15 from line 14 and enter the result (but not less than zero).
17. Subtract line 16 from line 13.

ADJUSTMENT TO CHARITABLE CONTRIBUTIONS:

18. Enter charitable contributions deduction from Schedule A (Form 1040), line 18.
19. **Refigure the charitable contributions deduction using line 12 above as your AGI.**
20. Subtract line 19 from line 18.

ADJUSTMENT TO CASUALTY AND THEFT LOSSES:

21. Enter casualty and theft losses from Form 4684, line 21 or line 16 if line 21 is blank.
22. Enter casualty and theft losses from Form 4684, line 18.
23. Multiply line 12 by .10.
24. Subtract line 23 from line 22 (but not less than zero). Then add Form 4684, line 17 to the result.
25. Subtract line 24 from line 21.

ADJUSTMENT TO MISCELLANEOUS DEDUCTIONS:

26. Enter miscellaneous itemized deductions from Schedule A (Form 1040), line 26.
27. Enter miscellaneous itemized deductions from Schedule A (Form 1040), line 23.
28. Multiply line 12 by .02.
29. Subtract line 28 from line 27 and enter the result (but not less than zero).
30. Subtract line 29 from line 26.

TENTATIVE TOTAL ADJUSTMENT:

31. Combine lines 17, 20, 25, and 30 and enter the result here. If line 12 is \$145,950 or less (\$72,975 or less if married filing separately), also enter the result on line 5 above and stop here. Otherwise, go to line 32.

--	--

ADJUSTMENT TO OVERALL ITEMIZED DEDUCTIONS LIMIT:

32. Enter the amount from line 28 of Schedule A (Form 1040).
33. Add lines 16, 19, 24, and 29 and the amounts on Schedule A (Form 1040), lines 9, 14, and 27.
34. Add lines 16 and 24, the amount on Schedule A (Form 1040), line 13, and any gambling losses included on Schedule A (Form 1040), line 27.
35. Subtract line 34 from line 33. If the result is zero, enter the amount from line 31 on line 6 above and stop here, otherwise go to line 36.
36. Multiply line 35 by .80.
37. Subtract \$145,950 (\$72,975 if married filing separately) from the amount on line 12.
38. Multiply line 37 by .03.
39. Enter the smaller of line 36 or line 38.
40. Subtract line 39 from line 33. Enter the result (but not less than your standard deduction amount) ...
41. Subtract line 40 from line 32. Enter the result here and on line 6.

NOL

Detail NOL Carryover/Carryback Worksheet

Name(s)

2005

VICTORIA J VOOYS

Social Security Number

Year Carried From	Amount Available for Carryover/Carryback	Amount Used In	Amount Used In	Amount Used In	Amount Used In	Amount Used in	Amount Used in	Amount Used in	Amount Used in	Amount Used in	Amount Used In	Amount Used In
2003	1,572.											
2004	14,118.											
Totals	15,690.											

Total amount available for carryover 15,690.
 Less total amounts used 0.
 Less total amounts expired 0.
 Remaining carryover 15,690.

JG000314

522211 05-01-05

Worksheet for Alternative Tax NOL Carryover

2005

Name(s) as shown on return
VICTORIA J VOOYS

Social Security Number
[REDACTED]

USE YOUR 2005 FORM 1040 TO COMPLETE THIS WORKSHEET:

1. Enter as positive number your AMT NOL deduction.		15,690.
2. Enter alternative minimum taxable income without the NOL.	2,430.	
3. Enter as a positive number any net capital loss deduction on line 13 Form 1040.		
4. Enter as a positive number any gain excluded on the sale or exchange of qualified small business stock.		
5. Enter any adjustments to adjusted gross income.		
6. Enter any adjustments to itemized deductions from line 22 below.		
7. Modified alternative taxable income. Combine lines 2 through 6 and enter the result (but not less than zero.)		2,430.
8. Alternative taxable income limitation. Enter 90% of line 7.		2,187.
9. AMT NOL carryover to 2006. Subtract line 8 from line 1 and enter the result (but not less than zero.)		13,503.

ADJUSTMENTS TO ITEMIZED DEDUCTIONS (Individuals Only).

10. Modified adjusted gross income (from NOL Carryover Worksheet, line 12.)		
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ADJUSTMENT TO MEDICAL EXPENSES:

11. Enter medical expenses from NOL Carryover Worksheet, line 16.		
12. Multiply line 10 by 2.5% (.025).		
13. Enter the lesser of line 11 or line 12.		

ADJUSTMENT TO CHARITABLE CONTRIBUTIONS:

14. Enter charitable contributions deduction from the AMT Contribution Worksheet.		
15. Refigure the charitable contributions deduction using line 10 above as your AGI.		
16. Subtract line 15 from line 14.		

ADJUSTMENT TO CASUALTY AND THEFT LOSSES:

17. Enter the casualty and theft losses from Form 4684, line 21 or line 16 if line 21 is blank.		
18. Enter casualty and theft losses from Form 4684, line 18.		
19. Multiply line 10 by 10% (.10).		
20. Subtract line 19 from line 18 (but not less than zero.) Then add Form 4684, line 17 to the result.		
21. Subtract line 20 from line 17.		

TOTAL ADJUSTMENT:

22. Combine lines 13, 16, and 21. Enter the amount from this line on line 6 above.		
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FILED

November 02, 2022 12:42 PM

SCT-Civ-2022-0049

VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME III

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.)	VOLUME I
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Tuesday, February 22, 2022
Kingshill, St. Croix

JURY TRIAL

IN-CHAMBERS CONFERENCE BEFORE VOIR DIRE

The above-entitled action came on for JURY TRIAL before the Honorable HAROLD W.L. WILLOCKS, Judge, in Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
(340) 778-9750 Ext. 7153

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A P P E A R A N C E S:

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ALSO PRESENT:

Joseph Gerace
Victoria Vooyoys
Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

1 (The judge entered the courtroom at 8:52 a.m.)
2 (Juror pool seated in the jury box and the gallery.)

3 THE COURT: Good morning, ladies and
4 gentlemen. Again, I apologize. But thank you very
5 much for being prompt. We will start within the
6 next ten to 15 minutes. Thank you.

7 (Recess was taken at 8:53 a.m.)

8 ***

9 (Proceedings held in chambers at 9:00 a.m.)
10 (Present: Judge Willocks, Counsels, Clerk and
11 Law Clerk.)

12 THE COURT: I do apologize. I was just as
13 surprised when I went in there and saw the jury
14 seated. How much time do you all need to set up
15 your electronics?

16 MS. ROHN: I'm not going to set up any
17 electronics because I'm using the Elmo.

18 MR. HOLT: I want to get on the Wifi. But
19 somebody gave me the password.

20 MS. ROHN: I got the password.
21 Some of my witnesses are no longer going
22 to be witnesses if you want to take them off.

23 THE COURT: All right. Let's start. Who
24 are you taking off?

25 MS. ROHN: Let me see.

1 MR. HOLT: Even though you're taking them
2 off, I think you have to ask the jury if they know
3 them. These are people who might know something
4 about them.

5 MS. ROHN: But they're not going to
6 testify.

7 MR. HOLT: That may be true, but if one of
8 them talked to a juror...

9 THE COURT: Who are you taking off?

10 MS. ROHN: If I can look at the list. I
11 didn't bring my glasses. Roger Morgan. Curt Otto.

12 MR. HOLT: Now I listed --

13 MS. ROHN: But --

14 MR. HOLT: -- Roger Morgan this morning
15 but --

16 MS. ROHN: -- your client talked to him.

17 THE COURT: Hold on. I have a court
18 reporter and this is on the record.

19 MS. ROHN: Your client talked to him and
20 convinced him not to testify.

21 MR. HOLT: Okay.

22 THE COURT: Attorney Rohn.

23 MR. HOLT: I'd like to respond, when I
24 can.

25 THE COURT: I'm just striking it from the

1 record. I'm not wasting time with this.

2 Strike that from the record, please, the
3 last couple statements.

4 MS. ROHN: There we go. I left some on
5 that I'm not actually going to call but they're on
6 the defendants' list.

7 THE COURT: That's fine. Are these people
8 going to be mentioned in the trial?

9 MR. HOLT: Roger Morgan is going to be
10 mentioned throughout the trial. People are going to
11 say they called in to his show and talked. His name
12 is going to be on there.

13 MS. ROHN: My people aren't going to say
14 that.

15 THE COURT: This case looks like it's
16 going to have a lot of hearsay. If I hear anyone
17 saying, "and I heard," that's clearly hearsay. I'm
18 not going to allow it, so, on both sides.

19 Attorney Holt, you filed a counterclaim
20 for unpaid rent?

21 MS. ROHN: Uh-huh (affirmative response).

22 THE COURT: You filed a counterclaim for
23 unpaid rent?

24 MR. HOLT: We're probably going to have to
25 withdraw it.

1 THE COURT: I still have to mention it and
2 give it to the jury. I have the one that I just
3 wrote it in so... Okay.

4 Attorney Rohn, any objection to the brief
5 facts that will be presented in the voir dire?

6 MS. ROHN: You left in fraudulent
7 inducement.

8 THE COURT: Fraud -- oh, okay.

9 Attorney Holt, as to the fraudulent
10 inducement?

11 MR. HOLT: I have no problem with this.

12 THE COURT: No. Attorney Rohn wanted
13 fraudulent inducement.

14 MS. ROHN: That's one of our counts.

15 THE COURT: Any objection, Attorney Holt?
16 We'll read: Then the plaintiff also alleges the
17 plaintiffs (sic) committed fraud, made
18 misrepresentations to plaintiffs, committed
19 fraudulent inducement, committed libel and
20 defamation on the plaintiffs.

21 MR. HOLT: I don't know if they ever said
22 libel. Defamation we definitely said. Libel is a
23 written thing. So I think defamation covers it.

24 THE COURT: Attorney Rohn?

25 MS. ROHN: That's fine.

1 THE COURT: All right. So we'll take out
2 libel. All right.

3 MR. HOLT: And are you going to explain
4 that these are just allegations?

5 THE COURT: Yeah.

6 MR. HOLT: Oh.

7 THE COURT: The plaintiff alleges.
8 Defendant denies these allegations. Okay.

9 MS. ROHN: And I guess you will mention
10 that plaintiff denies the allegations in the
11 counterclaim.

12 THE COURT: The defendant denies these
13 allegations.

14 MS. ROHN: But the defendants made a
15 counterclaim.

16 THE COURT: That's what I just said. I
17 wrote it in. What had happened is I had --

18 MS. ROHN: Can I see it?

19 THE COURT: I did it, and when I went back
20 and reviewed, I realized you had a counterclaim.

21 MS. ROHN: You should add "which
22 plaintiffs deny."

23 MR. HOLT: It's actually just only
24 Chrismos filed it. The defendants didn't file it.
25 Chrismos, the landlord, filed a counterclaim for

1 rent. Mosler and Hanley didn't fill a counterclaim
2 for rent. Chrismos filed a counterclaim.

3 THE COURT: Okay. All right. So I will
4 then put Defendant Chris- --

5 MS. ROHN: Chrismos and for Chris and the
6 other -- Chrismos.

7 THE COURT: All right. And Defendant
8 Chrismos has filed a counterclaim for unpaid rent
9 which the defendant denies --

10 MS. ROHN: Which the plaintiffs deny.

11 THE COURT: I'm sorry. Yeah. All right.
12 I will simply order a caution that they're not going
13 to be witnesses but I'll also call those names.

14 What we're going to do is those pictures
15 that you have, I need you to list the first -- we're
16 going to do it -- these are -- the changes are so
17 little, we're going to do five photographs per
18 session. In other words, we do five first, question
19 them on the voir dire, we do the other five,
20 display, show the other five, so that the juror
21 doesn't become too confused by them.

22 MS. ROHN: I don't have any photographs
23 for people I'm not calling.

24 THE COURT: Well, that's fine. But I
25 agree with Attorney Holt. The name should be

1 mentioned just in case.

2 MS. ROHN: That's fine.

3 THE COURT: All right. I think, Attorney
4 Holt, there was an issue as to 38A. I saw a copy of
5 it. I'm going to allow it.

6 MR. HOLT: I'm sorry, what is it?

7 THE COURT: Exhibit 38A, I believe. That
8 is the ad in which --

9 MR. HOLT: Okay. Thank you.

10 THE COURT: In which the respondent -- I
11 don't think we have resolved that particular one
12 because I couldn't read it. I've read it. I see
13 nothing wrong with it, subject to foundation.

14 MR. HOLT: I'm sorry, I apologize because
15 I'm not hearing well.

16 THE COURT: I'm saying, there was an issue
17 concerning Exhibit Number 38A.

18 MS. ROHN: That's the ad?

19 THE COURT: That's the ad.

20 MR. HOLT: Right.

21 THE COURT: And I looked at it when I saw
22 a cleaner copy. And subject to foundation, I will
23 allow it.

24 MR. HOLT: Can I just make a record on
25 that? But I'd like to make my record.

1 MS. ROHN: But you argued.

2 THE COURT: You wanted it admitted,
3 correct?

4 MR. HOLT: She wants to admit it.

5 MS. ROHN: I want to admit it because it's
6 the defamation about them being Cane Bay and drug
7 dealers and -- it's an ad he puts in the paper about
8 Cane Bay and that the drug dealers in Cane Bay are
9 claiming he's a racist.

10 THE COURT: That's not the ad that I saw.

11 MS. ROHN: I don't know what you're
12 talking about then.

13 THE COURT: The ad that I saw --

14 MR. HOLT: I didn't bring all my
15 paperwork.

16 THE COURT: The ad that I saw was taken
17 out in which Mr. Mosler was denying everything.

18 MS. ROHN: Mr. Mosler, in the ad, said
19 you're relying on the drug dealers at Cane Bay Beach
20 Bar who did karaoke at full moon parties that calls
21 me a racist.

22 THE COURT: I've got to look at that
23 again. That wasn't -- that wasn't -- that one
24 doesn't ring a bell. But I'm not going to hold back
25 on this right now. I have a jury that's seated in

1 the courtroom.

2 MS. ROHN: So can I ask -- bring up an
3 issue? So I've been looking at the courtroom scene
4 and also how hard it is to hear people in the
5 courtroom.

6 THE COURT: Well --

7 MS. ROHN: So when the plaintiff will --
8 when the witnesses are in the witness box, they're
9 behind plexiglass, can they testify without a mask?

10 THE COURT: Yes.

11 MS. ROHN: How about when we're addressing
12 the jury or asking questions?

13 THE COURT: Usually the marshals will wipe
14 off the mics and change them, so that shouldn't be a
15 problem.

16 MS. ROHN: Perfect.

17 THE COURT: I'll just instruct the
18 marshals. We may have to recess because I was
19 hoping to, with IT here, to explain how we do
20 sidebars, which is --

21 MS. ROHN: That would be interesting.

22 THE COURT: But we sat the jury so I can't
23 do that right now. So I'm going to just have to go
24 ahead. It's getting late. Hopefully not until we
25 get to the actual selections -- well, first of all,

1 call IT, please. I really didn't expect them to
2 seat the jury -- he's right in the courtroom. I
3 really didn't expect them to seat the jury.

4 MR. HOLT: Can I just address an
5 objection? It's Plaintiffs --

6 THE COURT: Except I don't have it here
7 and it's actually on my laptop, which I put on the
8 chair. Does it have to be addressed before trial?

9 MR. HOLT: Before opening.

10 THE COURT: Before opening?

11 MS. ROHN: Not before jury selection.

12 MR. HOLT: Not before jury selection, no,
13 but before opening.

14 THE COURT: All right. That's fine.
15 We'll deal with voir dire and maybe the preliminary
16 instructions and when we recess I'll address that.
17 I want to start this jury as quickly as I can
18 instead of having them sitting and waiting. So
19 we'll just revisit that.

20 Is there any issues concerning the -- I
21 think, Attorney Holt, you sent two additional voir
22 dires.

23 MR. HOLT: Right.

24 THE COURT: Can I have the voir dires,
25 please?

1 Attorney Rohn, have you seen them?

2 MS. ROHN: I have. And those are other
3 people who we assume have sued Mosler. They're not
4 going to be mentioned in this case. They're not any
5 part of this case.

6 MR. HOLT: Well, there are two people.
7 One person, Wayne James, has sued Mosler and has
8 gotten a fair amount of press about it. And
9 therefore I'm -- I don't have to ask a lot of
10 detail. I'd just like to know if anybody in the
11 jury pool knows him.

12 And the second one is John Boyd who has
13 not sued Mosler but he had a website dedicated to
14 vilify Mosler. If they -- you know, just for my
15 informational purposes. I don't want somebody on
16 the jury that knows something --

17 MS. ROHN: They may know him and not even
18 like him.

19 THE COURT: I'm just double-checking, but
20 when I looked at it, I saw no problem. I'm going to
21 allow it. But I'm not going to -- it's a simple
22 matter, do you know these people. The Court
23 recognizes or takes judicial notice that Wayne James
24 was in fact a senator, so we may have had some type
25 of influence or --

1 MS. ROHN: That has nothing -- oh, my God.

2 THE COURT: Attorney Rohn. Guess what?
3 You're looking all over, upside and especially at
4 me, so...

5 MS. ROHN: The Wayne James lawsuit against
6 Mosler had nothing to do with him being a senator.

7 THE COURT: It's not having anything to do
8 with Mosler. Is there anyone who knows Wayne James?
9 Anyone knows or employed by. Given those facts, can
10 you still be fair and impartial? In and out in less
11 than a minute. I see no reason why it's even an
12 issue. It's a simple question. I'm not going to
13 allow more than one or two questions on that. It's
14 just a simple question where -- and it goes from
15 there.

16 All right. Is there anything else that we
17 need in terms of the voir dire or the preliminary
18 issues?

19 MR. HOLT: Regarding those items, I don't
20 have anything else.

21 THE COURT: Attorney Rohn?

22 MS. ROHN: No.

23 THE COURT: All right. I think those were
24 the only two questions.

25 So I told them we'll give another -- we

1 have the count at 43, 43 potential jurors, which is
2 pretty good. We'll do -- each side will have three.
3 I stated six and three but it depends. I may give,
4 depending on the count, which as of right now is
5 three peremptory challenges each.

6 MR. HOLT: Each side or each party?

7 THE COURT: No, each side. Section 373
8 states each side has three. However, if multiple
9 defendants or plaintiffs, it is the Court's --

10 MR. HOLT: I understand. I'm just asking.
11 Never mind.

12 THE COURT: All right. So if there's
13 nothing else...

14 MR. HOLT: I do have one other question.
15 I haven't picked a jury during COVID. It looks like
16 some are in the overflow.

17 THE COURT: Do we have them in overflow?

18 THE CLERK: I'm not sure if they reached
19 the overflow.

20 THE COURT: I'm not sure. This Court can
21 hold 160.

22 MR. HOLT: So they're all in the
23 courtroom.

24 MS. ROHN: It was pretty full.

25 THE CLERK: For the most part.

1 THE COURT: Given the CDC three feet
2 apart, that would give us at least 48 to be able to
3 sit.

4 MR. HOLT: Okay.

5 THE COURT: So I think we should be able
6 to -- the next thing, too, is it depends, I may just
7 go with the six and one. That would enable us to
8 use the jury room for deliberations. That will save
9 us a lot of time instead of going back and forth.
10 So we're going to look at that and see how that
11 figures out.

12 MR. HOLT: Okay. And then I know the last
13 time I picked a jury with another judge in this
14 court, he would bring the jurors up to sidebar to
15 ask them detailed questions. You don't intend to do
16 that?

17 THE COURT: I'm sorry?

18 MR. HOLT: The last jury I picked was with
19 Judge Brady and the juror would raise their card and
20 come up to the sidebar.

21 THE COURT: No. No. That's a waste of
22 time. No, no, no. I won't. No. No. No.
23 Unless -- there's going to be a time where there
24 may -- I may ask them, is there anything else that
25 you wish to tell the Court that they don't want the

1 parties to hear; and that's when they'll come up.
2 But apart from that, I ask them questions in open
3 court. Yeah, I wouldn't go through all of that.
4 Yeah, well, it takes too much time to bring up
5 the --

6 MR. HOLT: Took us all day to pick that
7 jury. I remember that.

8 THE COURT: Well, I'm hoping to finish
9 this jury by 11:30, preliminary instructions by
10 12:30, break for lunch and then we'll start. I do,
11 the first day, finish early because, you know,
12 people have children. They don't know whether
13 they're on the jury or not.

14 So let me ask this. How many -- Attorney
15 Rohn, how many minutes do you anticipate your
16 opening?

17 MS. ROHN: Oh, 30 minutes at most.

18 THE COURT: Okay. Attorney Holt?

19 MR. HOLT: What's -- I'm sorry, the
20 question is?

21 THE COURT: How many minutes do you
22 anticipate in your opening?

23 MR. HOLT: 30 minutes is fine.

24 THE COURT: Okay. So then how many
25 witnesses do you have available, Attorney Rohn,

1 today?

2 MS. ROHN: Two. The first one is going to
3 be really long so we may only get to that witness.

4 THE COURT: Who's the first one?

5 MS. ROHN: The first one should be Gary
6 Anthony.

7 THE COURT: Gary Anthony.

8 MS. ROHN: That one will be short and
9 then -- and then Miss Vooy's.

10 THE COURT: Miss Vooy's, okay.

11 MR. HOLT: Vooy's is the second witness?

12 MS. ROHN: (Nodding head.)

13 THE COURT: And your third one?

14 MS. ROHN: I don't think you can -- Miss
15 Vooy's initial testimony is probably an hour and a
16 half.

17 THE COURT: So who is the third one?

18 MS. ROHN: It would be Mike Belcheff.

19 THE COURT: Mike --

20 MS. ROHN: Belcheff.

21 THE COURT: Is that a short witness or
22 long witness?

23 MS. ROHN: That's a long witness. Oh, not
24 that long.

25 THE COURT: So we're talking, roughly, we

1 should finish these witnesses by 5:00, 5:30.

2 MS. ROHN: Yeah, I mean there may be
3 people who are expecting to go pick up their
4 children earlier than that.

5 THE COURT: I understand. We'll play it
6 by ear. We have those three witnesses available
7 just in case. Okay?

8 MS. ROHN: Yes.

9 MR. HOLT: So after jury selection and
10 before we start argument, you'll have us meet one
11 more time?

12 THE COURT: Well, during the -- we're
13 going to meet in open court to go over -- right
14 after the preliminary instructions and before
15 opening, to look at this matter. All right. So
16 they'll be going for lunch, then we can take 15
17 minutes to go over that. I'll try to speak as loud
18 as I can, which I don't know if I can because I have
19 a terrible sinus, but we'll turn up the mics and see
20 what happens.

21 MR. HOLT: Crank them up.

22 THE COURT: I really can't speak loud.
23 Okay.

24 MS. ROHN: Are we waiting for IT for
25 the --

1 THE COURT: No. IT is in there.

2 MS. ROHN: You were going to tell us how
3 to do sidebar.

4 THE COURT: Yeah. Where is IT?

5 THE LAW CLERK: They're looking for Gary
6 as we speak. We had someone look in there and we
7 didn't see him anymore. So I mean from when I last
8 came inside, I guess ten minutes ago, we've been
9 looking. He should be in there now. I'll ask
10 again.

11 THE COURT: It's going to be a perfect
12 storm.

13 THE COURT REPORTER: That's off the
14 record?

15 THE COURT: Or on.

16 THE LAW CLERK: Still working on it.
17 Still trying to find him.

18 THE CLERK: I might need a few minutes to
19 get the system on. I haven't logged on.

20 THE COURT: All right. Well, since that's
21 going to be off the record, we may just have to,
22 when we find him, come in and go from there. So if
23 anyone has anything else, we'll go. Otherwise, you
24 guys can get ready and we'll start at 9:30.

25 Is that enough time for you to set up?

1 THE CLERK: I hope so.

2 MS. ROHN: Thank you.

3 (In-chambers proceedings came to a close at 9:20 a.m.)

4 (Voir Dire held in courtroom. Transcript not ordered.)

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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooys, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the 22nd day of
10 February, 2022.

11 I FURTHER CERTIFY that the foregoing 21 pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this 8th
15 day of March, 2022.



16
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18 _____
CAROL GRECO, RPR
REGISTERED PROFESSIONAL REPORTER
Official Court Reporter, II
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)
d/b/a CANE BAY BEACH BAR,) SX-2005-CV-00368
)
Plaintiffs,)
) VOLUME II
v.)
)
WARREN MOSLER, CHRIS HANLEY and)
CHRISMOS CANE BAY, LLC.,)
)
Defendants.)

Wednesday, February 23, 2022
Kingshill, St. Croix

The above-entitled action came on for JURY TRIAL
before the Honorable HAROLD W.L. WILLOCKS, Judge, in
Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN
OFFICIAL COURT REPORTER, ENGAGED BY THE COURT,
WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS
HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND
PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
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ALSO PRESENT:

Joseph Gerace
Victoria Vooy
Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

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1 (The judge entered the courtroom at 8:43 a.m.)

2 THE COURT: Call the case, please.

3 THE CLERK: Joseph Gerace and Victoria
4 Vooy, d/b/a Cane Bay Beach Bar, versus Warren
5 Mosler, Chris Hanley and Chrisomos Cane Bay, LLC.

6 THE COURT: Good morning. Parties, state
7 your name for the record, please.

8 MR. HOLT: Joel Holt on behalf of the
9 defendants.

10 THE COURT: The record should reflect it's
11 now 8:43. Plaintiffs attorney is not here. Order
12 to Show Cause will be issued as to why chambers has
13 not been notified as to her lateness. And Order to
14 Show Cause will be issued.

15 (Ms. Rohn entered the courtroom at 8:44 a.m.)

16 MS. ROHN: Good morning.

17 THE COURT: Good morning, Attorney Rohn.
18 I just issued an Order to Show Cause. I told you we
19 were starting at 8:30. It is now 8:44. Is there
20 any reason why you're late?

21 Well, I'll deal with that show cause
22 later.

23 MS. ROHN: Your Honor, I'm sorry. I got
24 here. The governor called me. I told him I had to
25 be in court. He had a conversation. I went up and

1 there was a long line at the gate. I got here as
2 fast as I could. I was here at 8:25.

3 THE COURT: Well, Attorney Rohn, you
4 weren't in my courtroom --

5 MS. ROHN: I'm sorry?

6 THE COURT: You were not in my courtroom
7 at 8:30. I came here late. I made sure I called
8 chambers and advised counsel that I would be here
9 late. I expect the same courtesy. And, you know,
10 that's just --

11 MS. ROHN: Well, I did -- I tried to tell
12 the governor that I was in court and he was like,
13 one minute, one minute, one minute.

14 THE COURT: Maybe you need to tell the
15 governor that he needs to pay your fine, because
16 governor or president, a simple phone call saying
17 you're running late would have been sufficient.

18 MS. ROHN: I was on the phone.

19 THE COURT: I'll deal with that at a later
20 date.

21 All right. The -- Marshal, when the
22 jurors come, have them assemble -- have them
23 assemble in the jury room first, please.

24 THE MARSHAL: Yeah, that's what we're
25 doing already, Judge.

1 THE COURT: Yeah, but that's one of the
2 alternates.

3 All right. Why am I getting a Fifth
4 Amended Exhibit List when the Fourth Amended Witness
5 List I have issues with? Attorney Rohn, your Fourth
6 Amended list, without even looking at the Fifth
7 Amended, on -- we -- on Item Number 9, we made these
8 corrections; and on your Fourth Amended list, you
9 brought it to -- repeated the same thing, which was
10 we took out "made after plaintiff vacated the
11 premises."

12 MS. ROHN: Your Honor, I can't hear you.
13 It's probably my ears.

14 THE COURT: All right. I'm referring to
15 your Fourth Amended --

16 MS. ROHN: Yes.

17 THE COURT: -- Exhibit List. Item Number
18 9, we corrected that to take out "made after
19 plaintiff vacated the premises." On your Fourth
20 Amended, you placed that back in.

21 MS. ROHN: Your Honor, this is to show --
22 these are --

23 THE COURT: Counsel.

24 MS. ROHN: This is to show what they did
25 for Mr. Jordan that they wouldn't do --

1 THE COURT: Counsel, I'm sorry. I don't
2 know if you're not hearing me. Your Fourth Amended
3 Exhibit List --

4 MS. ROHN: Yes.

5 THE COURT: -- right, we had a hearing on
6 this. And Number 9 is the same thing. I already
7 ruled on Number 9. And in fact, you said you didn't
8 have any objections to Number 9, which was -- which
9 was to take out the phraseology "made after
10 plaintiff vacated the premises." Attorney Holt
11 stated that that was not the proper caption and you
12 stated you didn't have any objections. But now in
13 your Fourth Amended, you placed the same thing that
14 we corrected back in.

15 MS. ROHN: Your Honor, Exhibit Number 9
16 is -- you're correct.

17 THE COURT: I know.

18 MS. ROHN: Exhibit Number 9 is --

19 THE COURT: I have that really bad habit
20 sometimes when I'm saying things to be correct.
21 Yes, I know.

22 On Plaintiffs Exhibit Number 30, you
23 withdrew that. In your second exhibit, you showed
24 withdrawn and now it's back in.

25 MS. ROHN: Well, it's a different exhibit,

1 Your Honor. It's an exhibit that was amen- -- that
2 was marked in Miss Vooys' deposition that we're
3 going to --

4 THE COURT: But, Attorney Rohn, I'm sorry,
5 I don't mean to interrupt you. How is the Court
6 supposed to know that unless you notify the Court?
7 Usually, when you change an exhibit, you simply put
8 in notice to add exhibit. Had I not gone through
9 this, how would I know what the difference was?

10 MS. ROHN: Because I would have had to
11 tender it and say it wasn't on my original exhibit
12 list.

13 THE COURT: And why would I have to do
14 that during the trial when all these times I'm
15 having these pretrials, it is for that? Now,
16 suppose Attorney Holt now objects to that. Then I
17 have to waste jury time to have a sidebar which is
18 what I'm trying to avoid; one.

19 Two, we are at trial stage. I would
20 expect a bare -- at a bare minimum, a notice of
21 change or addition to exhibit, not in the trial. I
22 look at this and I see, okay, this was withdrawn and
23 now it's there. I have -- Attorney Holt, have you
24 seen the spreadsheet for the vendors?

25 MR. HOLT: No. I know something was filed

1 last night. I did look at the bottom of the list to
2 see two new exhibits were added, but I didn't
3 realize there were exhibits substituted in the list.
4 I assumed it was all the same until I got to the
5 end.

6 THE COURT: No, it's not. And it's not
7 two exhibits were added. It was just Item Number 82
8 that was added.

9 Attorney Rohn, I don't try cases like
10 this, ma'am. I don't like surprises and I like to
11 know what the lawyers are doing.

12 You also added Item Number 82, 2003 to
13 2005 income tax return. You know, I try to avoid --

14 MS. ROHN: Those were on my original
15 exhibit list. They got them taken off and I put
16 them back on.

17 THE COURT: It doesn't work like that,
18 Attorney Rohn. Well, not in my court. I don't like
19 to waste the jury time. If you're going to add it,
20 that's fine. But give the Court and opposing
21 counsel an opportunity to see what the exhibits are.

22 MS. ROHN: Your Honor, we emailed the
23 exhibits to Attorney Holt.

24 (To her assistants) Did you email them to
25 the Court?

1 And we filed the exhibits with the Court.

2 THE COURT: Oh, I see. And when was that
3 filed?

4 MS. ROHN: (To her assistants) When was
5 that done?

6 Yesterday.

7 THE COURT: Yesterday. Attorney Rohn,
8 with a courtesy copy sent to chambers?

9 MS. ROHN: I don't know. Hold on. Let me
10 ask.

11 (To her assistants) Did you send a
12 courtesy copy to chambers?

13 No. She filed it on the ECF.

14 THE COURT: As all attorneys know, it
15 takes -- you know, the ladies downstairs are great.
16 They work very hard. They have a lot of stuff to
17 do. I mean, I don't know of any court that
18 something will be filed yesterday and it be brought
19 in today. All right. And we'll deal with this.

20 In the future, if you are adding and
21 subtracting exhibits, please let the Court know so
22 that I can deal with it and not in front of the
23 jury. I'm already behind by two hours.

24 MS. ROHN: Yes, Your Honor.

25 THE COURT: All right. Thank you.

1 MS. ROHN: Do you want me to hand you up
2 copies?

3 THE COURT: Well, yes, please.

4 I mean, Attorney -- Attorney Holt, do you
5 have any objections to the spreadsheet from vendors?

6 MR. HOLT: I don't know what the exhibits
7 are, Your Honor. I don't have the list. I saw it
8 on my filing but I didn't -- I saw it this morning.
9 I don't have the list. I don't have objections to
10 the two I saw, but I don't know if you --

11 THE COURT: Attorney Rohn.

12 MR. HOLT: -- put the exhibits in the
13 body, I don't know what they are.

14 MS. ROHN: We'll get you copies, but it's
15 Exhibit 11 to her deposition. It was --

16 THE COURT: Attorney Rohn, address the
17 Court, please.

18 MS. ROHN: Your Honor, it's Exhibit -- I
19 believe it was 11 to the deposition. It wasn't --
20 and it was in the deposition exhibits. It's the
21 spreadsheet of the bills of what they paid. That
22 goes with the bills. And it's a spreadsheet.

23 You questioned her about it in her
24 deposition -- excuse me.

25 Attorney Holt questioned her about it in

1 her deposition.

2 MR. HOLT: I may not have an objection.
3 I'll have to see it. I mean I don't know.

4 THE COURT: All right. That won't be
5 shown before Attorney Holt has had an opportunity to
6 review and so do I. Now, that was just --

7 MS. ROHN: May I -- may I pass this up to
8 you, sir?

9 THE COURT: Yes.

10 MS. ROHN: We included the exhibits with
11 our notice of filing Fifth Amended.

12 THE COURT: Well, now, Attorney Rohn, I'm
13 going to keep this -- there's no way I can go over
14 this so I'm going to hold you to the Fourth Amended
15 until I have an opportunity to review the Fifth.

16 The Number -- Item Number 30 and Item
17 Number 82 will not be admitted until Attorney Holt
18 and I get a chance to review it.

19 MR. HOLT: It's not in this.

20 MS. ROHN: It was attached to the Third
21 Amended.

22 MR. HOLT: It's not in here.

23 MS. ROHN: You have a Fourth Amended with
24 exhibits and then the Fifth Amended with additional
25 exhibits.

1 (To her assistants) When you did the
2 Third Amended, did you put the spreadsheet with it?

3 But it was attached to the Third Amended.

4 MR. HOLT: Well, I have an objection to
5 this exhibit but I can probably work it out with
6 Attorney Rohn.

7 THE COURT: That's fine.

8 MR. HOLT: I have a cleaner copy with this
9 exhibit. This has a lot of lines you can't read and
10 it has totals on it which are not correct.

11 THE COURT: Well, that's fine. I have no
12 problem with that.

13 MS. ROHN: If you have a better copy,
14 that's great. I only have the copy from when the
15 deposition was --

16 MR. HOLT: Yeah, I saw it and it was a bad
17 copy. That's why I made a better copy.

18 THE COURT: Okay. That's fine. Parties
19 can meet and confer prior to that exhibit being
20 shown. If there's any objections -- if there are
21 any objections, the Court will then have a sidebar
22 on that matter. And as to 82 and I believe 83 of
23 the -- well, I'm just going to have to go by the
24 Fourth until I can review and do a comparison of the
25 Fourth and Fifth so...

1 All right. Okay. Attorney Holt, the
2 Court misread or misunderstood as to Plaintiffs --
3 what I thought was a defense exhibit. Actually it's
4 Plaintiffs Exhibit Number 38. That is clearly
5 hearsay. I must admit I was a bit puzzled as to
6 what was the issue since you had Mr. Mosler. But if
7 defense wishes to introduce it, it's clearly
8 hearsay. It may be impeachable with the foundation,
9 used for impeachment if the possible foundation is
10 raised. However, for defense to use that, it's
11 clearly hearsay. Actually it's hearsay within
12 hearsay.

13 MS. ROHN: Your Honor, it's the plaintiffs
14 exhibit.

15 THE COURT: Okay.

16 MS. ROHN: It's plaintiffs exhibit for
17 impeachment.

18 THE COURT: This is a bit -- Attorney
19 Holt, whose exhibit is it?

20 MR. HOLT: It's the plaintiffs exhibit. I
21 object to it.

22 MS. ROHN: It's the plaintiffs exhibit.

23 MR. HOLT: Exhibit 38.

24 THE COURT: That's what I'm saying.
25 Plaintiffs exhibit. I thought -- well, maybe I

1 misspoke. I mean, take a step back.

2 MS. ROHN: You said defendants.

3 THE COURT: Yes, I misspoke. I apologize.
4 For the plaintiff to use that, it's clearly hearsay
5 within hearsay. It may be used as possible
6 impeachment if the proper foundation is met, but for
7 plaintiffs to simply come out using it without the
8 proper foundation, it's hearsay within hearsay, not
9 to mention the other evidentiary issues that may
10 come about on that.

11 MS. ROHN: Your Honor, this is actually an
12 ad that was made by Mr. Mosler and put in the paper.

13 THE COURT: Okay.

14 MS. ROHN: So it's not -- it's his
15 statement.

16 THE COURT: Do you have proof that he was
17 the one that did the ad?

18 MS. ROHN: Yes.

19 THE COURT: That he was the one that
20 approved the ad?

21 MS. ROHN: He's been deposed about it,
22 yes.

23 MR. HOLT: Your Honor, if I may, because
24 this is an important thing about -- for this case,
25 and I have three matters to bring up this morning.

1 This is the first one.

2 The complaint alleges in Paragraph 37 that
3 Hanley and Mosley and Chrismos falsely published on
4 the radio, newspaper and --

5 THE COURT REPORTER: Wait.

6 THE COURT: Hold on one second, Attorney
7 Holt. You need to speak a little louder, please.

8 (Brief interruption.)

9 THE COURT: All right. Go ahead,
10 Attorney.

11 MR. HOLT: They allege that we made false
12 statements about rental payments, how much money
13 they invested in the business and they weren't good
14 tenants. There's nothing in the complaint that
15 mentions the word drugs. Nothing. And when I
16 deposed them, they had nothing about drugs and
17 during the time period when this took place. This
18 complaint was filed on June 9th, 2005. That ad is
19 in 2006. And for them to try to amend their
20 complaint to add drugs into it is unduly
21 prejudicial.

22 THE COURT: Well, that's -- that's
23 actually -- the Court threw all of that out for the
24 record.

25 MS. ROHN: I can't hear you.

1 THE COURT: The Court already ruled on
2 that and struck it from the record as not being
3 properly before the Court.

4 MS. ROHN: Your Honor, if I could speak to
5 that?

6 THE COURT: No. No. Let me finish,
7 please.

8 (Mr. Mosler entered the courtroom at 9:00 a.m.)

9 THE COURT: Though the motion to amend the
10 complaint was filed, that along with several other
11 motions, along with motions from you, Attorney Holt,
12 and if you recall, we had a discussion as to what is
13 a motion and beyond the motion deadline. The Court
14 had already ruled that because the -- a motion to
15 file out of time was not filed, which would give the
16 Court an opportunity as to assess the appropriate --
17 or the reasons why these motions were not filed,
18 that it's improperly before the Court. It's
19 pursuant to the Virgin Islands Rules of Civil
20 Procedure.

21 MS. ROHN: Your Honor, this has --

22 THE COURT: I made that ruling already.

23 MS. ROHN: But, Your Honor, this has
24 nothing to do with amending the complaint. In the
25 joint final pre-trial, which is what controls the

1 case and supersedes the complaint, without
2 objection, plaintiff put --

3 THE COURT: Counsel, which one are you
4 referring to because --

5 MS. ROHN: The original joint final
6 pre-trial. Let's see if I can find it here. So
7 starting on Page 7: Thereafter, Defendants --
8 sorry.

9 THE COURT: Just a second, please. What
10 paragraph?

11 MS. ROHN: Sorry. Last paragraph.
12 Thereafter, Defendants Hanley and Mosler,
13 individually and on behalf of Chrismos, falsely and
14 publicly stated on radio shows, newspapers to the
15 public and customers of the plaintiffs they had not
16 made rental payments and were way behind on the
17 rent, they had not paid April 2005 rent, they did
18 not expect them to be able to do so, they were not
19 good tenants, that they mismanaged the business.
20 Warren Mosler also claimed the plaintiffs were drug
21 dealers, drug users, and that Gerace belonged to the
22 organized crime family.

23 There was no objection to that, and the
24 joint final pre-trial order takes precedence over
25 complaints.

1 MR. HOLT: Your Honor, on Page 13 of the
2 joint final pre-trial, there's a section called
3 Amendment to Pleadings.

4 THE COURT: Just a second.

5 MR. HOLT: There's a section where I --

6 THE COURT: Just a second, please.

7 MR. HOLT: Okay.

8 THE COURT: All right. What paragraph?

9 MR. HOLT: On Page 13, Item 6, Amendments
10 to the Pleadings.

11 THE COURT: Thank you.

12 MR. HOLT: I point out that I'm going to
13 move to amend the answer, which was allowed, and
14 then it says: No other amendments to the pleadings
15 shall be made. So this did not amend the pleadings.
16 The pleadings are the same pleadings at the
17 beginning of this case. And if the pleadings would
18 be amended, then I'd be entitled to file an amended
19 answer. And there's nothing in this case about
20 drugs. And if she mentions it in opening argument
21 or tries to get it in, I'm going to move for a
22 mistrial because it's unduly prejudiced for me to
23 try to defend allegations that weren't in the
24 complaint.

25 And the Supreme Court held in a case,

1 which I believe Attorney Rohn won, the Mills case,
2 you've got to set forth the basic elements of a
3 defamation claim in the complaint: What was said,
4 when it was said and to whom it was said. And
5 there's nowhere in the four corners of this
6 complaint is the word drug allegation mentioned
7 anywhere. And we would object to that coming in in
8 any way whatsoever. Not even through the back door,
9 like say, "Mr. Mosler, did you ever say," and then
10 they're going to try to get it in through that.
11 This case is about the four corners of the
12 complaint. It's 17 years old. And in the joint
13 final pre-trial order they did not ask to amend the
14 complaint to add in drug allegations.

15 MS. ROHN: And, Your Honor, I don't have
16 to, under the law of the Virgin Islands. I can put
17 it in my joint final pre-trial order, and that's
18 exactly what I did.

19 THE COURT: Pursuant to which rule?

20 MS. ROHN: Your Honor, tons of case law,
21 that rules that say --

22 THE COURT: Counsel. Counsel.

23 MS. ROHN: -- that it's controlling.

24 THE COURT: Attorney Rohn, I understand
25 all of that. Tons of case law. Cite them. That's

1 all I'm asking you to do. Give me the citations.

2 MS. ROHN: I don't have my rule book here.
3 Sorry. But there's -- you know, this is --

4 THE COURT: Attorney Rohn.

5 MS. ROHN: -- the same --

6 THE COURT: Attorney Rohn, excuse me. I'm
7 old school. And old school means when you meet and
8 you say there are tons of cases, there are tons of
9 the rules, I'd like you to cite them because I want
10 to make certain that everyone is on the same
11 field --

12 MS. ROHN: Well, you know --

13 THE COURT: -- you know.

14 MS. ROHN: -- I don't have cases off the
15 top of my head. So if you would give me 15 minutes,
16 I won't -- I won't mention it in opening argument
17 but I will get my office, Rhea Lawrence, to give me
18 the case law. I'll have her email them to me.

19 THE COURT: That's fair. I won't allow
20 you to mention anything about drug dealers in your
21 opening. I will allow you to cite the tons of case
22 law and the rule.

23 MS. ROHN: I will do so, Your Honor.

24 THE COURT: Okay. Any objection to that,
25 Attorney Holt?

1 MR. HOLT: To your deferring to ruling,
2 no. I understand.

3 THE COURT: Yes. To Counsel not being
4 able to -- actually except for what was objected --
5 stated in the complaint, plaintiff would be limited
6 to that until I make a ruling on the Exhibit Number
7 38.

8 All right. Attorney Holt, you said there
9 was a second issue.

10 MR. HOLT: Your Honor, I had one other
11 item.

12 THE COURT: Yes.

13 MR. HOLT: So in the Rule 26 disclosures,
14 they give us names of individuals and then they say
15 what their evidence would be; heard publicity made
16 by defendants. And we would object to any of these
17 witnesses testifying beyond the disclosure given to
18 us in this case. And we've already heard a little
19 bit of it, but you're going to hear about it later,
20 regarding Jim Jordan because they list John Reed as
21 saying may have heard conversations. And yet in the
22 deposition of Jim Jordan, on Saturday, they asked
23 Jim Jordan, "Isn't it true that John Reed caught you
24 snorting cocaine in the bathroom and you fired him?"
25 And that's not anywhere in this. It's a total

1 surprise to me. I don't know if John Reed is going
2 to testify to that or not.

3 But I certainly think that all of her
4 witnesses should be limited to areas which she said
5 in the Rule 26 disclosure and this doesn't just
6 become a free-for-all where they all start adding in
7 new items.

8 THE COURT: Well, just a second. Just a
9 second, please, Attorney Rohn.

10 The Court has already made clear that it
11 is not accepting hearsay testimony. Now, that's
12 pretty clear. That's standard evidentiary rules.

13 MS. ROHN: Your Honor, may I respond to
14 that, please?

15 THE COURT: Allow me to finish, please.
16 I'm just trying to make it clear.

17 So, Attorney Holt, you're objecting to
18 which witnesses, please?

19 MR. HOLT: I'm objecting to the witness
20 testifying beyond --

21 THE COURT: Which ones?

22 MR. HOLT: Well, she's got --

23 THE COURT: All of them?

24 MR. HOLT: She's got three or four listed
25 that, I think, are going to testify, and I'll give

1 you their names.

2 THE COURT: Yes, please.

3 MR. HOLT: John Reed is one of them. Mike
4 Belcheff is one of the them. Gary Anthony is one of
5 them. John Woodson is one of them.

6 THE COURT: Just a second, please. Hold
7 on, please. (Pause.) Go ahead.

8 MR. HOLT: Gary Anthony, John Woodson,
9 Donna Christensen and Alex Myers. Those are
10 witnesses that she actually said were going to
11 testify.

12 THE COURT: What was the last one?

13 MR. HOLT: Alex Myers.

14 THE COURT: All right. Attorney Rohn?

15 MS. ROHN: Yes, Your Honor. The Rule 26
16 requires simply that you disclose the subject of the
17 testimony, not all the testimony, what it is. And
18 while this is the exact same motion that the
19 defendant filed out of time that you struck, that
20 he's now bringing in connection with just a request
21 to have the witness appear by video, so he's put
22 this motion back in, even though you struck it and
23 told him it was out of time. He cites to no law to
24 this purpose.

25 The law, actually, pursuant to Tip Top

1 Construction Corporation versus Austin, 71 VI 549,
2 570, it's a 2019 case which reversed the Superior
3 Court's order excluding witnesses under similar
4 circumstances, provides quite clearly that you do
5 not have to tell them everything that they have to
6 testify to. That's why they have depositions. You
7 notice them. They take depositions.

8 In this particular case, the defendants'
9 trial strategy was they did not depose anyone except
10 the plaintiffs. And so they took no depositions to
11 find out the extent of the knowledge. We also cite
12 this Court as to the motion to limit trial
13 testimony --

14 THE COURT: What was the citation of Tip
15 Top?

16 MS. ROHN: Sure. I'll go back to that.
17 Hold on. That is 71 VI 549 at Page 570, a 2019
18 case.

19 THE COURT: 549?

20 MS. ROHN: Yes. Page 570.

21 We also cite this Court to In Re:
22 Catalyst, 2015 VI Lexis 145, which --

23 THE COURT: Give me --

24 MS. ROHN: -- provides that --

25 THE COURT: Can you give me that citation

1 again?

2 MS. ROHN: Sure. 2015 VI Lexis 145. It's
3 a Supreme Court case which says when you bring such
4 a motion, you have to cite to case law. Defendant
5 cited to no case law in this.

6 In addition, we have cited this Court to
7 Cowen. The clear purpose of Rules 26 disclosures is
8 to permit the party receiving the disclosure to be
9 able to understand what information a person has and
10 to consider contacting the person in order to
11 ascertain the significance of the individual's
12 knowledge or to depose the individual.

13 So the Rule 26 disclosure is not to tell
14 them everything that they may testify to but tell
15 them they have knowledge of relevant facts. It is
16 then under the law required that they either contact
17 them or depose them if they want to know what those
18 facts are.

19 THE COURT: But clearly that because one
20 person states a witness they have knowledge, the
21 knowledge must be based upon -- or not be based upon
22 hearsay.

23 MS. ROHN: There is nothing hearsay about
24 what Mr. Reed intends to testify to.

25 THE COURT: Okay.

1 MR. HOLT: Your Honor, if I could just
2 briefly respond?

3 THE COURT: You may.

4 MR. HOLT: Okay. First off, Tip Top
5 Construction dealt with the failure to give contact
6 information, telephone number and address. It did
7 not address the question of whether or not the
8 substance --

9 THE COURT: I'm sorry, Attorney Holt.
10 Just a second, please. I'm sorry. (Pause.) Go
11 ahead.

12 MR. HOLT: Tip Top Construction did not
13 address whether or not if you don't depose them,
14 they can talk about anything they want. It says
15 that you are to give them the subject of the
16 information so the disclosing party can decide what
17 to do.

18 Now, in this case, Attorney Rohn listed 30
19 witnesses. Am I supposed to go depose all 30
20 witnesses? I can tell from some of these
21 witnesses -- Roger Perezi (ph) has abandoned play at
22 Cane Bay. After publicity, refused to play at Cane
23 Bay. No longer -- I'm not going to depose him. I
24 can tell that. Plus, even though his contact
25 information wasn't there, I knew where he was so I

1 didn't raise that. So some of these I can tell.
2 But when somebody just gives me a generic thing, may
3 have heard conversations at Cane Bay, that doesn't
4 put me on notice that they're going to testify that
5 a key witness supposedly did drugs and try to
6 impeach them.

7 Now, Rule 26 is -- is -- and they say I
8 don't cite law. I cited the law. The Tip Top
9 Construction case only dealt with the narrow issue
10 of should they be stricken if they don't give
11 contact information. And you --

12 THE COURT: Attorney Holt, you may have
13 cited the law in the filing, but it was stricken
14 from the record.

15 MR. HOLT: Excuse me?

16 THE COURT: I said, if you recall, all
17 those motions were filed improperly before the
18 Court.

19 MR. HOLT: That's right, and I'm not
20 arguing those motions. All I am saying is if she
21 calls a witness to testify beyond what's in Rule 26
22 and she's exceeding what she's permitted to do in
23 this courtroom, she doesn't have free range, she
24 still has to stay within what Rule 26 is. And I
25 object to any of these witnesses testifying to

1 beyond what's in the Rule 26 disclosure.

2 MS. ROHN: Your Honor, in the testimony of
3 the witnesses, it was very clear that Johnny Reed
4 was the bartender both before my client, during my
5 client, and with Mr. Jordan. Mr. Jordan testified
6 that he was -- that he went to him and got him to be
7 the bartender. So there was all kinds of testimony
8 in the record.

9 I also cite this Court to the advisory
10 rules to the same counterpart of -- advisory
11 committee to the same federal counterpart. The
12 parties are expected to disclose the identity of
13 those persons who may be used by them as witnesses
14 or who, if their potential testimony were known,
15 might reasonably be expected to be deposed or called
16 as a witness by any of the other parties indicating
17 briefly the general topics on which such a person
18 may have information, should not be burdensome, and
19 will assist other parties in deciding which
20 depositions will actually be needed.

21 Mr. John Reed was clearly a key person.
22 Our clients testified about him. Their clients
23 testified about him. Mr. Jordan testified about
24 him.

25 MR. HOLT: And I'm not objecting

1 testifying about conversations at Cane Bay between
2 plaintiffs and defendants. That's what he's listed
3 as doing. And I can go through all of the other
4 witnesses that she's listed and what she says about
5 them. And for example, Gary Anthony, heard
6 publicity made by defendants defaming the
7 plaintiffs. Heard publicity. I'm not going to
8 object to it as long as he isn't giving hearsay. If
9 he's giving hearsay, I'll object to it. But I'm not
10 objecting to that. I don't know what else he's
11 going to say. But I'm satisfied I can live with
12 that because that has to be hearsay.

13 So I am only asking that she be bound by
14 the filing that she did. I'm not asking to strike
15 any witnesses. I'm not asking for any Rule 37
16 sanctions. I'm just asking the Court to guide the
17 evidence as it came to me in disclosure.

18 MS. ROHN: Your Honor, that would result
19 in two trials of this matter because I don't have to
20 give him a complete. I have to give him a brief.
21 Most the time people say may testify as to facts and
22 their knowledge. That's all that's required.

23 MR. HOLT: I don't think so.

24 MS. ROHN: Well --

25 MR. HOLT: And, you know, when we're

1 talking about tactics, I mean when somebody gives me
2 30 witnesses, I'm only entitled to ten depositions,
3 I've got to rely upon that statement in deciding
4 what I want to do.

5 MS. ROHN: Your Honor, he --

6 MR. HOLT: And, actually, I talked to --

7 THE COURT: Attorney Rohn, allow him to
8 finish, please.

9 MR. HOLT: And so I don't have to go --
10 there's no requirement that I go depose them. I'm
11 entitled to rely upon that and make a decision about
12 whether to depose them.

13 MS. ROHN: The rule is clear that he does
14 have to depose them to know what they're going to
15 say. And it's not that he didn't take 30
16 depositions. He didn't take a single fact witness
17 deposition. So we can't prove any prejudice because
18 he didn't attempt --

19 MR. HOLT: No.

20 MS. ROHN: Excuse me.

21 THE COURT: Attorney. Excuse me,
22 Counsels. Not in here.

23 Attorney Holt, allow Attorney Rohn to
24 finish, please.

25 MR. HOLT: Okay.

1 MS. ROHN: He didn't attempt to depose a
2 single witness. That was his trial strategy. But
3 this barring them from testifying as to their
4 knowledge, when he had knowledge that they had
5 relevant facts, were listed. Mr. Gerace testified
6 to Mr. Reed in his deposition. Miss Vooy's testified
7 to Mr. Reed in her deposition. Mr. Jordan, in his
8 discovery deposition, testified to all the
9 conversations he had with Johnny Reed. He has full
10 knowledge through discovery that this was a witness
11 he should have deposed.

12 THE COURT: Well, you know what? I'm
13 sorry. My jury is here. It's now 9:18. I'm going
14 to listen to argument before opening, but I'm not
15 going to have them wait too much longer. I still
16 have the issue of the one -- the alternate that I
17 have to deal with. So I'm going to put this off
18 until we take a break right after preliminary
19 instructions and before opening because I really
20 don't want the jury to be sitting waiting too much
21 longer.

22 Have the jury brought in, please.

23 Well, let's take a two-minute recess.

24 (Recess was taken at 9:18 a.m. to 9:25 a.m.)

25 (Potential Alternate Jurors who had been called

1 back to serve were escorted into the courtroom
2 at 9:25 a.m.)

3 THE COURT: Good morning, ladies. First,
4 I'd like to thank you for returning so that we can
5 somehow resolve this.

6 Good morning. Ms. Lewis, please approach
7 the bench.

8 (Sidebar conference at 9:27 a.m. as follows:)

9 MS. LEWIS: Good morning, Judge.

10 THE COURT: Good morning. Can you hear
11 me?

12 MS. LEWIS: Yes.

13 THE COURT: Miss Lewis, were you able to
14 make arrangements?

15 MS. LEWIS: Yes.

16 THE COURT: Okay. So you can sit on the
17 jury?

18 MS. LEWIS: Yeah.

19 THE COURT: Now, we may go into -- now, I
20 know we said Friday. We may go into Monday.

21 MS. LEWIS: Hopefully not because Monday I
22 have an eye appointment.

23 THE COURT: What time?

24 MS. LEWIS: For 7:45.

25 THE COURT: 7:45 in the morning?

1 MS. LEWIS: Yeah. I could probably call
2 and see if they --

3 THE COURT: I don't want you to do that.
4 It's just a -- don't need to get into it but just a
5 regular eye appointment?

6 MS. LEWIS: Yeah.

7 THE COURT: Okay. We can work it out
8 then.

9 MS. LEWIS: Okay.

10 THE COURT: So you're comfortable, it's
11 okay for you to sit?

12 MS. LEWIS: Yes.

13 THE COURT: Thank you very much.

14 (Ms. Lewis returned to the jury pool.)

15 THE COURT: That resolves that. She's
16 going to sit. If push comes to shove, we may just
17 go a little late on Monday if we go -- if we go that
18 far so it shouldn't be anything.

19 Who am I missing?

20 MS. ROHN: We're missing jurors. We're
21 missing the guy and a woman.

22 THE COURT: Oh, okay. Is there five? All
23 right. Take Miss -- Juror Number -- no, that's
24 fine. So we'll have six.

25 All right. Any objections --

1 MS. ROHN: I can't hear you.

2 MR. HOLT: No objection.

3 THE COURT: Attorney Rohn?

4 MS. ROHN: About her being the alternate,
5 no, Your Honor.

6 THE COURT: All right.

7 (Sidebar conference concluded at 9:30 a.m.)

8 THE COURT: Good morning again, ladies.
9 I'd like to thank you and apologize for the
10 inconvenience. I do really appreciate the fact that
11 you are, you know, willing to come forward so
12 quickly. And I thank you very much. I excuse you
13 and I will see you on my next jury. Thank you.
14 You're excused.

15 (Potential Alternate Jurors who had been called
16 back to serve were excused at 9:32 a.m.)

17 THE COURT: Counsel, before we begin the
18 preliminary instructions, do you need a few minutes
19 to use the restroom or whatever?

20 MS. ROHN: I did that during the last
21 break, Your Honor.

22 THE COURT: All right. Attorney Holt, do
23 you need a break before we start?

24 MR. HOLT: I think I'm ready.

25 THE COURT: All right. We're just waiting

1 for the jury then.

2 MS. ROHN: Before we bring the jury in,
3 would you like the law on the pre-trial order?

4 THE COURT: I'm sorry?

5 MS. ROHN: Before you bring the jury in,
6 would you like the law on the pre-trial order?

7 THE COURT: I can look at it after we do
8 the preliminary.

9 MS. ROHN: Well, we're about to do
10 openings. It would be helpful.

11 THE COURT: Well, we have to do
12 preliminary. I'm saying, after the preliminaries,
13 I'll take two minutes and I'll listen to the
14 citation. I don't want the jury waiting anymore.
15 Attorney Rohn, I don't want to start the discussion
16 and then -- the only thing that's holding up the
17 discussion is one of the ladies is in the restroom
18 so I don't want them waiting any further.

19 (The jury entered the courtroom at 9:36 a.m.)

20 THE CLERK: Joseph Gerace, Victoria Vooyo,
21 d/b/a Cane Bay Beach Bar, versus Warren Mosley,
22 Chris Hanley and Chrisomos Cane Bay, LLC.

23 THE COURT: Good morning. Parties ready
24 to proceed?

25 MS. ROHN: Good morning, Your Honor. Lee

1 Rohn for the plaintiffs. We are ready to proceed.

2 MR. HOLT: Good morning, Your Honor. Joe
3 Holt on behalf of the defendants, ready to proceed.

4 THE COURT: Please stand.

5 (The jury is sworn in by the clerk at 9:38 a.m.)

6 THE COURT: Good morning again, ladies and
7 the gentleman. I know I haven't been keeping my
8 promises. I said we'd move this case along quickly
9 and I still trying -- I'm still going to try and
10 keep it, but sometimes there are legalities that
11 sometimes slow the case down but it is necessary and
12 it does increase it.

13 Ladies and gentleman of the jury, you've
14 been selected and sworn as a jury to try the case of
15 Joseph Gerace and Victoria Vooys, doing business as
16 Cane Bay Beach Bar, versus Warren Mosler, Chris
17 Hanley and Chrismos Cane Bay, LLC.

18 Before the trial begins, however, there
19 are certain instructions you should have in order to
20 better understand what we presented before you and
21 how the trial will be conducted. At the end of the
22 trial -- can everyone hear me?

23 THE JURY: Yes. Yes, sir.

24 THE COURT: At the end of the trial, I'll
25 give you more detailed guidance on how you are to go

1 about reaching your decision and those instructions
2 will control your deliberations. By your verdict,
3 you will decide the disputed issues of fact. I will
4 decide all questions of law that arise during the
5 trial and before you retire to deliberate at the
6 close of the case. I'll further instruct you on the
7 law that you must follow and apply in deciding your
8 verdict.

9 Since you'll be called upon to decide the
10 facts of this case, you should give careful
11 attention to the testimony and evidence presented
12 for your consideration. Bearing in mind, I'll
13 instruct you at the end of the trial considering the
14 matter in which you should determine the credibility
15 of each witness and the weight to be given to his or
16 her testimony. During the trial, however, you
17 should keep an open mind and should not form or
18 express an opinion about the case one way or the
19 other until you have heard all of the testimony and
20 the evidence, the closing arguments of the lawyers
21 and my instructions to you on the applicable laws.

22 During the trial, if it may be necessary
23 for me to confer with the lawyers with regards to
24 questions of law or procedures that require
25 consideration by the Court alone. On some occasion,

1 you may be excused from the courtroom for the same
2 reason. This is not because we want to keep any
3 pertinent information about the case from you but,
4 rather, because such discussions for legal matters
5 with which you are not concerned with and which
6 might confuse you or prejudice you if you were to
7 hear it. I will try to limit these interruptions as
8 much as possible but you should remember the
9 importance of the matter you are here to determine
10 and should be patient even though the case may seem
11 to go slowly. You may relax and stretch during
12 these discussions. And if you want to talk quietly
13 amongst yourselves about anything other than the
14 case, you may do so.

15 Once again, you will decide what the facts
16 are from the evidence which will be presented here
17 in court. That evidence will consist of the sworn
18 testimony of witnesses, exhibits received in
19 evidence, and any facts upon which the lawyers agree
20 or which I may instruct you to accept. Questions of
21 the lawyers are not evidence for the evidence
22 consists of witnesses answers to questions.
23 Statements and arguments of counsel are not evidence
24 unless made as an admission or stipulation of the
25 fact. When attorneys on both sides agree to the

1 existence of a fact, you must, unless I otherwise
2 instruct you, accept the stipulation as evidence and
3 regard that fact as true.

4 Occasionally, the Court may take judicial
5 notice of certain facts or events. When the Court
6 declares that it will take judicial notice of some
7 fact or event, you must accept that fact as true.

8 What is not evidence? The following
9 things are not evidence and you must not consider
10 them to be evidence in deciding the facts of the
11 case. Statements and arguments of the attorneys,
12 questions and objections of the attorneys, testimony
13 that I instruct you to disregard and anything you
14 may have seen or heard when the Court is not in
15 session, even if what -- even if what you see or
16 hear is done or said by one of the parties or by one
17 of the witnesses. At the end of the trial, you have
18 to make a decision based on what you recall of the
19 evidence. You will not have a written transcript to
20 consult and it's difficult and time consuming for
21 the reporter to read back lengthy testimony.
22 Therefore, I strongly urge you to pay close
23 attention to each testimony as it is given.

24 There are two kinds of evidence: direct
25 and circumstantial. Direct evidence is testimony by

1 a witness about what that -- about what that witness
2 personally saw or heard or did. Circumstantial
3 evidence is indirect evidence, that is there is
4 proof of one or more facts from which one can prove
5 another fact. You may consider both direct and
6 circumstantial evidence in deciding this case. The
7 law permits you to give equal weight to both, but it
8 is for you to decide how much weight to give any
9 evidence.

10 From time to time during the trial, I may
11 be called upon to make a ruling of law on the
12 objections or motions made by the lawyers. The
13 parties may sometimes object to some of the
14 testimony or other evidence. When a lawyer asks a
15 question that is offered into evidence and the
16 lawyer on the other side thinks that it's not
17 permitted by the Rules of Evidence, the lawyer may
18 object. If I rule -- if I overrule the objection,
19 the question may be answered for the exhibit
20 received. If I sustain the objection, the question
21 cannot be answered and the exhibits cannot be
22 received. Whenever I sustain an objection to a
23 question, you must disregard the question entirely.

24 Sometimes I may order that evidence be
25 stricken from the record and that you disregard or

1 ignore the evidence. That means that when you are
2 deciding the case, you must not consider the
3 evidence which I told you to disregard.

4 In deciding the facts of this case, you'll
5 have to decide which witnesses to believe and which
6 witnesses not to believe. You may believe
7 everything a witness says or simply part of it or
8 none of it. To make that determination, you should
9 carefully scrutinize the testimony given, consider
10 it in the light of your experience and understanding
11 and observe intently and with care the manner,
12 demeanor and attitude of each witness as he or she
13 testifies.

14 In considering the weight of the testimony
15 of any witness, you may consider their appearance,
16 attitude and behavior of the witness, the interest
17 of the witness in the outcome of the case, if any,
18 the inclination of the witness to speak truthfully
19 or not, the probability or improbability of the
20 witness's statements and all other facts and
21 circumstances in evidence. Thus, you may give the
22 testimony of any witness just such weight and value
23 as you believe the testimony of the witness is
24 entitled to receive.

25 No wit- -- no statement, ruling or remark

1 or comment that I may make during the course of the
2 trial is intended to indicate my opinion as to how
3 you should determine the facts. At times, I may
4 question -- I may ask questions of witnesses. If I
5 do so, it is for the purpose of bringing out matters
6 that I feel should be brought out and not in any way
7 to indicate my opinions or facts or indicate the
8 weight I feel you should give to the testimony of
9 the witnesses. I may also find it necessary to
10 admonish the lawyers and if I do so, you should not
11 show prejudice to a lawyer or his client because I
12 found it necessary to admonish him or her.

13 This is a civil case. The plaintiffs have
14 the burden of proving the case by what is called the
15 preponderance of the evidence. That means the
16 plaintiff has to produce evidence which, considered
17 in light of the facts, leads you to believe that
18 what the plaintiff claims is more likely true than
19 not. In other words, if you were to put plaintiffs
20 and defendants evidence on top of the sides of the
21 scale, plaintiff would have to make the scale go --
22 would have to make the scale tip slightly on that
23 side. In this case, plaintiffs have to prove their
24 claim against the defendant by a preponderance of
25 the evidence. If this is done, you must find for

1 the plaintiff. However, if the plaintiff failed to
2 prove their claim by the preponderance of the
3 evidence, you must find for the defendant.
4 Likewise, the defendant must prove its affirmative
5 defense by a preponderance of the evidence.

6 Those of you who may have sat on a
7 criminal case would have heard proof beyond a
8 reasonable doubt. That requirement does not apply
9 to a civil case and you should not therefore put
10 it -- you should therefore put it out of your mind.

11 Again, I will give you detailed
12 instructions on the law at the end of the case and
13 those instructions will control your deliberations
14 and decisions. But in order to follow the case,
15 I'll now give you a brief summary of the case.

16 Plaintiffs allege that the defendants
17 breached a contract with the plaintiffs. The
18 plaintiffs also allege the defendants committed
19 fraud, made misrepresentations to the plaintiffs,
20 committed fraudulent inducement and defamation upon
21 the plaintiffs. As a result, the plaintiffs
22 suffered emotional distress and damages.

23 The defendant denies these allegations and
24 has raised affirmative defenses. And Defendant
25 Chrismos has filed a counterclaim for unpaid rent

1 which the plaintiff denies.

2 I will now say a few words about your
3 conduct as jurors. First, do not talk to each other
4 about this case or about anyone who has anything to
5 do with it until the end of the case when you go to
6 the jury room to decide on your verdict.

7 Second, do not talk with anyone else about
8 this case or about anyone who has anything to do
9 with it until the trial has ended and you have been
10 discharged as jurors. Anyone else can include
11 members of your family and your friends. You may
12 tell them that you're a juror, but don't tell them
13 anything about the case until after you have been
14 discharged by me.

15 Third, do not let anyone talk to you about
16 the case or about anyone who has anything to do with
17 it. If someone should try to talk to you, please
18 report it to me.

19 Fourth, if there is publicity about this
20 trial, you must ignore it. Do not read anything or
21 listen to any television or radio reports or any
22 other electronic media about the case or about
23 anyone who has anything to do with it.

24 Fifth, do not do any research such as
25 consulting dictionaries or other reference

1 materials. Do not make any investigation about the
2 case on your own.

3 Six, if you need to communicate with me,
4 simply give me -- give a signed note to the marshal
5 to give it to me.

6 Seven, you must not take anything I may
7 say or do during the trial as indicating what your
8 verdict should be. Do not be influenced by my
9 taking notes at any time. When I write down -- what
10 I write down has nothing to do with what you will be
11 considering with this trial.

12 Finally, do not make up your mind about
13 what the verdict should be until after you have gone
14 to the jury room to decide the case and you and your
15 fellow jurors have discussed the evidence. Keep an
16 open mind until then.

17 The reason for these rules, as I'm certain
18 you will understand, is that your decision in this
19 case must be made solely on the evidence presented
20 at the trial.

21 The order -- the trial shall proceed in
22 the following order. First, each side may make
23 opening statements. What is said in opening
24 statements is not evidence but simply to provide an
25 introduction as to the evidence, what the parties

1 making the statement intend to produce.

2 Second, the plaintiff will introduce
3 evidence in support of their claim. The plaintiff
4 will do that by calling witnesses to testify.
5 They'll be placed under oath and then examined and
6 cross-examined by attorneys -- by the attorneys.
7 Documents or other exhibits may also be produced as
8 evidence.

9 At the conclusion of the plaintiffs case,
10 defendant will be given an opportunity to present
11 their case. The defendant, however, are not
12 obligated to introduce any evidence or call any
13 witnesses. If the defendant introduces evidence,
14 the plaintiff may then introduce rebuttal evidence.

15 Third, the parties will present closing
16 arguments to you as to what they think the evidence
17 has shown and as to what the inferences which they
18 contend you can draw from the evidence.

19 The arguments. What is said in closing
20 argument, just as what is said in opening statement,
21 is not evidence. The arguments are designed to
22 present to you the intentions of the parties based
23 on the evidence introduced.

24 Lastly, I'll instruct you on the law which
25 you are to apply in reaching your verdict. You will

1 then retire to the jury room to decide your verdict.

2 Ladies and gentleman, I'm going to take
3 a -- there is an issue that the Court must resolve.
4 I'm going to take a brief ten-minute recess and then
5 we will start out with the opening remarks, opening
6 statements. Thank you.

7 (The jury was escorted out of the courtroom at 9:52 a.m.)

8 THE COURT: Attorney Rohn? Yes.

9 MS. ROHN: So the Third Circuit rule which
10 is what our rule has relied on --

11 THE COURT: I'm sorry, I can't hear you.
12 Go ahead, Attorney. I just can't hear you.

13 MS. ROHN: You can't hear me?

14 THE COURT: No, I can't. Speak a little
15 louder.

16 MS. ROHN: (Adjusting mic.) Red means
17 hot. Sorry, Your Honor.

18 THE COURT: No, I get confused on that as
19 well.

20 MS. ROHN: So the Third Circuit has
21 stated, it is of course established that law --
22 established law that a pre-trial order when entered
23 limits the uses of trial and in substance takes the
24 place of the pleadings covered by the pre-trial
25 order. And that's Basista versus Weir, 340 F.2d 74.

1 And there's also --

2 THE COURT: Give me that cite again,
3 please.

4 MS. ROHN: 340 F.2d 74.

5 THE COURT: 340 F.2d 74?

6 MS. ROHN: Yes, sir.

7 There's also 831 F.2d 1191, which holds
8 the pre-trial order supersedes the pleadings.

9 There's also 837 F.Supp.2d 419; recites to
10 a whole lot of cases. The pre-trial order
11 supersedes all previous pleadings and controls the
12 subsequent course of action.

13 THE COURT: You stated that it's also in
14 the rules.

15 MS. ROHN: I'm sorry, I can't hear you.

16 THE COURT: You stated that it's also in
17 the rules. What's your citation on the rule?

18 MS. ROHN: I didn't get the rule book. I
19 had -- Rhea is in St. Maarten. Her grandmother
20 died. I emailed her. I don't -- I don't have her
21 in the office so...

22 But there's case law interpreting the rule
23 that holds without doubt that joint final pre-trial
24 supersedes the pleadings and becomes the new
25 pleadings.

1 THE COURT: Okay. Attorney Holt?

2 MR. HOLT: Your Honor --

3 THE COURT: I'm sorry. I'm sorry.

4 Attorney Rohn, are you finished?

5 MS. ROHN: No. There's another cite. 837
6 F.Supp.2d 419.

7 THE COURT: Okay. Attorney Rohn, before
8 you --

9 MS. ROHN: Yes, sir.

10 THE COURT: I did a cursory read through
11 the Tip Top Construction case and it raised Virgin
12 Islands Rules of Civil Procedure 37(c) provides that
13 if the parties fail to provide information or
14 identify a witness as required by Rule 26(a) or (e),
15 the party's not allowed to use that informational
16 witness to supply evidence on a motion at a hearing,
17 at a trial unless the failure was substantially
18 justified or harmless.

19 MS. ROHN: Right. That was the lower
20 court's ruling. It was overruled by the Supreme
21 Court.

22 THE COURT: Attorney Holt?

23 MR. HOLT: First of all, that ruling only
24 dealt with the failure to give address and phone
25 number, contact information. That ruling did not

1 say that you can then go beyond whatever is listed
2 in the Rule 26 statement. The issue in that case
3 dealt solely with the failure to give contact
4 information so the witnesses could be contacted.

5 MS. ROHN: Your Honor, that Tip Top case
6 is exactly like this case and the other case that I
7 cited this Court to. The defendant tried to say,
8 oh, no, they can only tes- -- they can't testify
9 because they didn't give addresses; and the second
10 cases said, oh, no, you have to give all the
11 information. Both of those cases were overruled.
12 All of those rulings were overruled.

13 The Supreme Court is very clear, you've
14 got to give notice that the person has knowledge.
15 It is up to the defendant to either speak to the
16 witness or depose the witness. So the law -- the
17 Supreme Court has been very clear on this and this
18 is -- I hear no argument, no case law from the
19 defendant to support its position and I've given you
20 Supreme Court law to the contrary.

21 MR. HOLT: That's not my reading of the
22 case.

23 THE COURT: I'm looking, Attorney Rohn,
24 and I'm seeing, we conclude that Tip Top's failure
25 to disclose contact information for these witnesses

1 was harmless under Virgin Islands Rule of Civil
2 Procedure 37(c) and that the Supreme Court -- the
3 Superior Court erred in excluding their testimony.

4 MS. ROHN: Right. It was harmless because
5 you knew who they were, you could have moved to
6 compel, you could have --

7 THE COURT: Attorney Rohn.

8 MS. ROHN: -- done all kinds of things
9 which you didn't do.

10 THE COURT: Attorney Rohn, contact
11 information.

12 MS. ROHN: Okay. That's that one.

13 But then I cited this Court --

14 THE COURT: Attorney Rohn.

15 MS. ROHN: -- on the conditional issue of
16 subject matter --

17 THE COURT: Attorney Rohn.

18 MS. ROHN: -- to --

19 THE COURT: Attorney Rohn, speaking fast
20 and loud doesn't change it. I'm asking you a
21 question, please. You cited -- one of the cases you
22 cited was Tip Top. And I'm saying I'm looking at
23 it. At the conclusion of their -- of it-- and it
24 dealt -- so far it dealt with contact information.
25 I cite you to Page -- well, 34, you should have

1 that, where the Supreme Court concluded it was
2 contact information.

3 MS. ROHN: Well, we -- yes, Your Honor, we
4 waived that because that was the first objection
5 that they made to the witnesses, that they didn't
6 have their contact information.

7 THE COURT: Okay.

8 MS. ROHN: So I cited you to that.

9 And then as to the other issue of subject
10 matter, I cited the Court to a number of cases.

11 THE COURT: Just a second, please. I just
12 want to make the record clear. Tip Top only goes to
13 contact information, correct?

14 MS. ROHN: Tip Top -- Tip Top says that
15 contact information and that stuff required by
16 Rule 26 isn't really required.

17 THE COURT: Just a second. I have no
18 problem with that. Okay.

19 MS. ROHN: And then I --

20 THE COURT: Just a second, Attorney Rohn.
21 It's clear that Tip Top deals solely with contact
22 information.

23 MS. ROHN: I don't think you can actually
24 say that because if you read the whole opinion --

25 THE COURT: Attorney Rohn.

1 MS. ROHN: -- the Court is talking about
2 the duty of the defendant.

3 THE COURT: Okay. Can you underline where
4 the Supreme Court decides outside of the contact
5 information?

6 MS. ROHN: That particular issue, the
7 issue was the issue of contact information. But if
8 you read the wording of the Supreme Court, what it's
9 saying is they have the information, they have an
10 opportunity to go get the information, they didn't
11 do it, you can't bar the witness so...

12 And then we can go to the subject matter.
13 We've cited you to cases in which the courts have
14 held --

15 THE COURT: Okay. Hold on. Hold on.
16 We're dealing with Tip Top right now, which is a
17 case that you've cited. I see the issue of contact
18 information. Now, I also look at the -- you're
19 citing -- I'm looking at the rationale from the
20 court, and I'm just simply asking you, if you can
21 point out to me where it says Tip Top has been
22 expanded to support your argument?

23 MS. ROHN: Tip Top was generally about
24 whether or not you can bar a witness for not obeying
25 Rule 26 as to contact.

1 THE COURT: Okay. So then -- so we are in
2 agreement on that.

3 MS. ROHN: Right. However --

4 THE COURT: Just a second, please.
5 Earlier your argument was that it was on point on
6 both issues, unless I misunderstood you.

7 MS. ROHN: No. I said that was the issue
8 of contact, because he raised two issues originally,
9 and then I referred you to the case law on the
10 subject matter.

11 THE COURT: So we're in agreement that Tip
12 Top just deals with contact information.

13 MS. ROHN: It does deal with contact
14 information but it also --

15 THE COURT: All right.

16 MS. ROHN: -- more broadly talks about
17 barring witnesses.

18 THE COURT: Yeah, because of contact
19 information.

20 MS. ROHN: Yeah.

21 THE COURT: Yeah, all right. Well, that
22 goes to the first prong.

23 Now, the subject matter, you also cited, I
24 believe, Catalyst. These are cases you've cited to
25 support your argument, correct?

1 MS. ROHN: The second one is the case law
2 to support the argument that I don't have to give
3 them every information. Just a short topic is all
4 that's required under the rule.

5 THE COURT: Okay. This is In Re:
6 Catalyst.

7 MS. ROHN: That is a number of cases.

8 Oh, no, In Re: Catalyst starts with the
9 proposition that he can't -- the defendants can't
10 raise this issue without citing to the court
11 something in support of its position, which it has
12 never done, not in its original motion, not in this
13 motion. So that was the purpose --

14 THE COURT: Attorney Rohn.

15 MS. ROHN: -- of In Re: Catalyst.

16 THE COURT: Attorney Rohn, are we going to
17 go down this road again? I'm listening to you. But
18 if you hear me start to speak, let me say what I
19 have to say, please.

20 MS. ROHN: I thought I was answering your
21 question, I'm sorry.

22 THE COURT: No, because I was -- I heard
23 what you were saying. I had a question.

24 Well, it's clear, the rules -- and even
25 the Supreme Court have said, every -- there must be

1 citations on motions and everything else. So I'm
2 simply asking you, is that what you're representing
3 to this Court, In Re: Catalyst? Because I have no
4 problem with that.

5 MS. ROHN: That's exactly what I
6 represent.

7 THE COURT: Well, the rule is clear on
8 that.

9 MS. ROHN: Right. There has to be some
10 law to support this position.

11 THE COURT: Some citation.

12 MS. ROHN: Right.

13 THE COURT: I agree. That's a given so I
14 have no problem with your recitation. The Supreme
15 Court as well as the rules make certain that you
16 must have some citation so... But it addresses the
17 two parts of your argument, but it doesn't address
18 Attorney Holt's third argument -- or his secondary
19 argument.

20 MS. ROHN: Correct. Then I cited to other
21 case law for that.

22 THE COURT: All right.

23 MS. ROHN: And I quote: The clear purpose
24 of Rule --

25 THE COURT: Hold on, Attorney Rohn.

1 You're referring to Basista versus Weir?

2 MS. ROHN: I'm referring to Cowen versus
3 Public Service, which is --

4 THE COURT: Let me -- let me ask this. I
5 don't mean to change the subject. Obviously this is
6 going to be something the Court is going to have to
7 research. Are the parties prepared to go do opening
8 statements without the ruling on this? Or must you
9 have it?

10 MS. ROHN: No, I need a ruling on it
11 because I'm going to tell them what John Reed is
12 going to say.

13 THE COURT: All right.

14 MS. ROHN: But, Your Honor, can I raise
15 one other issue, please?

16 THE COURT: Well, one issue at a time. Go
17 ahead. Give me the citation. Cowen v. -- you
18 said -- what was the citation?

19 MS. ROHN: It is 2015 Westlaw 644, 6948 at
20 Footnote 4. The clear purpose of a Rule 26
21 disclosure is to --

22 THE COURT: Attorney Rohn, what's the name
23 of the case, please?

24 MS. ROHN: Cowen versus Public Service.

25 THE COURT: All right. Just a second,

1 please. (Pause.) Can you repeat the citation
2 again, please?

3 MS. ROHN: Sure. 2015 Westlaw WL 644,
4 6948, at Footnote 4.

5 THE COURT: You may continue.

6 MS. ROHN: May I continue?

7 THE COURT: Yes.

8 MS. ROHN: And that says the clear purpose
9 of a Rule 26 disclosure is to permit the party
10 receiving the disclosure to be able to understand
11 the information the person has and consider
12 contacting the person in order to ascertain the
13 significance of the individual's knowledge or to
14 depose the individual.

15 Similar case saying that you only have to
16 give a brief description on the knowledge because
17 the defendant's supposed to contact or depose, is
18 225 F.R.D. 645.

19 THE COURT: What's the name of the case?

20 MS. ROHN: That is Sender versus Mann.

21 And then there's also 202 F.R.D. 359.
22 That's Biltrite Corp. versus World Road Markings.

23 THE COURT: I'm sorry, can you repeat that
24 again?

25 MS. ROHN: I'm sorry?

1 THE COURT: Can you repeat that again,
2 please?

3 MS. ROHN: Sure. 359 -- sorry. 202
4 F.R.D. 359.

5 And finally --

6 THE COURT: No, I'm sorry. Name of the
7 case. I didn't hear it.

8 MS. ROHN: I'm sorry. That was Biltrite
9 Corp versus World Road Markings.

10 THE COURT: Build Right?

11 MS. ROHN: Biltrite, B-i-l-t-r-i-t-e.

12 THE COURT: Versus?

13 MS. ROHN: World Road Markings.

14 And then finally, I cite the Court to the
15 advisory committee's notes as to Rules 26; and it
16 says, the parties are expected to disclose the
17 identity of those persons who may be used by them as
18 witnesses or who, if their potential testimony were
19 known, might reasonably be expected to be deposed or
20 called as a witness by any of the other parties.
21 Indicating briefly the general topics on which the
22 persons have information. Should not be burdensome
23 and will assist other parties in taking depositions
24 that are needed.

25 So clearly, the purpose is to just simply

1 say, these people are probably going to be
2 witnesses. This is the brief statement of the
3 topics. And then the other party is supposed to
4 depose them.

5 THE COURT: Before your next issue,
6 Attorney Holt --

7 MS. ROHN: I can't hear you. I'm sorry.

8 THE COURT: Before you mention your next
9 issue, Attorney Holt, would you like to respond?

10 MR. HOLT: Yes, Your Honor. Rule 26(a)
11 requires them to give that brief statement. And
12 Rule 37(c) says they're not allowed to use
13 information other than that information. If you
14 fail to provide information, you're not allowed to
15 use it. So what she provided, she can use. What
16 she didn't provide, she can't use.

17 So for John Reed, I mean he's not the only
18 one, they give a very specific description of what
19 he's going to testify to. He may talk about
20 conversations at the Cane Bay Bar regarding the
21 incident. Other than that, it's beyond the
22 information he gave me.

23 Now, they keep talking about deposing
24 them. But we also sent interrogatories and we asked
25 them, what witnesses are going to talk about

1 misrepresentations we made, breach of contract? And
2 they listed five witnesses. They didn't list him.
3 They didn't list several of the other witnesses that
4 they intend to call.

5 And then we deposed the plaintiffs. And
6 on the plaintiffs, I said, who -- did Warren Mosler
7 ever say that you were drug users? No. Other than
8 that ad that they reference a year later. And then
9 I said, did Chris Hanley? And they said, well,
10 Chris Hanley supposedly told somebody who told
11 somebody, which would all be hearsay, and neither of
12 those somebodies are listed as witnesses in this
13 case.

14 So we did pursue the issue and the only --
15 the only allegation of drug users is that newspaper
16 ad which is basically not directed at them anyway.
17 It's, you know, an ad between two politicians. No
18 one could reasonably understand that to be going
19 after them. But the bottom line is after the
20 complaint was filed, and the complaint was never
21 amended.

22 Now, on this thing about the pre-trial
23 statement amends the complaint, well, if that's the
24 case, we have to do discovery all over again. The
25 pre-trial complaint is not designed to expand the

1 pleadings. The pre-trial complaint is simply to
2 elaborate on it.

3 THE COURT: Pre-trial order.

4 MR. HOLT: Excuse me?

5 THE COURT: The pre-trial order. You're
6 saying complaint.

7 MR. HOLT: Pre-trial order. I apologize.

8 And in the pre-trial order there's a
9 special section on amendments and it says no other
10 amendments shall be made.

11 Now, adding drugs into a case where all of
12 the allegations up until the filing of this
13 complaint dealt with you didn't pay your rent on
14 time, you borrowed money from relatives and didn't
15 pay it back, you were perpetually late on rent, I
16 mean those are the allegations in the complaint.
17 The word drug is nowhere in the complaint. And
18 they're just doing that to unduly prejudice the
19 plaintiffs in to trying to suggest they made
20 allegations against drug use they didn't make. And
21 it would be unduly prejudicial to add that in. It
22 would be unduly prejudicial to allow these witnesses
23 to talk about anything they want if it exceeds the
24 statement they gave as to what they have to say.

25 THE COURT: Attorney Rohn?

1 MS. ROHN: The preamble to the joint final
2 pre-trial clearly states -- may I have that
3 document? The following shall constitute the final
4 pre-trial order pursuant to 16(e) of the Federal
5 Rules of Civil -- it says Federal. Civil Rules of
6 Procedure. And this final pre-trial order shall
7 govern the conduct of the trial of this case so...

8 And, Your Honor, as to the complaint about
9 the Rule 26 disclosures, I proffered it to you, Your
10 Honor, that the defendant didn't believe that that
11 was the case at the time they did their Rule 26
12 disclosures because their Rule 26 disclosures, their
13 disclosures are Hal and Suzanne Rosbach, owners of
14 Cane Bay Dive Shop; nothing else. Roger Morgan; no
15 information. Chris Howe; no information. Gregory
16 Ballentine (plumber). That's the type of
17 information that's given in Rule 26 every day by
18 every party. And they're trying to get you down a
19 primrose path that there's absolutely no law to
20 support.

21 MR. HOLT: Your Honor, might I just point
22 out Mr. Hal Rosbach was deposed so they know exactly
23 what he's going to testify to.

24 MS. ROHN: But, Your Honor, that's my
25 point. You have to depose the witnesses to find out

1 what they know. The defendant made a strategical
2 decision not to depose a single witness, not one,
3 except for the plaintiffs.

4 MR. HOLT: There's no rule requiring me to
5 take depositions. I used interrogatories to pin
6 down the few that would be and I deposed the
7 plaintiffs to find out who it would be. They didn't
8 list any of these things that they now say John Reed
9 is going to talk about. He's not listed as someone
10 who has knowledge of any of those things. So I
11 just --

12 THE COURT: Has there been prior, any
13 discussion as to -- in any deposition or otherwise,
14 about drug dealers, they being called drug dealers?

15 MS. ROHN: Yes.

16 THE COURT: Where?

17 MS. ROHN: In my -- in Miss Vooy's'
18 deposition -- I'll have to pull it. In Miss Vooy's'
19 deposition, she says, then they started calling us
20 drug dealers. Miss Vooy testified to that in her
21 deposition.

22 THE COURT: Okay. Just a second.
23 Attorney Holt?

24 MR. HOLT: In her deposition, I asked her
25 those questions. She pointed to two things. She

1 pointed to a statement by a guy named Robert Woods,
2 which is no longer listed as a witness, and he
3 didn't hear anything. He said he heard something.
4 That would be hearsay. So he's not a witness.

5 Then she pointed to this ad which post
6 dates the filing of the complaint. It doesn't even
7 refer to her. It refers to drug dealers at the full
8 moon parties. So I mean you could exclude it just
9 on that grounds alone because it doesn't -- it
10 doesn't pertain to the owners of the bar a year
11 later. They were gone.

12 So they're just trying to get that in to
13 inflame the jury and get them off on matters that
14 aren't properly before the Court.

15 MS. ROHN: Your Honor, the --

16 THE COURT: Just a second, please.

17 MR. HOLT: And if there's other witnesses
18 that they're going to testify about drug use, they
19 weren't --

20 THE COURT: Attorney Holt, just a second,
21 please. Hold on a second. (Pause.)

22 Go ahead, Attorney Rohn. I interrupted
23 you first.

24 MS. ROHN: So there was testimony in the
25 deposition that -- and it related to the ad, that

1 Mr. Mosler was putting ads out in newspapers calling
2 them drug dealers in the testimony, and that ad does
3 refer to them. It refers to the drug dealers who
4 were doing the full moon parties. My clients,
5 that's exactly who they're referring to. And it
6 says, making racist statements -- claiming I made
7 racist statements by the drug dealers who did the
8 full moon parties.

9 THE COURT: Okay.

10 MS. ROHN: That's my client. My client --
11 it says karaoke and --

12 THE COURT: Attorney Rohn.

13 MS. ROHN: -- full moon. My clients were
14 the only people that had karaoke --

15 THE COURT: Attorney Rohn.

16 MS. ROHN: -- and full moon.

17 THE COURT: Attorney Rohn, hold on. Okay.
18 Just a second, Attorney Rohn. I'll give you an
19 opportunity to respond in a second.

20 Am I missing something? I'm looking at
21 Plaintiffs Exhibit -- or Defense Exhibit Number 38.

22 MS. ROHN: Defendants Exhibit 13?

23 THE COURT: 38.

24 MS. ROHN: You mean Plaintiffs Exhibit 38?

25 MR. HOLT: Yeah, it's Plaintiffs Exhibit

1 38.

2 THE COURT: Which does -- I just need to
3 figure out exactly -- the particular paragraph, and
4 please correct me if I'm wrong, reads, this year, at
5 the last minute, you were playing a jingle that
6 again was maliciously -- to libel me a racist
7 suggesting I might build a fence around some beach
8 and supporting malicious rumors started by drug
9 dealers trying to brand me as a racist and falsely
10 say I end -- I ended reggae and karaoke at Cane Bay.

11 Is that the particular paragraph?

12 MS. ROHN: That is the paragraph, which
13 is -- that's my clients. That's what my clients
14 said. My clients went on the radio and said, he's
15 stopping the karaoke and he's stopping the reggae.

16 THE COURT: We're talking about this ad,
17 this particular ad. And I'm asking, can you show me
18 where in here the reference is to your client?

19 MS. ROHN: My -- okay. You have to go
20 back to 2005 when there is all the stuff on the
21 radio in which my clients are the people on the
22 radio and in the newspaper saying, it's my clients,
23 he's stopping reggae, he's stopping karaoke. Those
24 are the people who said that.

25 THE COURT: Attorney Rohn, can you show me

1 where, in Plaintiff Exhibit 38, where he's saying
2 it's malicious rumors started by drug dealers, where
3 it is related to your client on itself, the document
4 on itself?

5 MS. ROHN: It's saying malicious rumors.

6 THE COURT: Uh-huh (affirmative response).

7 MS. ROHN: Okay.

8 THE COURT: Started by --

9 MS. ROHN: If you take -- if just take
10 out -- just for the purposes of looking at this as
11 to who is being referenced, malicious rumors
12 started -- malicious rumors trying to brand me as a
13 racist and that falsely say I ended reggae and
14 karaoke at Cane Bay, that's my client. That's what
15 my client said for -- for --

16 THE COURT: Counsel, how do you make this
17 quantum leap? I mean the paragraph reads -- that's
18 why I'm looking at this and I'm trying to figure out
19 how -- how this quantum leap becomes. This year, at
20 the last minute, you were playing a jingle. Who do
21 you -- as I read it, it refers to Donna Christensen.
22 You were playing a jingle. Is that correct?

23 MS. ROHN: Correct.

24 THE COURT: Okay. You were playing a
25 jingle, jingle, that again tried to maliciously

1 label me as a racist, reference back to the jingle,
2 suggesting, reference back to the jingle, I might
3 build a fence around some beach, reference back to
4 the jingle, supporting malicious rumors started by
5 drug dealers, reference back to the jingle, or to
6 brand me -- wait a minute -- to brand me a racist
7 and to falsely say I ended reggae and karaoke at
8 Cane Bay, reference back to the jingle.

9 MS. ROHN: But the jingle doesn't mention
10 Cane Bay or ending reggae parties.

11 THE COURT: How do I know that?

12 MS. ROHN: Because Donna Christensen is
13 going to testify. It's her jingle.

14 THE COURT: I -- quantum leap. I mean
15 I -- I'm looking at this. I guess this is where I'm
16 confused because I really can't see -- I see it as
17 just a -- politics as usual.

18 MS. ROHN: Okay. But, Your Honor, it's an
19 impeachment document. So it goes also to the fact
20 that Mr. Mosler puts this ad in the paper calling
21 people drug dealers and who he doesn't even know who
22 they are.

23 THE COURT: Stop, stop, stop.

24 MS. ROHN: If it's not my client, then who
25 is it?

1 THE COURT: Counsel, Counsel, stop. You
2 have just made the point I'm trying to make. He
3 calls who drug dealers? Who? And you just said it
4 yourself. He calls the people drug dealers and he
5 doesn't know who they are. That is the point I'm
6 trying to make to you. How do I -- can I go and
7 file a libel slander against Mr. Mosler because he
8 said drug dealers? You have just stated the exact
9 point I'm trying to make.

10 MS. ROHN: But, Your --

11 THE COURT: Well, hold on a second.

12 MS. ROHN: I understand what you're
13 saying.

14 THE COURT: You just said it. Drug
15 dealers. And he doesn't know who they are.

16 MS. ROHN: But that was my purpose. I
17 don't think he could say drug dealers if he didn't
18 know who they were.

19 THE COURT: Stop, stop.

20 MS. ROHN: How would he say that if he
21 didn't know who they are? He knew who they are.

22 THE COURT: Okay. Maybe I'm missing
23 something. He doesn't know who they are by calling
24 them drug dealers but he knows who they are.

25 MS. ROHN: No, sir. He has to because he

1 has to know who he's speaking about. Since he
2 wouldn't know anybody but my clients, that's who
3 he's speaking about.

4 THE COURT: How do you jump to that -- I'm
5 trying to figure out how you get to that quantum
6 leap, Counsel. I'm really trying to figure it out.
7 Because this is a political ad in which she's
8 playing a jingle, and politics is, by no stretch of
9 the imagination pure, and he's saying that jingle
10 called him a racist and by this party and rumors
11 here and rumors there and drug dealers, how -- I'm
12 just trying to figure out how that gets all of
13 that -- because then, one can say then that, if I
14 follow your -- I guess I know your argument then --
15 is that drug dealers are your clients and your
16 clients are the ones who are calling him a racist.

17 MS. ROHN: My clients did call him a
18 racist.

19 THE COURT: Okay.

20 MS. ROHN: Exactly. My clients did call
21 him a racist.

22 THE COURT: Okay. But, Counsel, I just
23 don't see the quantum leap. I really don't. I mean
24 I've looked at it. I'm trying my best to figure out
25 how -- and I guess my confusion is, hey, maybe I'm

1 missing something in the reading but it's not --
2 it's addressed to Delegate Christensen. It's a
3 political statement.

4 MS. ROHN: It's addressed to the public.
5 It's in the newspaper.

6 THE COURT: It's addressed to Christensen
7 but it's sent to the public. Well, it's not
8 addressed to her but it's in reference to her. And
9 it doesn't -- it's a quantum leap that you take a
10 political document and say the reference is to your
11 client when -- I mean if he had -- I would
12 understand your argument if he had said "and the
13 people at Cane Bay," then definitely. Definitely.
14 But it doesn't say that. It's really very
15 generally. And the reference to Cane Bay is "and
16 you're saying that I stopped -- I stopped reggae and
17 karaoke." There's no -- there's no --

18 MS. ROHN: You're relying on drug dealers
19 to say I stopped.

20 THE COURT: But how do -- I still am not
21 certain, and I'm trying my darndest to figure out,
22 how this is connected, how -- it's beyond a quantum
23 leap. How is it connected? That's what I'm trying
24 to figure out.

25 MS. ROHN: There's another point. When

1 Donna -- when this whole thing happened, Donna
2 Christensen was called in. She supported my clients
3 publicly.

4 THE COURT: Okay.

5 MS. ROHN: So who else are you accusing
6 Donna of talking to besides the people she was out
7 there supporting?

8 THE COURT: I can take judicial notice
9 that she won the election so obviously there was a
10 lot of people supporting her. How are you able to
11 single out --

12 MS. ROHN: No, she was supporting them on
13 the issue of being kicked out of the bar. She
14 was -- she -- she was vocal about the fact they
15 shouldn't get kicked out of the bar. So when you
16 say supporter, this is a person that she's already
17 publicly stood up for.

18 THE COURT: Counsel, I understand what
19 you're trying to do and I'm simply saying to you,
20 you haven't crossed even in the littlest of a
21 quantum leap, because it is so -- and then I have to
22 do a balancing as to the prejudicial factor versus
23 the document, the evidentiary benefit, and I'm
24 saying I have problems with just trying to say that
25 the reference is to your client. I really, really

1 have problems with it. I just -- I've read it and I
2 guess that was my whole confusion in terms of whose
3 document it was because it's so broad that I'm
4 looking at it and I'm thinking, okay, this may very
5 well be the defendant. And I'm sorry, I just
6 don't -- I can't.

7 MS. ROHN: Well, my client certainly
8 immediately believed that that was them she was
9 referencing to.

10 THE COURT: That may very well be true.

11 MS. ROHN: Because that was the only
12 people they talked to.

13 THE COURT: That may very well be true,
14 Attorney Rohn. But is the belief an evidentiary
15 factor? Unless we're getting into a self-defense
16 factor. It is not. So I'm just saying I cannot
17 embrace this as a -- as any evidentiary -- I don't
18 even know how we got beyond the relevance issue
19 because I just can't see it being -- and then of
20 course you have the highly prejudicial factor and I
21 just can't see this being even close enough to allow
22 this Court to balance the factor because it's very
23 ambiguous as to who he's referring to "and you're
24 listening to these drug dealers." And your quantum
25 leap is on your clients. I can't see it. I really,

1 really can't. I mean I've read it too many times.
2 And I'll give you one last opportunity to convince
3 me but I really can't see it.

4 MS. ROHN: Well, I've said everything I
5 can.

6 May I bring up one issue?

7 THE COURT: Yes. Okay.

8 MS. ROHN: So there are several claims
9 that the defendant has made against my client for
10 which we expect them to mention in opening and
11 attempt to testify to. Number one is that people
12 complained about how loud the reggae music is.
13 That's complete hearsay.

14 THE COURT: I agree.

15 MS. ROHN: They don't have a single
16 witness who's coming in here to say that.

17 THE COURT: Then they can't bring it in.

18 MS. ROHN: So that can't be.

19 THE COURT: Okay.

20 MS. ROHN: The other issue is that somehow
21 Mosler learned that my client was making money at
22 the restaurant when he claimed he wasn't.

23 THE COURT: That's -- that's --

24 MS. ROHN: Well, can I just finish?

25 THE COURT: No, because it's a waste of

1 time. That's definitely also hearsay unless there
2 are documents that can prove it. I mean, why -- I
3 don't really need to --

4 MS. ROHN: Okay.

5 THE COURT: Attorney Holt, you may respond
6 but --

7 MS. ROHN: Because the person is supposed
8 to be Mr. Jordan. We took his trial testimony. He
9 doesn't testify to that.

10 THE COURT: Let Attorney Holt respond.

11 Attorney Holt, unless you can show me how
12 it's not hearsay.

13 MR. HOLT: So it's not being offered for
14 the truth of the matter because we don't think that
15 he actually was making that money.

16 THE COURT: Well, then --

17 MR. HOLT: But it's what provoked
18 Mr. Mosler to go out --

19 THE COURT: Attorney Holt, stop a second,
20 please. You know, that was one of the funniest
21 things about the hearsay rule because I always said
22 but if it's not being offered for the truth of the
23 matter, why then is it even being offered?

24 MR. HOLT: Okay. So I'll be glad to
25 proffer that. They were always behind on their

1 rent. They weren't keeping the place in good
2 repair. But they lived with that. And then one day
3 Mr. Jordan comes to Mr. Mosler and says he'd like to
4 get a lease because there is no lease and Mr. Mosler
5 says, why would you do that? And he said, because
6 they're making a hundred thousand dollars. And
7 Mr. Mosler was so mad that he went out -- and that
8 provoked the whole conversation. That's the reason
9 he was angry about it. Now, I don't think that they
10 were making a hundred thousand dollars.

11 THE COURT: Exactly my point. Clearly
12 hearsay.

13 MR. HOLT: But wait a minute. But it's
14 what provoked Mr. Mosler to get angry and go out and
15 see them and confront them about it, and they did
16 not deny it when he said it to him. So it goes to
17 his -- what Mr. Mosler became upset about.
18 Otherwise, why would Mr. Mosler go out and have a
19 meeting with them and tell them to leave? He got
20 angry because he thought they were being dishonest
21 with him. So that goes to the crux of the whole
22 case, Your Honor.

23 THE COURT: Yeah, but when you look at the
24 balancing factor versus -- you know, I try my best
25 to be fair. And you're in the same position with

1 Attorney Rohn. How is that -- I mean, how is that
2 not based upon hearsay? How is that not
3 prejudicial?

4 MR. HOLT: Well, wait a minute.
5 Mr. Mosler goes out and he tells them that he wants
6 them to have an exit strategy. Why would he do
7 that? Because he heard that they were making money.

8 THE COURT: Attorney Holt.

9 MR. HOLT: Now that may not be true but
10 that --

11 THE COURT: Stop. Attorney Holt. Listen
12 to what you just said. He heard.

13 MR. HOLT: Exactly right.

14 THE COURT: Let's stop there. So we all
15 agree it's hearsay.

16 MR. HOLT: Yes. But it's not being
17 offered for the truth of the matter. So it's not
18 hearsay. Hearsay has to be something being offered
19 for the truth of the matter.

20 THE COURT: And but then, Attorney Holt,
21 it's not being offered for the truth of the matter,
22 but it's being offered as a basis for his decision
23 that he relied on, then that's truth. So then it
24 has to be offered for the truth of the matter
25 because, according to your testimony or what you're

1 saying, this is what he relied on. It's going to
2 mislead the jury. I'm not going to allow it. Let's
3 move on.

4 MR. HOLT: Your Honor --

5 THE COURT: Attorney Holt.

6 MS. ROHN: But Mr. Jordan was deposed. He
7 never said he even told him that.

8 THE COURT: I'm not even going to answer.
9 This is getting really ridiculous.

10 MR. HOLT: Well --

11 THE COURT: Attorney Holt, the document --
12 the statement is clearly hearsay. It is
13 prejudicial. It is going to mislead the jury
14 because if the witness testifies that he heard that
15 he was making money, it may -- without any iota of
16 truth or evidence, it is going to mislead the jury
17 into believing that, yes, he was in fact making
18 money based upon hearsay. It is going to mislead
19 the jury. I'm not going to allow it. Okay? I mean
20 it's just -- I can't allow -- oh, then I'm going to
21 let in what Attorney Rohn said, well, she heard that
22 they were the one who were -- who were called --
23 it's the same argument. It is going to mislead the
24 jury. I can't -- I can't have a duck in one hand
25 and a goat in the other hand. I must have two

1 ducks. If I'm going to stop Attorney Rohn from
2 doing the same thing that you're now trying to do, I
3 can't do that, and there's no way I'll do that.
4 It's basically falling on the same concept. It is
5 going to mislead. I'm not going to allow it.

6 MR. HOLT: Well, okay, so --

7 THE COURT: Attorney, Attorney Holt, we
8 can stay here until Christmas. Your record is made.
9 I already made my decision, you know. Just --

10 Attorney Rohn?

11 MS. ROHN: I have nothing else. That was
12 my issue was hearsay.

13 THE COURT: I'm not going to allow the
14 other two discussions. Now, I guess we're back to
15 the issue as to racist.

16 MS. ROHN: As to whom? I can't hear you.

17 THE COURT: I'm sorry. As to the initial
18 argument -- well, no, Attorney, it will not be
19 allowed -- just a second, please. (Pause.) So
20 we're back to the one issue.

21 I'm sorry?

22 MR. HOLT: I just want to make my record.

23 THE COURT: Attorney Holt.

24 MR. HOLT: I don't think it's properly
25 made for the --

1 THE COURT: Well, guess what? If it's not
2 properly made, what else do you have to say?

3 MR. HOLT: I want to make -- 801(c)
4 defines hearsay, where a party offers it in evidence
5 to prove the truth of the matter. It's not being
6 offered to prove the truth. It's being offered to
7 prove why Mr. Mosler confronted and got upset and
8 confronted them. So it's not being --

9 THE COURT: Attorney Holt, you said that.

10 MR. HOLT: I just wanted to make sure I
11 cited it.

12 THE COURT: I understand all that. And
13 I'm telling you, the rules -- the judge is a gateway
14 of all evidentiary facts. If I allow that, it is
15 going to mislead the jury. Because though you're
16 correct in citing your rule, this Court has to make
17 certain that no evidence comes in that will mislead
18 the jury. And though it's not offered for the truth
19 of the matter, there is no question in this judge's
20 mind that it's going to mislead the jury, because
21 the jury is going to say that the reason why
22 Mr. Mosler got vexed is because the plaintiffs were
23 making money and was not paying the rent.

24 MR. HOLT: Okay. So --

25 THE COURT: No, no, no, sir. Stop.

1 There's nothing else to say.

2 MR. HOLT: Well --

3 THE COURT: Attorney Holt.

4 MR. HOLT: I've made my objection.

5 THE COURT: Attorney Holt.

6 MR. HOLT: You've made your ruling.

7 THE COURT: First of all -- no. Don't
8 raise your voice at me. No, you do not want to go
9 that route. And I'm not in a back and forth with no
10 attorney. You have made your point. I am now
11 explaining something. So don't go down that way
12 with me. Don't go that way with anyone and don't
13 ever raise your voice at me. Okay. I don't raise
14 my voice at people. No one raises their voice at
15 me. Is that clear, sir?

16 MR. HOLT: Yes, Your Honor. I apologize.
17 I didn't realize I was raising my voice.

18 THE COURT: Yes, sir, and I'm very
19 sensitive of that. Do not raise your voice,
20 Counsel. You have made your record. I am telling
21 you, further explanation, I am not going to allow
22 it. You can stay here until Christmas.

23 MR. HOLT: I don't --

24 THE COURT: Sir --

25 MR. HOLT: I'm going to live with the

1 ruling. I'd like to make sure that I don't run
2 afoul of it.

3 THE COURT: Well, if you run afoul of it,
4 you'll know, because I don't see what is -- it's
5 simple. He will not be able to testify on hearsay
6 evidence that is going to mislead the jury; one.
7 Two, I mean, it -- it -- it -- it's clearly -- I
8 don't even see the issue. If I have it admitted,
9 it's clearly going to mislead the jury. Even if
10 it's being offered not for the truth of the matter,
11 the jury is going to interpret it as being truthful
12 or being truth. And it's going to be highly
13 prejudicial. Anyhow, I'm done with that. All
14 right. Your record is made.

15 All right. Now, for the final -- I
16 believe we still have one more thing. I mean this
17 is just -- my jury has been here for 40 minutes now.
18 Just a second. I'm just finishing reading this one
19 case here Attorney Rohn cited. Just hold on.

20 MS. ROHN: I'm sorry, I couldn't hear you.

21 THE COURT: I said I'm just reviewing the
22 Cowen case very quickly.

23 MS. ROHN: Okay. Thank you.

24 THE COURT: Take a brief three-minute
25 recess.

1 (Recess was taken from 10:45 a.m. to 10:58 a.m.)

2 THE COURT: The Court has reviewed the
3 case to which Attorney Rohn speaks of.

4 MS. ROHN: Could you speak up, sir? I
5 can't hear you.

6 THE COURT: The Court has reviewed the
7 case -- one of the cases you have referred to and
8 strangely enough, I read in particular Rule 26(a)(1)
9 of the Federal Rules of Civil Procedure requires a
10 party to provide to the other party the name and, if
11 known, the address and telephone number of each
12 individual likely to have a reasonable -- excuse
13 me -- to have discoverable information along with
14 the subjects of that information that the disclosing
15 party may use to support its claim of defense.
16 Citations, citations. Monitored disclosures serve
17 several purposes including given the opposing party
18 information about identification and locations of
19 knowledgeable individuals to determine whether an
20 individual should be deposed during discovery.

21 So it's clear here that, in looking at it
22 from a logical point, and this is -- again, most of
23 it deals again with the disclosure of witnesses and
24 the information. But my looking at this and my
25 interpretation of this says from a very practical

1 matter, opposing parties, there must be a subject or
2 I guess an overview, if you will, synopsis of what
3 that testimony is going to be along with the
4 information of the individual. And, you know, it's
5 common sense. Not that really complicated.

6 What that does then is allows opposing
7 counsel to look at the synopsis of what this
8 person's going to testify to and again to make that
9 determination as to whether or not that person
10 should be deposed.

11 In the Cowen case, I believe it was 156
12 witnesses. And Cowen basically said the same thing
13 that Attorney Holt's argument is, that I'm looking
14 at the synopsis, I'm looking at the information
15 that -- to make determinations as to whether or not
16 I should depose. The commonsensical part of this is
17 very simple. I'm not saying that's the situation
18 here. But from a common sense point of view, if a
19 party gives a synopsis and the opposing party looks
20 at it and says, well, okay, I'm not going to depose
21 this person because there's really no reason, and
22 then the other party decides to go beyond the
23 synopsis, then clearly the intent of the rule is not
24 followed because the information or the subject or
25 the topics has to put the opposing party with

1 sufficient information to make that determination if
2 they are to be deposed or not. And if the presented
3 party wishes to go beyond the synopsis, or the
4 information has been provided or the topic of the --
5 as stated in Cowen, then they must advise opposing
6 counsel that we have to expand.

7 Therefore, bringing it back to this case
8 in hand and using, looking at the case in which
9 Counsel thinks is instructive, the Cowen case, it is
10 clear that the -- when the one party gives --
11 provides the 26(a)(1), there must be two things that
12 must be provided: information, and in terms of
13 being able to contact the party; and also a synopsis
14 or areas that will be dealt with. And therefore to
15 go beyond that would be a violation of this rule.

16 So the motion by Attorney Holt is granted.

17 MS. ROHN: Your Honor, may I just simply
18 put something on the record?

19 THE COURT: You may.

20 MS. ROHN: So in the deposition of Miss
21 Victoria Vooy's, she testifies:

22 He asked Johnny who?

23 Answer, Johnny Reed, the guy -- the guy
24 that came -- kind of came with the bar when we
25 bought. And then through all of this, I found out

1 he was on the payroll of Jim Jordan and talking to
2 Mosler.

3 And Attorney Holt goes on to something
4 else.

5 So the law is clear, it's either in
6 Rule 26 or otherwise provided in discovery. And she
7 told him in discovery, this is the guy that's
8 talking behind our backs to Jimmy Jordan and talking
9 to Mosler about what's going on. So that has been
10 disclosed to them.

11 MR. HOLT: I agree.

12 MS. ROHN: He still did not decide to
13 depose him.

14 THE COURT: Well, could you be more --
15 just for the record, can you be more specific in
16 terms of he said --

17 MS. ROHN: I'm sorry, I can't hear you.

18 THE COURT: You said you were discussing
19 this and that. Can you be more specific as to the
20 topic?

21 MS. ROHN: It's a brief subject. Just
22 subject, not what's going to be said. Just topic.

23 THE COURT: Counsel, I'm aware of that.

24 MS. ROHN: Okay. And then through all of
25 this, I found out he, Johnny Reed, was on his

1 payroll, that's Jim Jordan, payroll for Jim Jordan
2 and talking to Mosler.

3 So the subject of Johnny Reed is
4 conversations he's having with Mosler, the
5 conversations he's having with Jordan, and the
6 conversations he heard in the bar and what he
7 observed in the bar. And that is all I'm asking him
8 to testify to except for -- and I will agree to
9 delete from the deposition the question, were you
10 doing drugs. Because Johnny Reed did indeed see
11 Mr. Jordan snorting coke in the office.

12 MR. HOLT: So you'll agree to delete that?

13 MS. ROHN: I will agree to delete that.

14 MR. HOLT: Your Honor, if I may, I agree
15 that if you go do a deposition and you learn a
16 little more information, then you're on notice of
17 that. I don't have any problem with that. I accept
18 that.

19 So with her caveat that she'll delete the
20 thing about the drugs with Jordan, I don't know all
21 the things he's going to talk about but I have no
22 problem in talking about the representations she
23 made there or the conversations that he says he had
24 with him.

25 THE COURT: Okay. So does that resolve

1 the problem?

2 MS. ROHN: Ta-ta.

3 THE COURT: Yeah, whoopie. It's only been
4 two hours over. All right. Now everyone is clear
5 on the ruling? We can finally proceed to trial?

6 MS. ROHN: Openings.

7 THE COURT: Yeah. It's 11:06.

8 Just as a quick housecleaning matter,
9 Attorney Rohn, we have to break for lunch at 1:00.
10 Can you get in two witnesses before 1 o'clock?

11 MS. ROHN: Can I get in what?

12 THE COURT: Two witnesses.

13 MS. ROHN: Before 1 o'clock?

14 THE COURT: Yes.

15 MS. ROHN: I have two witnesses here, yes.
16 One of them will be finished and one of them will be
17 starting. Miss Vooy's will be long.

18 THE COURT: All right.

19 MS. ROHN: What time is it now? 11:00.
20 So we're not going to lunch until 1:00?

21 THE COURT: That is when the food is going
22 to come.

23 MS. ROHN: Okay. Cool. Just checking my
24 time.

25 THE COURT: So you figure the food reaches

1 at 1:00. By 1:15 they'll be ready for lunch.

2 (The jury was escorted in at 11:09 a.m.)

3 THE COURT: Good morning, ladies and the
4 gentleman of the jury. I do apologize. It seems
5 like I'm apologizing all day. Hopefully not. But
6 we did have some technical issues that were brought
7 up that we had to resolve before we can start this
8 trial. Now I'm happy to announce that we are going
9 to start the trial.

10 Okay. So I'm now going to ask Attorney
11 Rohn for the plaintiff to come and give her opening
12 statement.

13 Marshals, please lock the door. Make sure
14 that no one enters or leaves during the opening
15 statements.

16 MS. ROHN: Well, I can almost say --
17 whoops. I've got to kind of -- there's no way I can
18 see them all.

19 THE COURT: Attorney Rohn, you can stand
20 to the side if it's easier. Yeah, that's probably
21 easier.

22 OPENING STATEMENT BY THE PLAINTIFFS AT 11:12 AM

23 MS. ROHN: So good morning. As you know
24 earlier, my name is Lee Rohn. I have a team here,
25 Deidre Fitch Hodge, Karima Guzman and, of course, my

1 clients, Joe Gerace and Victoria Vooyoys. And we
2 thank you for serving on this jury. We know you
3 have things you'd rather be doing. It's kind of
4 your civic duty and we really appreciate it.

5 My clients, other than on the witness
6 stand, can only speak through me because that's our
7 court system. So I want to tell you a little bit
8 about what I think this case is about. This is
9 their day in court. They don't get to come back for
10 another day in court.

11 So first of all, this case is 17 years
12 old. This case arose back in 2003, 2004, 2005. At
13 the time of the events in this case, my client, Joe
14 Gerace, was 25 years old, and my client, Victoria
15 Vooyoys, we're not going to tell you her age, but she
16 was about the same age. They were newly graduates
17 from culinary school. They had met in culinary
18 school and they were looking for a restaurant to
19 have together to open. And Joe Gerace saw an ad for
20 a restaurant at Cane Bay in St. Croix, Virgin
21 Islands. It was a dream to be able to go and do
22 that.

23 He went down, he looked at the restaurant.
24 It was just exactly what he'd always envisioned. He
25 went back, he talked to Victoria, they made a bid on

1 the restaurant. There was a purchase, asset
2 purchase agreement. And they went down to the
3 Virgin Islands in July. The first time they went
4 down was around June of 2003, July of 2003. They
5 come down August, actually August 9th, 2003, they
6 close on the restaurant. They ship everything they
7 owned down here, they sell off things, they ship
8 their car. The day before they leave to come down
9 here, they learn that the seller actually doesn't
10 have a lease. They shipped everything here and they
11 think, oh, my gosh, maybe we can get something to
12 work out. They come. They close. They pay \$45,000
13 on a down payment on a price of 80. And they think,
14 well, hopefully we'll get a lease.

15 So shortly after they did that, they are
16 met -- Mosler and Hanley come to the restaurant.
17 Because they come down here and they start with the
18 restaurant right away. Mosler and Hanley come to
19 the restaurant and they say, where are the new
20 buyers? We're going to close in a few days. And we
21 understand you're the new people in the restaurant.
22 And they say, yeah, but we don't know if we're
23 staying or not, we don't have a lease, it didn't
24 turn out right, we're kind of thinking about like
25 going back home and just going after the people

1 because they didn't have a lease and be done.

2 And Hanley and Mosler were like, oh, no,
3 we need somebody in the restaurant. We're just
4 about to buy the property and we want the restaurant
5 open. They said, well, we really need a lease so if
6 you'll agree to give us a seven-year lease, \$1,500,
7 but it needs to be a seven-year lease because we
8 need to be able to pay back ourselves from all the
9 money we're going to have to do, put in, we'll stay.
10 And he says, no problem, yes, we can work that out.

11 So they say, well, can we have a lease
12 right away? And they said, well, we don't really
13 know how good you're going to be doing the
14 restaurant and we don't really know how successful
15 you're going to be so let's give you a chance to get
16 the restaurant going. And also we want -- in order
17 to do this, you're going to need to make repairs to
18 the restaurant.

19 So the restaurant -- the -- Mosler and
20 Hanley, they have a -- one owns 97 and -- Mr. Mosler
21 owns 97 and a half percent and Chris Hanley owns two
22 and a half percent, so they bought a lot of acreage
23 and some buildings that are kind of dilapidated for
24 a million dollars and the buildings are in bad
25 shape.

1 And so they say, well, in order to get
2 this commitment for the lease, you're going to have
3 to make some improvements to the building. They
4 think, well, that's better than going after
5 somebody. Yeah, we'll make improvements.

6 And so there's a list of improvements that
7 they have to make to the building and that includes
8 painting the building, fixing the bathrooms,
9 replacing the sinks, a number of -- there's a whole
10 list of things that they have to do.

11 So there's a bartender that's already
12 there, Johnny Reed. They've kept Johnny Reed.
13 Johnny Reed pitches in with them. They spend money.
14 They repaint the entire restaurant. They redo the
15 flooring and put all the nuts and bolts down on the
16 flooring. They spent about six months doing the
17 chores that are supposed to be done. And then
18 they're like, well, where's the lease? And they're
19 like, oh, we're working on it, we're working on it.
20 And so my clients are patient. They're new here.
21 They don't want to ruffle anybody's feathers and so
22 they're like, okay, but we really need that. And
23 they've just gotten out of culinary school so they
24 learned a lot of business and they know this is
25 something that's necessary to be successful. So

1 after they -- the six months, they start asking for
2 it.

3 Now, the Moslers and Hanley are pretty --
4 also pretty loosey-goosey about the rent. I mean,
5 they're like, well, we really want you to get this
6 up and running, so it's not so important that you
7 pay the rent to us on a particular day but, you
8 know, try to keep up with the rent.

9 And so initially, the first of 2003,
10 Hanley would come to the restaurant when he was over
11 in that area and he would pick up the rent checks.
12 And so that -- then that didn't work out so well
13 because sometimes he wouldn't get by. So there was
14 an agreement that they would then take the rent
15 checks to his real estate company, which was
16 Farchette & Hanley, and they would turn the checks
17 in there.

18 And there were -- they would pay the rent
19 and there was a couple months the rents were late.
20 But they were told, don't worry about it, we want to
21 work with you, this is going to be a great
22 relationship. We know you're putting money into the
23 restaurant. We're fine.

24 So that goes along for a period of time,
25 and then finally the restaurant is starting to take

1 off. The food's really good. They're starting to
2 do entertainment. They've got the reggae coming in
3 on the full moon, and they're doing things in the
4 evening. And the local north shore population likes
5 them and gravitates to them and they're really taken
6 into the north shore community.

7 And there are people, people that you'll
8 hear from, Gary Anthony is one, they like these
9 people so much that they would hang out in that bar
10 and restaurant five or six nights a week because it
11 was such a great vibe in that restaurant and the
12 food was really good.

13 So about seven months into this thing, in
14 March of 2004, they're presented -- Mosler had an
15 assistant named Matt Lorig and he brings by a lease
16 to them. They look at it and they're like, this
17 isn't what we talked about. It was for two years,
18 two and a half years, required them to do away with
19 the right to a jury trial, told them they couldn't
20 assign the lease to anybody. It was a really bad
21 lease. And so they went to him and said, we can't
22 sign a lease like this. This wouldn't even give us
23 our investment back. We can't do that. They said,
24 never mind, never mind, we'll do something else. So
25 they wait again for the lease. The restaurant

1 continues to do well.

2 Then in August of 2004, there's a fire in
3 the kitchen. And the fire in the kitchen is caused
4 by the fact that the hood in the kitchen is not the
5 correct size, which they inherited. It's not the
6 correct size for the size of the kitchen and it
7 catches on fire. And they have to close the
8 restaurant for two months. So they go to Hanley and
9 Mosler -- because most of the time, if you can't
10 operate, the landlord will give you a break -- and
11 they say, can you forgive us the rent for the two
12 months because we're going to have to spend all this
13 money on fixing the kitchen? And they say, no, no,
14 you need to pay us. You don't have to pay us right
15 away but you have to pay us. And they ask if
16 they'll -- you know, it's their building. They're
17 putting this money into the building they own and
18 it's going to improve it. So they say, will you
19 help us with the costs? And they say no. But they
20 love the restaurant. They want to get open.

21 So they invest a lot of money and they
22 say, you know, you've got to promise to give us a
23 seven-year lease at the \$1,500 rent before we go in
24 and put all this money into these improvements. And
25 they say, no problem, we're going to do that. So

1 they do it. They're financially in trouble because
2 they're not getting any income and they're spending
3 a lot of money. And they invest about \$40,000 into
4 these repairs. And they have some difficulties
5 paying WAPA but they do, because if they don't pay
6 WAPA the freezer goes out and they lose all the food
7 they've got in the freezer. So they struggle and
8 make the WAPA payments. They can't make the rent
9 payments. So they then start back up and they make
10 enough money to substantiate paying the rent again.
11 And by January, they pay the September -- they paid
12 the August rent before. They pay the September and
13 October rent, of 2005, September of 2004, but they
14 pay in January of 2005. In February, they pay the
15 November, the December and the January rent. Now,
16 granted, the first check bounced but they put more
17 money in and the rent's paid. So -- but the money
18 goes back in on March 5th, 2005, and they're paid.
19 So -- and besides, they've been told, it's not
20 important if you pay right away. So they're
21 virtually up to date on March 5th, except they owe
22 March rent. And then on March 15th, they pay
23 February and March rent. So they're up -- they're
24 up to date.

25 So one of the ways that they increased the

1 income and made the restaurant so successful is that
2 the reggae parties and the vibe of the restaurant
3 increased the amount of locals who were coming to
4 the restaurant so it wasn't really a tourist
5 restaurant anymore. It had become a local
6 restaurant. It became a local hangout spot. And
7 the evidence will show that Mosler really didn't
8 like that.

9 So in January, we know -- or about
10 January, Mosler meets a gentleman, who comes in to
11 St. Croix on his yacht, named James Jordan. And he
12 starts talking to James Jordan about him taking over
13 the restaurant. In February of 2005, Mr. Mosler
14 comes and gets the bartender at the restaurant,
15 Johnny Reed, and introduces him to James Jordan.
16 And James Jordan says, I'm going to take over this
17 restaurant. I want you to be my bartender. But
18 don't tell the plaintiffs. And Johnny Reed feels
19 bad but he says, well, if this is going to go on,
20 I'm going to go with the people to keep my job.

21 So shortly -- that was, as I said, March
22 15th, they pay the rent and they're up to date. And
23 they -- Mr. Mosler comes in shortly after that and
24 he says -- unannounced. And he said, you know, I'm
25 not happy with how things are going. You're behind

1 in your rent, which they weren't, and I just don't
2 like how the restaurant's going. I really would
3 rather have a more white, middle-class restaurant
4 than what you're doing here. I'm not happy.

5 And they of course are devastated. So
6 they call Hanley, because they have a better
7 relationship with Hanley. And they ask him, what's
8 he talking about? He says, we've invested so much.
9 And Hanley confirmed to them at that time, yeah,
10 Mosler has an acquaintance he wants to take the
11 restaurant over and he wants you out by the end of
12 the month. And they're like, we're not leaving,
13 you're supposed to be giving us a lease.

14 And a week later, Mosler and Hanley come
15 to the restaurant for a meeting. And they say,
16 again, we don't like your clientele, we want a
17 white, middle-class restaurant, I want a place I'd
18 be comfortable to bring my business clients to, you
19 will never get a lease, and you need to figure out
20 an exit strategy, you're not getting a lease.

21 They, at that meeting, falsely accuse my
22 clients of being behind in the rent, not knowing how
23 to do a place of business, telling them that the
24 bathrooms are filthy, which they weren't, and
25 there's dogs in the restaurant all the time. None

1 of that was true. Those were all just excuses.
2 Hanley then virtually repeats what Mosler says and
3 says, yeah, this isn't the kind of restaurant we
4 want here. I'm with Mosler.

5 Victoria is so upset and she knows she's
6 going to cry, so she gets up and runs to the back of
7 the restaurant and she's literally in tears. She's
8 so upset that she actually is wailing in the back of
9 the restaurant. Everything that they've worked for,
10 they've just been told is gone. Joe gets up to try
11 to comfort her. And when they come back, Mosler and
12 Hanley are gone.

13 After that, Hanley returns later back to
14 the restaurant himself, trying to kind of soften
15 things over and he says, don't worry, we'll work
16 something out, I know you're disappointed, but we
17 will get you your money back from Jordan. We will
18 give you a lease conditioned on you only use that
19 lease to assign it to Jordan and we'll get him to
20 buy that lease and your equipment and you'll be able
21 to recoup. My clients are like, well, we don't know
22 anything about how to sell a lease. We don't know
23 about that. And he says, oh, don't worry, I buy and
24 sell restaurants and I'm a realtor. You take one
25 and a half times your -- your gross profits. They

1 don't know how to do it. They don't know what
2 happens. Jordan says they don't really know how to
3 do it. And sooner or later, the evidence will be
4 from Mr. Jordan, he originally says, well, I'll give
5 you \$50,000 for the business and then later says,
6 well, I'll only give you \$30,000 for the business.

7 But the problem is is that in addition to
8 doing all that, Mosler and Hanley go on the radio
9 and start talking about the reason that they're
10 kicking them out is because they're not paying the
11 rent, not true, that they haven't been paying the
12 rent, the place is filthy and that there is -- that
13 the -- they don't know how to run a business and
14 this is -- this is why we're kicking them out.

15 So of course my clients' reputation is now
16 damaged. It's like they're deadbeats. They're not
17 doing what they're supposed to be doing. And
18 they're devastated because they spent all this time
19 keeping the place clean, making it really a great
20 restaurant, they've struggled. They paid May --
21 March rent, they paid April rent, they paid May
22 rent.

23 So on April 12th, they get a letter. They
24 get served with a letter that says, pretty much,
25 this is to verify -- from a lawyer, this is to

1 verify that you agreed that you would get out of the
2 restaurant by the end of April, April 30th, and if
3 all your stuff isn't out by then, we're going to
4 consider it abandoned and throw it away.

5 They thought, wow, this is really terrible
6 because we didn't agree to any of that. So they
7 hire a lawyer. They come and they hire me and I
8 write back and on their behalf and say, that's not
9 what was agreed to. And oh, by the way, the law
10 here in the Virgin Islands says that if you're going
11 to evict somebody, you have to give them 30 days'
12 notice and you accepted March rent and you accepted
13 April rent and you can't kick them out.

14 And Hanley finds out about that letter and
15 gets angry and calls my clients and says, I don't
16 care what your lawyer says, you're going to be out
17 of here by April 30th. My clients -- on behalf of
18 my clients, I have to write to the lawyer to say,
19 have Mr. Hanley not speak to them again. Stop
20 threatening them.

21 So finally, my clients accept the fact
22 that they're never going to get a lease and they're
23 going to get -- they're pretty much told, you've got
24 two choices: sell your -- sell the little bit that
25 you got and get the little \$50,000 at the time or

1 we're going to evict you anyway and you're going to
2 get out for nothing.

3 So they resign themselves and they started
4 dealing with Jordan. And Jordan first does say he's
5 going to give them \$50,000. And then after that, in
6 June, Jordan goes to the restaurant one night -- one
7 day, and it's closed, but it's a day they are
8 closed, and the restaurant has the flaps that come
9 down and cover up all the windows and doors. He,
10 Jordan, decides that they've abandoned the
11 restaurant and taken all the equipment.

12 And so Hanley and Mosler's lawyer writes a
13 letter accusing them of abandoning the property and
14 taking all the equipment and says, now what we're
15 offering you is \$3,500. So they have to, through
16 me, write back and say, no, that's not true, they
17 were closed, the equipment's still there. And
18 you'll hear Mr. Jordan testify that as a result, he
19 decides that he's going to lower the amount to
20 \$30,000. So now all they're going to get is
21 \$30,000.

22 You will hear that Mr. Jordan, as part of
23 the purchase, required my client to put \$3,000 in
24 escrow to make sure that Mr. Mosler and Mr. Hanley
25 were paid everything they owed and if there were any

1 vendors, that the vendors were paid. And you will
2 hear that my clients paid every single bill, paid
3 them all of the rent. It was determined that was
4 true. And my clients were finally given, in
5 October, that \$3,000.

6 Despite that, and despite Mr. Hanley in a
7 deposition admitting that he had no facts to support
8 the fact that my clients owed rent, they have filed
9 a counterclaim in this case claiming that my client
10 owes \$1,500. My client doesn't owe. They got the
11 check for June. They cashed the check for June.

12 So what happens is the guy that wants to
13 do the white, middle-class restaurant gets the lease
14 that they were promised. He gets a seven-year lease
15 with a three-year renewal. He gets the right to
16 assign. There's no waiver of a jury clause in it.
17 He gets the lease. He gets all the promises.

18 My clients lose money. They're
19 devastated. This was their dream. They've lost
20 their dream. They go to family for a while to try
21 to lick their wounds. They're being looked at by
22 people as deadbeats. They're so embarrassed and so
23 hurt that they don't go back to the north shore.
24 They lose their friends on the north shore. They're
25 constantly running into people who want to talk

1 about, well, how did you get kicked out without the
2 rent? It's awful for them. And to this day, these
3 people, who back then were young adults, will never
4 ever forget what happened to them.

5 And thank you for your time. I believe
6 that you'll see that the evidence supports my
7 statements. Thank you.

8 THE COURT: Thank you, Attorney Rohn.
9 Attorney Holt?

10 OPENING STATEMENT BY DEFENDANTS AT 11:37 AM

11 MR. HOLT: Good morning. As you've heard,
12 my name is Joel Holt. I'm a lawyer here in
13 Christiansted. I came to St. Croix in 1977 and
14 never left. And fortunately today I have a great
15 staff and one of them, Jay Sheen, is with me today.

16 Even though I've been doing law a long
17 time and I've done a lot of cases, as has Attorney
18 Rohn, I'm actually a little bit nervous. My wife
19 asked me how come I had butterflies on my tie today
20 and I said, because I have butterflies in my
21 stomach, because we've never done a trial with
22 COVID. Never done a trial with COVID. The good
23 news is the judge let us take off our mask at least
24 when we're speaking to you because we're distanced
25 away so I can at least speak a little louder and

1 hopefully a little more clearly. And the judge has
2 also agreed that the witnesses when they're
3 testifying can do the same because it's hard to
4 speak through the mask.

5 Okay. And the mask makes a difference. I
6 don't get to see a lot of your mannerisms and your
7 facial expressions. Yesterday, juror number two
8 stood up and said that he knew or had a relative
9 that worked for me who died. I didn't recognize him
10 until he took his mask off. Then I recognized that
11 he knew Francis who worked with me who died this
12 last year. But the mask kept me from knowing who he
13 is. So the mask coming off helps because while we
14 don't really need to see your expressions, you
15 should see the expressions of the witnesses. It
16 helps you understand what they're feeling.

17 Now, the opening argument is just that --
18 opening statement is just that, just a statement of
19 what do we think the evidence will show. Okay. So
20 what we say is not evidence but we're trying to give
21 you a roadmap of where we're going to go. And this
22 did happen 17 years ago and I was under 55 years of
23 age 17 years ago, and I never thought I'd be over 70
24 years of age trying this case. I'll tell you that
25 right now. But I am.

1 And what happens in 17 years? Memories
2 fade, particularly the people who really weren't
3 directly involved because it wasn't as important to
4 them as it was to the people involved. And so
5 you're going to have to look back when a witness is
6 testifying to what they say they recall and decide
7 how much do they really recall in detail, like
8 dates. Do they really recall where they were on
9 February 15th, 2005? Do they really recall all the
10 dates?

11 But there's some good news. The good news
12 is there were documents exchanged during this time
13 period between everybody. And the documents, they
14 don't change over time. The paper doesn't change.
15 What's on the documents remains the same. And what
16 those documents that come into evidence are going to
17 show is in July of 2003 a woman named Maria Bentley
18 owned this restaurant and she listed it for sale for
19 \$95,000. And what the evidence is going to show is
20 within 12 days, Mr. Gerace had flown down to the
21 island and agreed to buy it for \$80,000.

22 And on August 7th, he shows up on
23 St. Croix with Victoria Vooy, his fiancée, who he
24 had met in culinary school. They were working in
25 Arizona together. And it's going to show they

1 showed up and they paid \$5,000 back when they put a
2 deposit down and they showed up and paid another
3 \$45,000 to buy this restaurant. The first check
4 they wrote bounced but they made it good. So they
5 paid \$50,000 to Maria Bentley.

6 But I told you they agreed to buy it for
7 80. Where's the other 30? They agreed to pay
8 Mrs. Bentley over time for that next \$30,000. So
9 they paid 50,000 cash, owed 30,000.

10 And you're also going to find out that
11 when they bought this property and when they came to
12 St. Croix, it was owned by another company, another
13 guy. And after they'd come and they were beginning
14 to operate the business, you're going to find out
15 that Mr. Mosler and Mr. Hanley decided they wanted
16 to buy the whole Cane Bay property, not just the
17 restaurant. There's a hundred acres out there.
18 They wanted to buy the whole hundred acres including
19 the building, and you're right, for a million
20 dollars, about \$10,000 an acre for Cane Bay
21 beachfront property and they did want to buy it.

22 And so several things happened. First,
23 Mr. Mosler and Mr. Hanley went to their lawyer and
24 they formed a company called Chrismos, Chris and
25 Mosler, Chrismos, LLC, a limited liability

1 corporation. You're going to hear about that. And
2 after they formed this limited liability corporation
3 to buy it, they then closed this transaction on
4 September 12th, 2003, about a little bit over a
5 month, after they'd already bought the restaurant.
6 So they inherited Vicki and Joe, so to speak. They
7 bought the restaurant with them in place.

8 And by the way, you'll find that before
9 they bought it, things were so informal that Maria
10 Bentley, who paid \$2,300 a month in rent, and when
11 they came in they paid \$1,500, and the reason why
12 was because when Maria Bentley had it there was a
13 little cottage. And so it was just decided they'd
14 pay 15. Who decided they'd pay 15? They decided.
15 The landlord didn't decide it. They just started
16 paying it. And when Chrismos bought it, they said,
17 fine, just pay us \$1,500.

18 And you're going to start hearing a little
19 bit about changing evidence because they have never
20 testified that they were promised a seven-year lease
21 in any of the depositions they've given, in any of
22 the statements they've made. Today is the first
23 time I've heard that they claimed that happened.
24 Instead, they claim that they knew they had no
25 lease. They were concerned about it, and they asked

1 their lawyer, Mr. Groner, to please see if they
2 could get a lease. And they claim that Mr. Groner
3 talked to Mr. Logan and they said, well, we'll talk
4 about it, I'm sure we can get a lease. But you
5 didn't hear Mr. Groner saying it or Mr. Logan saying
6 it, because they know Mr. Groner and Mr. Logan
7 aren't going to come in and testify that there was
8 ever an agreement to provide a seven-year lease. No
9 such thing happened. So they had to change their
10 story.

11 And the evidence is going to show in
12 addition to Chrismos forming an LLC, these folks
13 formed a corporation called Barabus, Barabus, Inc.
14 And that's how they operated their business.
15 Barabus, Inc. opened a bank account, paid its bills,
16 had a business license for the first year, I think.
17 I'm not sure. Filed their income taxes under
18 Barabus, Inc. So they had a corporation.

19 Now, things started off okay. That
20 building was pretty rundown but they started off
21 okay. And by the way, they looked at it before it
22 was refinished so they knew what they were getting
23 into. So November rent on time. December rent on
24 time. January no payment. February no payment.
25 March a little late.

1 And you're going to find out in March,
2 these gentlemen had a person working named Matt
3 Lorig take down the lease that they'd been asking
4 for. Because they had been asking for a lease and
5 he gave them the lease. And it was a lease for two
6 and a half years. And it had some blanks in it. It
7 wasn't a final lease. It was a draft lease for
8 discussion. And it had rent at \$1,500 a month like
9 they'd been paying, and then in November it
10 increased it to \$2,000 a month. Okay. And they
11 gave them this lease.

12 Now, in depositions, we asked them
13 questions. So we know some of these answers. The
14 evidence will show that they only had three problems
15 with that lease: One, they thought the rent was too
16 high; two, they'd like to get more time; and, three,
17 it wasn't in the name of Barabus, Inc. It was in
18 the name of Joe Gerace. They wanted the name of
19 their corporation. And it also showed that what
20 they did with that lease, they took it and gave it
21 to their lawyer, Mr. Groner. And somehow they
22 thought Mr. Groner was negotiating a new lease for
23 them. I don't think he's going to testify to that.
24 Mr. Groner never contacted Mr. Logan. No one ever
25 responded to Chrismos about whether they wanted that

1 lease or not. So they gave them a two-year lease.
2 They didn't respond to it.

3 And you're going to hear a little bit
4 about leases as we go along, and I appreciate your
5 patience to some of these legal things but the
6 evidence is going to show that they then continued
7 on and they were okay with April rent, a little late
8 in June, a little later in July. And you're going
9 to see all the rent checks. And the good news is
10 this all comes into evidence through their
11 documents. Okay. In discovery we exchange
12 documents and a lot of documents have a little JG at
13 the bottom. All these rents checks they have. And
14 we also have copies. So we have a copy of what they
15 gave us. They have a copy of what cleared the bank.

16 And you're going to find that all of a
17 sudden something happened in the summer. I don't
18 know if it was August or September. They had a
19 fire. Don't blame these guys for the fire. They
20 had a fire in their business in the kitchen. And I
21 don't know how much damage it did because, you know,
22 we didn't go down and look at it. But they had to
23 start fixing the place after the fire. And
24 eventually, they got it fixed up. Well, you're
25 going to find out they didn't pay rent from the time

1 of that fire all the way -- they didn't pay rent
2 ever again, October, November, December. Finally in
3 January, they made up two months. And then you'll
4 find in February they paid three months rent, three
5 months back rent. And of course that check bounced.
6 But they were patient. They put it through and it
7 cleared. But you're going to find that they weren't
8 the good tenants that they say they were. That they
9 were difficult tenants. They paid their rent late.
10 They had plumbing issues. They had a fire in the
11 restaurant.

12 And you're also going to find they talk
13 about all these improvements they made to the
14 property. You're not going to see any photographs
15 of any of the improvements they made. Apparently
16 they're going to give you some bills to show it. I
17 don't know if that's going to happen or not. We've
18 seen bills they've given us. But you're not going
19 to see any great improvements to this property.
20 They didn't do anything to improve this property.
21 They just ran this property to make sales and get
22 money. That's all they did. And the property
23 remained disheveled just like the day they bought
24 it, other than after the fire, they had to put a new
25 hood in the kitchen. And they had to upgrade the

1 kitchen because of the fire.

2 So I don't want to bore you with all of
3 those details but you're going to hear it, and
4 unfortunately it's going to come in and it's going
5 to be a little boring because we're going to talk
6 about tax returns and receipts and things like that.
7 But you're going to find that they really did
8 nothing to really improve it.

9 And then the evidence is going to show
10 that a man named Jim Jordan decided -- he was a
11 customer of the bar, a friend of -- he was a
12 customer of the bar. And you're going to hear him
13 testify that he heard while he was at the bar it was
14 for sale. And he approached -- you've heard Joe
15 Gerace and Victoria Vooy's, but you're going to hear
16 a lot of Joe and Vic, so, you know, a lot of the
17 names will get a little more of nicknames. But he
18 approached Joe and Vic and talked to them about a
19 sale. And two things came up: One, there wasn't a
20 lease. He's not going to buy it without a lease.
21 He's not going to make the mistake they made about
22 the lease. He needed a lease. So he went to
23 Mr. Mosler to talk to him about getting a lease.
24 Chrisomos is the landlord. And the second thing is
25 they've got to come up with a purchase price. If

1 you're going to sell it, what's the price? And
2 you're going to hear they talked to Mr. Hanley,
3 because Mr. Hanley is a realtor, and they asked him,
4 how do you value a business? He told them you value
5 a business for sale, really, at two and a half times
6 your net. So if you're netting \$10,000 a year, you
7 can value your business around \$25,000. That's just
8 a rule of thumb. That's not hard and fast. But he
9 told them that. But then that's got to be your true
10 number. You've got to be a number you can show a
11 buyer. If you tell the buyer, I'm making a hundred
12 thousand dollars a year, you've got to show the
13 buyer. You have books to support that. They don't
14 have any books to show that. You're going to find
15 out from their tax returns, they lost money the
16 first year, they lost money the second year, and the
17 third year they made about \$7,000. They didn't
18 really have any business to sell. They couldn't
19 value that business. Two and a half times 7,000
20 would give them a sale around 20,000.

21 Now, when they bought this business from
22 Maria Bentley, you heard me talk about they signed a
23 note for \$30,000. She also sold them the trade
24 name, Cane Bay Beach Bar. But it turns out that she
25 didn't own the trade name. And when they went to

1 register to get the trade name, they weren't allowed
2 to transfer. No matter. They continued to use the
3 name, just like she had used the name and she didn't
4 have it registered.

5 And the reason I mention that it is
6 important because you're going to find from the
7 testimony that Mr. Gerace testified that Jim Jordan
8 offered them \$80,000 to buy the restaurant, but when
9 he heard they didn't have a trade name, he lowered
10 it to \$50,000 because somehow or another a trade
11 name is worth \$30,000, the name that everybody keeps
12 using. Whoever owned it is gone, gone. Why would
13 they -- why would they say that? Because they owed
14 Maria Bentley \$30,000 and they're trying to come up
15 with a reason not to pay Mrs. Bentley. That's what
16 they're doing. They're going to sell her business
17 and they're trying to come up with a reason not to
18 pay her. And of course Mrs. Bentley, by the way,
19 you'll hear had a husband named Mr. Bentley, David
20 Bentley, and he was around. He was still a customer
21 of the bar. And you're going to find that he died
22 in an airplane crash. You probably all see the
23 cross over by the cottage. So he wasn't around
24 anymore and she had left the island. And they're
25 now trying to figure out how not to pay her. Okay.

1 All that's going to come into evidence.

2 So they come up with this theory, just
3 like they came up this morning, the evidence is
4 going to show they claimed that he offered to buy it
5 for 60. And then he would only agree to pay 50.
6 And you're going to hear -- from then on the
7 testimony is going to get a little bit convoluted.
8 So I want to go back and get to March of 2005
9 because that's when things begin to happen. That's
10 when Jim Jordan tells Mr. Mosler he wants to take
11 over the business, discussions with Mr. Mosler and
12 Mr. Mosler gets upset. He confronts them about
13 things because he now feels like they haven't been
14 honest with him. You'll hear Mr. Mosler say, I
15 didn't mind them being late on the rent if they
16 really couldn't afford to pay it, but if they --

17 MS. ROHN: Objection, Your Honor.

18 THE COURT: Sustained.

19 MS. ROHN: Thank you.

20 MR. HOLT: Excuse me?

21 THE COURT: Sustained.

22 MR. HOLT: Well, you're going to find that
23 Mr. Mosler got vexed with it all because he felt
24 they had been dishonest with him and he confronted
25 them about it.

1 MS. ROHN: Objection, Your Honor.

2 THE COURT: I don't know. Attorney Holt,
3 you're on thin ice.

4 MR. HOLT: Excuse me?

5 THE COURT: I said, you're on thin ice.

6 MR. HOLT: Okay.

7 And so they have a discussion, all right,
8 and he's going to tell you what they said in that
9 discussion. And this is on March 31st. We happen
10 to be able to tie that date down, one of the few
11 days we've been able to tie down. And after that
12 discussion, everything went haywire.

13 Now, all of a sudden, sometime after that,
14 the next week, people started calling into the Roger
15 Morgan show. I don't know if you all listened to
16 Roger --

17 MS. ROHN: Objection, Your Honor.

18 Hearsay.

19 THE COURT: Overruled.

20 MR. HOLT: And there became a whole brewha
21 on the Roger Morgan show. And you're going to find
22 the plaintiffs themselves called into the Roger
23 Morgan show and complained that they thought
24 Mr. Mosler and Mr. Hanley were being harsh on them
25 and you're going to find that they called them names

1 and they said bad things about them. And you're
2 going to find Mr. Hanley went on the radio to defend
3 themselves. And you're going to hear testimony
4 about TV shows. You're not going to hear any tape
5 of any of this because nobody saved any of this.
6 But there was a brewha about all of this going on.
7 And it led to a lot of public discord.

8 Somehow or another the parties were able
9 to come back and try to get things on focus. In
10 April, you heard her say on April 12th, Attorney
11 Logan sends a letter and he sends a letter to Joe
12 and Vic and he says, my clients understand you're
13 leaving at the end of the month, please make sure
14 you take all your things with you. But it says down
15 here at the end, if any statement of this letter is
16 inaccurate, please notify me immediately. It didn't
17 tell them, we're evicting you. It says, we
18 understand you're leaving. And if you are, make
19 sure you get everything out. It doesn't say, we're
20 evicting you. It says, please confirm.

21 Then you'll find they went and hired a
22 lawyer, Attorney Rohn. And in it, on April 20th,
23 and this comes in evidence, she says that she
24 represents them and she says, my clients never
25 agreed to vacate the premises on April 30th and will

1 not do so. So she answered that question. Not
2 leaving. It is their decision that there was a
3 promise made to them to enter into a two-year lease.
4 Two-year lease. And they relied on that promise in
5 expending monies. Not seven years. Two years. And
6 they got a two-year lease. It was given to them.
7 They just didn't sign it. And then she goes on to
8 tell them that you can resort to self-help in this
9 jurisdiction. You can't take a tenant out without
10 coming to this courthouse and filing a complaint
11 with the tenant. So you can evict a tenant for
12 nonpayment of rent. You can evict a tenant if the
13 lease has expired. Or if you're month to month,
14 evidence will show you can evict a tenant by just
15 giving them one month's notice. And the evidence
16 will show that after giving this letter, they --
17 Mr. Mosler decided not to go forward with any
18 eviction. He told his lawyer, drop it.

19 Now, Mr. Mosler's under the impression,
20 when he did that, that they were current on their
21 rent. And he'll testify that he thought they were
22 up to date on their rent. And he wasn't going to do
23 anything as long as they were current on their rent,
24 and he didn't.

25 Now we're going to get to May 1st. And

1 everything is in writing. There's an email from Jim
2 Jordan to Mr. Mosler and it says, I'm trying to get
3 this deal closed. I've offered them \$50,000. It
4 doesn't say 80,000. That was all made up. The 80
5 was made up so they could say there was no trade
6 name, so they could try to keep from paying Maria
7 Bentley. He said, I've offered them \$50,000 and I'm
8 working on trying to get this done.

9 Then the next thing you'll see, a few days
10 later, is a proposal to them. He sent them a
11 proposal for \$50,000. And in that proposal, it's
12 contingent on him getting a lease because I'll pay
13 you \$50,000 but I'm not going to do it unless
14 Chrismos gives me a lease. Okay. And then I'm not
15 sure all what happened during May but we do know one
16 thing. They closed the business. They finished in
17 May. They were not open in June.

18 And come the end of May, May 30th, Jim
19 Jordan writes an email to Mr. Mosler and says,
20 things are going a little rough but we're getting
21 there. It seems like they don't want to pay the
22 other -- Maria Bentley, but, you know, we're trying
23 to get through these things. It doesn't say
24 anything else is wrong other than it's going rough.

25 And then two days later, on June 1st,

1 there's another writing. You see, that's what's
2 good. We don't have to rely on memory because these
3 things are in writing. And he says, Joe and Vic
4 don't want to accept any of my offers. They're
5 taking all their stuff out. We're going to have to
6 start from scratch. So as far as Mr. Jordan is
7 concerned, they've left the business. He now needs
8 to figure out how to get possession. He still needs
9 a lease. And he's got to figure out how to start a
10 business all over again.

11 Well, I'm not exactly sure how it all
12 happened but Mr. Jordan ended up talking to them
13 again. And you'll find on June 17th that the same
14 agreement that he had promised them in May, same
15 document, is now signed by Mr. Jordan and Joe and
16 Vic. And this time it's exactly the same except it
17 is 30,000. It's not 50,000. Still contingent on
18 getting a lease from Mr. Mosler. Okay. If we don't
19 get that lease from Chrismos -- I keep saying
20 Mr. Mosler, but it really is Chrismos. Chrismos is
21 the owner. And you'll hear Jim Jordan say the
22 reason it was reduced is they had taken most of the
23 stuff out. I offered them 50. They didn't sign
24 that contract. They had the right to take it out.
25 It does belong to them. They can quit any time.

1 That's in their documents. Until he has a signed
2 agreement, he didn't have a signed agreement. But
3 he was still willing after all this and the things
4 that they did move out, to still offer him to pay
5 30,000 as long as they got a lease.

6 And then you're going to find out that
7 Mr. Mosler gave them a lease. Chrismos gave a
8 seven-year lease to Jim Jordan on June 29th. And if
9 he had not done that, they would never have gotten
10 it closed. He didn't have to do that. He could
11 just stay with Joe and Vic or wait for them to
12 leave. They pretty much left. They will tell you
13 they were closed in June. They were not open in
14 June. But he didn't try to take advantage of them
15 on that. He went ahead and gave that lease to Jim
16 Jordan, the seven-year lease. And then two days
17 later, they close. And they get their 30,000 plus
18 whatever furniture they took with them. And they
19 leave. And Jim Jordan takes over.

20 And you'll find that Jim Jordan is a
21 pretty astute businessman. You think he was friends
22 with Mr. Mosler. In his lease, he negotiated. He
23 negotiated. I want two months of free rent because
24 this place is a mess. It says, owner acknowledges
25 the place needs to be fixed up. Right in the lease

1 it says that. And I want two months free rent and I
2 want you to fix up the roof and I want you to fix up
3 the electrical. He extracted promises from
4 Mr. Mosler that Chrismos didn't have to give. They
5 had to go spend money. But they did it so that this
6 sale would take place.

7 And then Jim Jordan went on to operate the
8 Cane Bay Beach Bar, the same as before. He had the
9 same full moon parties. He had the same bands
10 playing. He didn't change anything.

11 And what did they do? They took the money
12 and they came into Christiansted and they bought a
13 business called Club 544. I don't know if any of
14 you all have heard of that but that's a nightclub
15 down on Company Street. And what did they pay for
16 it? \$28,000. And they opened up in September. And
17 they operated that business for one year, two years,
18 three years. And you'll see that instead of losing
19 money like they did over at Cane Bay, they slowly
20 started making money. And ultimately they sold that
21 business for \$99,000. \$99,000. And then they took
22 that and they opened a third bar called Tavern 1844.
23 And when they opened that third bar, they did pretty
24 well too. As a matter of fact, I don't know if
25 you've heard of Taste of St. Croix but the evidence

1 will show that they actually got an award for some
2 of their food at the Taste of St. Croix so they're
3 doing pretty well.

4 And then you're going to find that
5 everything falls apart for Joe and Vic. And it had
6 nothing to do with Mr. Mosler. It had to do with
7 themselves. And Vic leaves the island. And
8 eventually Joe left. And you're going to find that
9 all of these things that they're concerned about are
10 problems that they created themselves.

11 Now, I've forgot to tell you about one
12 other person. I want you to know about the
13 witnesses. There was a dive shop downstairs in this
14 building, Cane Bay Dive Shop, owned by Hal Rosbach.
15 And he's going to testify. And Hal was there when
16 all these sales took place. Hal met Mr. Mosler and
17 Mr. Hanley. Hal only had a month-to-month lease.
18 And Hal's going to tell you a couple key facts. One
19 is when all this fighting was going on in April and
20 everybody wasn't getting along and going to the
21 newspaper and going to the radio, that Joe told Hal
22 he was going to burn the place down, heck with all
23 of you, I'm going to burn this place down. And Hal
24 got so scared that he went up and doubled his fire
25 insurance because he believed that the place was

1 going to burn down. So you're going to hear it was
2 a pretty tense month in April.

3 The other thing you're going to hear Hal
4 say is he got a lease from them too finally. He
5 didn't like it. Too much rent. So what did he do?
6 He went to them and negotiated. They came down, he
7 came up, and he got a -- he got a lease. You're not
8 going to hear Joe and Vic ever negotiated. You're
9 going to hear that Hal negotiated.

10 You're also going to hear that while
11 Mr. Hanley did tell them how to value their
12 business, Mr. Hanley also told them that they would
13 work with them on getting the business sold and they
14 would give the new tenant a lease. He never told
15 them, I'm giving you a lease. Because if I'm going
16 to give you a lease and your sale falls through,
17 then I've got a long-term lease with you. I don't
18 want that. But I'm willing to give them a long-term
19 lease.

20 So when you get down to it, you need to
21 think about the evidence and look at the written
22 word. Instead of people trying to make up, oh, I
23 think this sounds good or I remember a long time,
24 what is the evidence? And in this case that is 17
25 years old, what is the written evidence? What do

1 the documents tell you? And unfortunately, like I
2 told you from the beginning, some of the documents
3 are going to be a little boring. Okay. Me, I hate
4 taxes and bills. Thank goodness my wife is into
5 books and she loves taking care of the books. She
6 takes care of the tax returns. But we're going to
7 have to talk about taxes. These are things that are
8 going to take just a little time. You've been very
9 patient with us even waiting for us all morning to
10 get started. But in the end, I think the evidence
11 will show us that all of the things they tell you
12 are not true.

13 And I'm going to leave you with one last
14 point. The rent. The records from Chris Hanley's
15 office is going to show that they still owed one
16 month rent when they left. And the records that Joe
17 and Vic have are also going to show you that there
18 was one month rent left, that they did not pay all
19 the rent, that they always owed on the rent. And
20 when you hear how they tried to make the record look
21 like they don't owe rent, you're going to realize
22 that they're going to do anything they can to try to
23 make the evidence look their way. But there are two
24 documents which are going to make it clear to you
25 why they still owe rent and why, when someone says

1 they owe rent, that's true. And when someone says
2 they borrowed money from their family, that's true.
3 That \$50,000. They'll admit to you that came from
4 their family. So all the things that they say
5 people say bad about them, they're all true.

6 Now, I appreciate you are taking the time
7 to listen to me. I'm hoping I can prove to you all
8 the things I said I could prove to you because
9 that's the standard you're going to hold me up to.
10 If I get up and tell you I'm going to prove
11 something, yeah, hold me to it. And I'm hoping I
12 can stand and look you in the eye, this week I
13 hope, although the way things are going it might be
14 next week, and say to you I think we proved all of
15 the things we're going to prove. Thank you so
16 much.

17 THE COURT: Thank you, Attorney Holt.

18 Ladies and gentleman, we'll just take a
19 very brief two-minute recess.

20 (The jury was escorted out at 12:07 p.m.)

21 (Recess was taken.)

22 (The jury was escorted in at 12:22 p.m.)

23 THE COURT: Attorney Rohn, you may call
24 your first witness.

25 MS. ROHN: Thank you, Your Honor.

1 DIRECT EXAMINATION AT 12:24 PM

2 BY MS. ROHN:

3 Q. Oh, good afternoon. Sorry.

4 A. It's all right.

5 Q. Could you state your name for the record,
6 please?

7 A. Gary Anthony.

8 THE COURT: Stop, stop, stop.

9 Attorney Rohn, call your first witness so
10 he can be sworn, please.

11 MS. ROHN: I thought he had already.

12 I call Gary Anthony.

13 THE COURT: Swear the witness, please.

14 GARY ANTHONY,

15 called as a witness, after having been first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION AT 12:25 PM

18 BY MS. ROHN:

19 Q. All right. Rewind.

20 Could you state your name for the record,
21 please?

22 A. Gary Anthony.

23 Q. And good afternoon.

24 A. Good afternoon.

25 Q. Mr. Anthony, what's your current occupation?

1 A. I am currently the production and programming
2 manager for Government House.

3 Q. Do you know Joe Gerace and Victoria Vooy's?

4 A. Yes, I do.

5 Q. And how do you know them?

6 A. I know them because I met them when they owned
7 the Cane Bay Beach Bar.

8 Q. Had you gone to the Cane Bay Beach Bar before
9 they took it over?

10 A. Yes, I had.

11 Q. And can you tell the ladies and gentleman of the
12 jury whether or not my clients made improvements to that
13 bar after they took over?

14 A. Yes, they did.

15 Q. And can you tell them what those improvements
16 were?

17 MR. HOLT: Your Honor, objection. This is
18 beyond the scope of his Rule 26 statement. You
19 already ruled on this.

20 MS. ROHN: First of all, it was raised as
21 to Mr. Reed.

22 THE COURT: Just a second, please.
23 Attorney Rohn?

24 MS. ROHN: He was listed as a patron to
25 the bar. A patron to the bar would know whether or

1 not improvements were made.

2 THE COURT: I'll allow the one question.

3 After that, move on.

4 BY MS. ROHN:

5 Q. Can you tell the jury what improvements had been
6 made?

7 A. Well, they added more bartenders. They used to
8 have -- before they owned it, the ice coolers were
9 actually big ice chests. They removed those. So one of
10 the things that they did is actually had real coolers so
11 you could have, like, beers and stuff like that and the
12 alcohol on -- you know, on the bar without having the big
13 coolers there.

14 THE COURT: Move on, Attorney Rohn.

15 MS. ROHN: Excuse me?

16 THE COURT: Next question, please.

17 MR. HOLT: Your Honor, is there any chance
18 of turning his volume up? I mean I -- I really
19 didn't hear that answer, although I don't need to
20 repeat it. I'm just --

21 THE COURT: Counsel, excuse me, Attorney
22 Holt, please make sure your mic is off. Once you're
23 having discussion, put your mic on green, please.
24 Thank you.

25 I'm sorry, Attorney Rohn, was the

1 defendant finished testifying as to the improvements
2 or not?

3 MS. ROHN: Your Honor, I don't recall
4 seeing a limine on Mr. Anthony.

5 THE COURT: I'm sorry?

6 MS. ROHN: I don't recall seeing any
7 limine.

8 THE COURT: Attorney Rohn, did you
9 understand my question?

10 MS. ROHN: No. I'm sorry. I can't hear
11 you very well.

12 THE COURT: I asked you, he paused and I
13 thought he was finished. And that's when I said
14 move on.

15 MS. ROHN: You said what before? I'm
16 sorry. I'm getting old. My hearing is getting bad.

17 THE COURT: I said, he paused seeming that
18 he finished answering the question and that's when I
19 said move on. Next question.

20 MS. ROHN: Okay. Thank you, Your Honor.

21 BY MS. ROHN:

22 Q. So did you see any other improvements to the
23 bathrooms or --

24 THE COURT: Sustained. I said one
25 question. He answered. Let's move on.

1 BY MS. ROHN:

2 Q. Was there a difference in the bar after they
3 took over?

4 THE COURT: Attorney Rohn.

5 THE WITNESS: A difference in --

6 THE COURT: Sir, once you hear me
7 speaking, please don't say anything.

8 Attorney Rohn, you're going to get the
9 same results. I allowed the one question. Asking
10 it a different way gets the same answer. Let's move
11 on.

12 MS. ROHN: Can I just look at my
13 disclosure, please, for just a moment?

14 THE COURT: Attorney Rohn, let's move on,
15 Counsel. I can't -- I can't hold up this jury
16 anymore. Let's move on.

17 MS. ROHN: Thank you.

18 THE COURT: Thank you.

19 BY MS. ROHN:

20 Q. Did you observe whether or not the amount of
21 clientele increased?

22 A. Yes. There were more people hanging out there.

23 Q. And how was the food at the restaurant?

24 A. It was very good.

25 Q. Did you attend any of the full moon parties?

1 A. Yes, I did.

2 Q. And did you attend before they took over?

3 A. Yes.

4 Q. And after they took over?

5 A. I attended before and after.

6 Q. Prior to the full moon par- -- prior to their
7 takeover, what were the full moon parties like?

8 A. Uhm, they were a lot of fun. They had bands,
9 you know, lots of rock and roll.

10 Q. And after my clients took over, was there a
11 change in the type of music?

12 A. They added more reggae.

13 Q. And did you notice whether or not the types of
14 crowds that were drawn changed?

15 A. It was still a lot of people. A lot more locals
16 would be hanging out.

17 Q. And how often, how many days, how frequently
18 were Joe and Vic at the restaurant?

19 A. They were there every day.

20 Q. Did Joe and Vic add any other activities to the
21 bar and restaurant?

22 MR. HOLT: Your Honor, once again, this is
23 beyond what she listed him as a witness for.

24 THE COURT: I'm sorry, Attorney Holt, I
25 can't hear you.

1 MR. HOLT: Beyond what she listed him for
2 being a witness on. I'm willing to be patient but
3 she's going well beyond what she listed him as a
4 witness for.

5 THE COURT: Just a second. Please
6 approach.

7 (Sidebar conference at 12:28 p.m. as follows:)

8 THE COURT: Attorney Holt?

9 MR. HOLT: Your Honor, she listed him as a
10 witness for defendants' statements concerning
11 patrons.

12 THE COURT: Attorney Rohn?

13 MS. ROHN: Your Honor, Your Honor, in --
14 there is case law that you don't even have to say
15 what they're going to testify to. Mr. Holt didn't
16 designate any of his witnesses, what he was going to
17 testify to. That is how people are doing Rule 26.

18 THE COURT: Well, Attorney Rohn, then you
19 can object if he goes outside the case that you --

20 MS. ROHN: I have --

21 THE COURT: Attorney Rohn, are you going
22 to continue talking when I'm speaking?

23 MS. ROHN: Excuse me.

24 THE COURT: I'm saying to you, okay, you
25 know the reason I'm not gonna spend a lot of time on

1 this. You know, you stated the case, I looked at
2 it, I made a ruling on it. Now, how much -- you
3 know, I allowed you to get into that area. How much
4 longer are you going to continue going outside like
5 this?

6 MS. ROHN: I'm going to talk about when he
7 was a patron, what he saw at the bar. He's clearly
8 a patron at the bar.

9 THE COURT: Yeah, but now you're going --
10 even though I allowed it the first time, now you're
11 going a bit outside. If in fact the topic or the
12 subject was entertainment, I mean you're going
13 really too far. You have one more question on that
14 and that's it. Then you skip to the public
15 speaking. Thank you.

16 MS. ROHN: I'm sorry, I couldn't hear the
17 last one.

18 THE COURT: You have one more question on
19 it and then you skip to the public speaking. Thank
20 you.

21 MS. ROHN: Thank you.

22 BY MS. ROHN:

23 Q. So what was your -- sorry. Can you describe the
24 bar for cleanliness, the restaurant and bar?

25 A. It was very clean.

1 Q. And did there come a time that you learned
2 that -- let me ask you, what was your relationship with
3 Joe and Vic?

4 A. They were friends of ours.

5 Q. And did there come a time that you learned that
6 they had been kicked out of the restaurant?

7 A. There was, yes, I did find that out.

8 Q. And how did you learn that?

9 A. I first saw it on -- I think there was a
10 newspaper article that just said, like, you know --

11 THE COURT: Sustained.

12 BY MS. ROHN:

13 Q. Did you -- do you recall hearing any of the
14 media on the radios, on the TVs?

15 THE COURT: Sustained.

16 MR. HOLT: Objection, Your Honor.

17 THE COURT: Sustained. Sustained. Calls
18 for hearsay.

19 BY MS. ROHN:

20 Q. So when you learned that they left the
21 restaurant, what did you do?

22 A. What did I do?

23 Q. Uh-huh (affirmative response).

24 A. Well, I asked them if that was true.

25 Q. And did you notice their demeanor at the time

1 that you asked them that?

2 A. Well, I noticed that they weren't -- you know,
3 they were majorly bummed. That was not something --

4 THE COURT: Mr. Anthony, you answered the
5 question, sir.

6 Next question, please.

7 BY MS. ROHN:

8 Q. Did you continue in the restaurant after they
9 left?

10 A. Yes, I did.

11 Q. And how would you describe the restaurant after
12 they left?

13 A. It was not nearly as good.

14 Q. Why do you say that?

15 A. Less bartenders. The food wasn't as good.

16 There was a time when, at one point, there was just one
17 person working the entire restaurant.

18 Q. And did you notice whether or not the clientele
19 changed?

20 A. A lot less people. Yeah, a lot less people.

21 Q. And how about the localness of the crowd?

22 MR. HOLT: Objection; leading.

23 THE COURT: Rephrase your question,

24 Attorney Rohn.

25 BY MS. ROHN:

1 Q. What did you notice as to the amount of locals
2 that were --

3 A. Less locals.

4 MS. ROHN: Thank you very much.

5 THE COURT: Attorney Holt,
6 cross-examination?

7 CROSS-EXAMINATION AT 12:35 PM

8 BY MR. HOLT:

9 Q. Good afternoon. How are you doing?

10 A. I'm doing fine.

11 Q. Do you live in the Cane Bay area?

12 A. Yes, I do.

13 Q. And so even after Joe and Vic and the next,
14 you've continued to go to that bar, correct?

15 A. Yes, we did.

16 Q. Okay. As a matter of fact, to this day, they
17 continue to play reggae music in that area, don't they?

18 A. I be- -- I really couldn't say. I don't hang
19 out there as much. Again, as you get older, you don't
20 hang out as much.

21 Q. Do you remember posts on your Facebook in 2020
22 that there was a reggae band down on the beach as part of
23 a promotion?

24 A. There was a band when they were having the Cane
25 Bay Music Festival.

1 Q. Okay. And that was put on by the -- Chrismos
2 and the people that own the property?

3 A. I believe so.

4 Q. So they still had reggae out there?

5 A. Yeah. I mean not as often as they did. They
6 don't have music as often as they did.

7 Q. And when Jim Jordan owned the bar, did you go to
8 the full moon parties?

9 A. Which -- which owner? Where was --

10 Q. The one after Joe and Vic.

11 A. Right after? Yes, I did attend a few.

12 Q. Okay. And did you hear the Midnight band play,
13 Midnight Express play?

14 A. I don't recall, but it doesn't necessarily mean
15 it didn't happen.

16 Q. Okay. They would be reggae?

17 A. Midnight Express?

18 Q. Yes.

19 A. I would consider them more -- I -- Midnight
20 Express, which one is Midnight Express? I -- you know, I
21 mean I get them -- get them confused sometimes with
22 Express band, which is more of a, like, calypso type
23 of -- you know, not so much just reggae.

24 Q. Would you consider it to be local music?

25 A. I would consider it to be local music, yes.

1 Q. And I may have the names mistaken myself.

2 A. Okay.

3 MR. HOLT: Thank you.

4 THE COURT: Do you yield the witness,
5 Attorney Holt?

6 MR. HOLT: Yes. I'm sorry. Yield the
7 witness.

8 REDIRECT EXAMINATION AT 12:37 PM

9 BY MS. ROHN:

10 Q. Mr. Anthony, why did you stop going as
11 frequently?

12 A. The food wasn't as good. We weren't having as
13 much fun. Less and less of people that we used to hang
14 out who were also locals were going there.

15 MS. ROHN: Thank you.

16 THE COURT: Attorney Holt?

17 MR. HOLT: Nothing further, Your Honor.

18 THE COURT: Okay. Is Mr. Anthony free to
19 go? Would the parties be calling him back?

20 MR. HOLT: I will not be calling him back.

21 MS. ROHN: I will not.

22 THE COURT: Thank you, Mr. Anthony.
23 You're free to go.

24 (The witness was excused at 12:38 p.m.)

25 THE COURT: Attorney Rohn, call your next

1 witness, please.

2 MS. ROHN: Victoria Vooy's.

3 VICTORIA VOOYS,

4 called as a witness, after having been first

5 duly sworn, testified as follows:

6 DIRECT EXAMINATION AT 12:40 PM

7 BY MS. ROHN:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. You need to keep your voice up.

11 A. (Adjusts chair.) Good afternoon.

12 Q. Is that more comfortable for you?

13 A. Yes.

14 Q. Okay. Can you state your name for the record,
15 please?

16 A. Victoria Vooy's.

17 Q. Okay. You're still pretty low.

18 A. Really?

19 MS. ROHN: Your Honor, can you poll to see
20 if the jury can hear her?

21 THE WITNESS: Victoria --

22 THE COURT: Ladies and gentleman of the
23 jury, can you hear the witness testify?

24 THE MARSHAL: One more time.

25 THE WITNESS: Victoria Vooy's.

1 THE COURT: Okay. Please try and keep
2 your voice up as high as possible. Thank you.

3 MS. ROHN: There's no way to turn her mic
4 up; is that right? She's really soft-spoken.

5 THE COURT: I've put in a call to IT for
6 them to come up and see what can be done.

7 (Microphone is adjusted.)

8 THE COURT: In the meantime, if she can
9 try that again, please.

10 THE WITNESS: Victoria Vooyo.

11 BY MS. ROHN:

12 Q. And, Miss Vooyo, where were you born?

13 A. I was born in El Paso, Texas, Fort Bliss.

14 Q. And what did your dad do?

15 A. My dad was in the military. We moved around
16 every 18 months until we finally settled in
17 Massachusetts.

18 Q. And where did you go to school?

19 A. I graduated high school in Massachusetts and
20 then I went to college down at Savannah, Georgia. I went
21 to art college.

22 Q. And did you go to any other colleges or schools?

23 A. I did. After I graduated art school, I was in
24 the advertising field for a while and then -- about six
25 years, and then I decided that wasn't for me and I needed

1 a change of career. And so I went to culinary school out
2 in Scottsdale, Arizona.

3 Q. And why did you decide to go to culinary school?

4 THE COURT: Sustained. Counsel, I
5 understand you're doing preliminary but let's move
6 on, please, to more relevant matters.

7 BY MS. ROHN:

8 Q. How long did you go to culinary school?

9 A. It was a six-month program with a three-month
10 externship.

11 Q. And how did you meet Joe Gerace?

12 A. I met him at school.

13 Q. And how did that develop?

14 A. I was the only female in class. It was me and
15 11 men that attended culinary school and Joe was the most
16 talented chef and we developed a relationship.

17 Q. And when did you decide to open a restaurant
18 together?

19 A. Soon after we graduated, we thought we could go
20 ahead and start our own place. So we started looking for
21 restaurants to buy.

22 Q. And did you locate or did the two of you locate
23 a restaurant that you were interested in?

24 A. Yes. In our hunt for restaurants, we came
25 across Cane Bay Beach Bar on St. Croix, on the internet.

1 We found it on the internet for sale.

2 Q. And who went down to see the restaurant?

3 A. Joe went down first at the end of June to check
4 it out and see if --

5 Q. Would that be -- what year would that be?

6 A. I'm sorry. 2003.

7 Q. And what made you guys decide that this was the
8 restaurant that you wanted?

9 A. I'd never been to the Caribbean. I -- who
10 wouldn't want to live in the VI? It looked gorgeous.
11 The Caribbean Ocean was going to be our office window,
12 basically. It was a beautiful place, so it seemed like
13 the perfect place to start a place, a restaurant.

14 Q. And who did the negotiations as to the offers to
15 purchase?

16 A. Joe did.

17 Q. When is the first time you actually went to the
18 restaurant and saw it?

19 A. The first time I saw it was after we had taked
20 our belongings and moved. From Arizona, drove everything
21 down to Florida, got on a plane, landed. We were picked
22 up. That was the first time I saw it.

23 Q. And where did the money come from to pay for the
24 down payment and the first payment?

25 A. I had sold my condo in Phoenix and some stock.

1 MS. ROHN: I need the Elmo on.

2 THE COURT: Marshal, no.

3 Attorney Rohn.

4 MS. ROHN: I just didn't want to break
5 anything.

6 THE COURT: Yeah, I understand. But you
7 haven't even done the appropriate foundation.
8 You're now getting --

9 MS. ROHN: I was just going to let it warm
10 up. Doesn't it have to warm up?

11 THE COURT: No, not really.

12 MS. ROHN: Oh, sorry. Well, in the time
13 of COVID, I'm not exactly sure how to do this, but
14 I'd like to have the witness shown Exhibit 2.

15 THE COURT: Well, Exhibit 2, I believe,
16 and, Attorney Holt, you can correct me if I'm
17 wrong --

18 MS. ROHN: I can't under- -- I can't hear
19 you. You're green.

20 THE COURT: No. I said I believe
21 Attorney -- Exhibit 2 was admitted.

22 MS. ROHN: It was, Your Honor.

23 THE COURT: Okay.

24 MS. ROHN: So may I publish it?

25 THE COURT: You may.

1 IT is on its way.

2 (Off the record to adjust Elmo device.)

3 THE COURT: Hold on a second, Attorney
4 Rohn. Attorney Rohn.

5 Marshal, turn off the light, please. Hit
6 the lights.

7 BY MS. ROHN:

8 Q. Ms. Vooy's, can you identify Exhibit 2?

9 A. Yes. That's the \$45 check we put down --

10 Q. \$45?

11 A. \$45,000 check we put down the day of closing.

12 Q. And who was that check given to?

13 A. To --

14 Q. See the top where it says --

15 A. Richards & Ayer.

16 THE COURT: I'm sorry?

17 THE WITNESS: Richards & Ayer Associates.

18 MS. ROHN: Now, Your Honor, should I give
19 the hard copy of the exhibit to the clerk?

20 THE COURT: When it's admitted, yes, give
21 it to the marshal.

22 MS. ROHN: Thank you.

23 THE COURT: You may continue.

24 MS. ROHN: Can we have the lights back on,
25 please, Marshal? Thank you.

1 BY MS. ROHN:

2 Q. So can you tell the ladies and gentleman of the
3 jury, when you came down, what did you bring with you?

4 A. Well, I sold my condo. We packed up all our
5 belongings, put them in a truck and drove from Phoenix to
6 Florida. I also brought my Jeep. We had to put all our
7 belongings and Jeep on a container and ship it here while
8 we flew here.

9 Q. And when you saw the restaurant for the first
10 time, what was your impression?

11 A. The restaurant itself was cute. It had
12 potential. The view of Cane Bay and the Caribbean Ocean
13 were breathtaking.

14 Q. And when did you realize there was no lease for
15 the restaurant?

16 A. We actually found out that when we were in
17 Florida, before we flew down.

18 Q. And why did you continue to come to St. Croix?

19 A. Because we had gotten that far. We had sold a
20 condo, packed up all our stuff. Word sent to Joe, went
21 down end of June, we were daydreaming about it and what
22 to do and what we would do and how great it would be for
23 over a month. So when we found out there was no lease,
24 we thought we'd take a leap of faith and continue.

25 Q. Did there come a time that you learned that the

1 property itself was going to change hands?

2 A. We found out that the landlord was going to --
3 was going to sell the property. I think that's why there
4 was no lease.

5 Q. And how long after you got there did you learn
6 that?

7 A. That somebody had bought it? When they bought
8 it.

9 Q. That somebody was going to buy it?

10 A. Was going to buy it? Soon after we got there.

11 Q. And how long -- did there come a time that you
12 met Mr. Hanley and Mr. Mosler?

13 A. Yes. It was a few weeks after we started -- I
14 mean the day we closed, we started running the
15 restaurant. A few weeks after that, Hanley and Mosler
16 came to introduce themselves as the new landlords.

17 Q. Well, at the time they came to you, had they
18 purchased the property yet or were they about to purchase
19 the property?

20 A. I believe they had purchased the property.

21 Q. And when you saw them, what did you discuss with
22 them?

23 A. We had talked about our concern that we didn't
24 have a lease, we would like a lease. We talked about the
25 rent and how to get them the rent.

1 Q. And did you give them a special amount of time
2 you needed on the lease?

3 A. Absolutely. We were just taught in school,
4 seven years. Five and five is okay, but seven years is
5 the best lease for a restaurant.

6 Q. And you know from your education, why is that?

7 A. Because the first three years you're not even
8 making a profit yet, so if there's anything shorter than
9 seven, you need time to stay there long enough to recoup
10 your investment.

11 Q. And what was the amount of -- when you got the
12 property from the old landlord, how much were you paying
13 in rent?

14 A. 1,500.

15 Q. And had the prior tenant had the property plus a
16 cottage?

17 A. Yes.

18 Q. Okay. Did you take the cottage?

19 A. We were told there was a cottage. There was no
20 cottage for us.

21 Q. So you only got the restaurant?

22 A. Yes.

23 Q. And you didn't pay the rent for the cottage?

24 A. No.

25 Q. And when -- and did you continue paying the same

1 rent?

2 A. Yes. We discussed with them that.

3 Q. And initially what were you told about who would
4 pick up the rent?

5 A. Chris was going to come by and pick up the rent
6 when he would stop by. For now, he would come by and
7 pick it up.

8 Q. Now, when you discussed the seven-year lease,
9 what was the response of Mr. Hanley and Mr. Mosler?

10 A. They said that that seemed, like, reasonable.
11 We would work on that and we'd get one, you know. We'd
12 talk more about it.

13 Q. And what was the discussion as to the utilities?

14 A. The utilities were, unfortunately, all
15 connected. The dive shop and the restaurant were
16 connected. So we had to work out with the dive shop --
17 or the dive shop told us what we owed despite --

18 Q. Now, when you talked to Mr. Hanley and
19 Mr. Mosler, this first conversation about the seven-year
20 lease, did they put any conditions on you getting a
21 lease?

22 A. Yes. Actually, they wanted to see us get up and
23 running, wanted to make some improvements, general
24 cleanup, some repairs, paint the place, do some repairs
25 that, frankly, we thought were the landlord's

1 responsibility, but we were in a position we couldn't
2 leverage much. We were -- really wanted to get the
3 lease.

4 Q. And what kinds of things did you think was
5 generally their responsibility but you were willing to do
6 to get the lease?

7 A. Well, anything that's attached to the building
8 or done to the structure is their property, but we -- we
9 went ahead and we replaced screens and plywood and the
10 outside of the kitchen. We resurfaced the bar. We power
11 washed and did general cleanup and we painted. We had to
12 replace the sinks in the bathroom. But the things that
13 are fixtured should normally be the landlord's
14 responsibility.

15 Q. Did you do anything to improve the looks of the
16 bathroom?

17 A. Yeah. I hired a local artist to put a mural in
18 the -- one of the bathrooms, the ladies room.

19 Q. And how were you on cleanliness at that
20 restaurant?

21 A. I was pretty adamant about clean- --
22 cleanliness, especially in a bathroom. If you're in a
23 restaurant, if people see a dirty bathroom, they think
24 your kitchen is dirty. So I was adamant about cleaning.
25 My employees knew the bathrooms had to be spick and span.

1 And I would check them often just because I'm so
2 particular about them.

3 Q. Now, how did you know precisely what
4 improvements to be made?

5 A. We talked about it when we were talking about
6 getting a lease and what the rent was to be paid and
7 where.

8 Q. Now, at the time -- I forgot to ask you this.
9 At the time when you came down to this restaurant, how
10 old were you?

11 A. I was 30.

12 Q. And how old was Joe?

13 A. 25, 26.

14 Q. And so how long did these repairs, about, take
15 to get done?

16 A. Initially, we didn't close or anything. We were
17 doing these repairs while we were running, so it took
18 about a couple months to six months.

19 Q. And during that six-month period, how often
20 would you see either Mr. Hanley or Mr. Mosler?

21 A. About once a month.

22 Q. Now, when you -- in addition to sharing one
23 utility or one -- what's it called -- meter box --

24 A. Yeah.

25 Q. -- between you and the dive shop, did you share

1 anything else with the dive shop?

2 A. We shared the cistern as well, so we shared all
3 the water.

4 Q. And how -- was there -- how was it decided who
5 would pay what?

6 A. We were told by Hal that the restaurant would
7 pay two-thirds of the electricity and we split water.

8 Q. And ultimately, was that fair?

9 A. We didn't know what was fair when we first got
10 there. We didn't know how much equipment they had that
11 used electricity, how much water they were using. They
12 have a pool. We didn't know how much electricity was
13 when we first got here, you know, so we had to go on a
14 couple months and figure out if this seemed fair.

15 Q. And what did you determine?

16 A. We weren't sure, and we didn't -- it was kind of
17 a bad position to be in because it could cause a riff
18 between us and our neighbor. So we had also talked to
19 Chris and Mosler about separating the meters so we
20 wouldn't get into any arguments with our neighbors.

21 Q. So when did you bring up separating the meters
22 for the first time?

23 A. I'm sure a few months -- at least by six months.
24 after we were there, because we had enough time to see
25 electric bills and --

1 Q. You're really going to have to keep your voice
2 up now because there's rain outside.

3 A. Oh, that's what that was.

4 And the amount of water. We had to order water
5 all the time. So we just weren't sure who was
6 responsible for that.

7 Q. And when you asked them, Mr. Hanley or
8 Mr. Mosler, in the first few months, what was their
9 response as to splitting the meter?

10 A. They thought that would be something they could
11 do because it would be best for --

12 Q. I can't hear you.

13 A. It would be best for both tenants.

14 Q. What was Mr. Hanley or Mr. Mosler's response
15 when you asked them? Did they say okay? No? What did
16 they say?

17 A. That was going to be something we would work
18 on -- they would work on, not --

19 THE COURT: Excuse me. Attorney Rohn,
20 I've been advised the food is here.

21 MS. ROHN: Good, because I can hardly
22 hear.

23 THE COURT: This may be a good time to
24 take a break. IT said they would come in during the
25 break and work on turning it up.

1 Ladies and gentleman, this is a good time
2 for us to break. We'll give IT an opportunity to
3 come in and turn up the volume so we can hear
4 better. Again, at the break for lunch, please don't
5 discuss this case among yourselves. Keep an open
6 mind until you've heard all the evidence and retire
7 to deliberate. Recess until 1:45.

8 MS. ROHN: What time did you say?

9 THE COURT: 1:45.

10 (The jury was escorted out at 1:05 p.m.)

11 (Lunch recess was taken.)

12 (The jury was escorted in at 1:57 p.m.)

13 THE COURT: Good afternoon, ladies and the
14 gentleman. I hope the food was to your
15 satisfaction.

16 THE JURY: Yes. Yeah.

17 THE COURT: Okay. We'll try and do a
18 little better next time.

19 All right. I had IT come and I've been
20 advised that if they turn up the volume anymore, I
21 think there will be a slight feedback. So at any
22 point that you cannot hear, simply raise your hand
23 and I will ask the witness or the attorney or I'll
24 tell myself --

25 THE MARSHAL: It's better now, Judge.

1 It's better. I can hear you.

2 THE COURT: Good, because I'm literally
3 talking to the top of my voice. I can't go much
4 higher than this.

5 But in any event you cannot hear, simply
6 raise your hand and we'll try to figure out how
7 we're going to do that. Okay.

8 Attorney Rohn, your witness. Thank you.

9 MS. ROHN: Thank you.

10 CONTINUED DIRECT EXAMINATION AT 1:59 PM

11 BY MS. ROHN:

12 Q. Good afternoon. I think we were talking about
13 the electric meters, the separation of the electric
14 meters.

15 A. Yes.

16 Q. So why didn't you just separate the electric
17 meters yourself?

18 A. We didn't own the property. It wasn't in our
19 name and we didn't own the building.

20 Q. And can you tell the ladies and gentlemen of the
21 jury -- gentleman, how many times you had discussions
22 with the -- Mosler or Hanley about needing a separate
23 meter?

24 A. Several. And I know Hal did as well, our
25 neighbor.

1 Q. And why were you having those conversations with
2 them that often?

3 A. Because it was starting to cause tension between
4 us and our neighbor.

5 Q. Mr. Hanley claims that he gave the paperwork to
6 you to do it. Did he ever give you any paperwork to do
7 it?

8 A. No, I didn't get any paperwork or I would have
9 done it.

10 Q. If you could have?

11 A. If I could have.

12 Q. Now, initially, how was your and Joe's
13 relationship with the Rosbachs?

14 A. Really good. Really amicable. Friendly. They
15 loved our food and ate -- they and their employees all
16 ate at the restaurant. Joe got certified at their dive
17 shop. We got along great for --

18 Q. Did you end up doing any business -- businesses
19 with them or helping them out in their business?

20 A. Yeah. They even asked us -- they put lottery in
21 the dive shop and they asked us to put keno in the bar
22 and we obliged.

23 Q. And did you and the Rosbachs together make
24 complaints to Hanley and Mosler about the building?

25 A. The building, yes. Besides the meters needing

1 to be separated, the roof was in terrible condition.
2 When it would rain, it would rain in our kitchen. It
3 would rain in their dive shop. We both rose these --
4 raised these concerns often to Chris and Mosler.

5 Q. And did there come a time that the relationship
6 between you and Joe and Hal Rosbach soured?

7 A. Unfortunately, after we had the fire in the
8 kitchen, we weren't -- we had no income coming in. We
9 had to close for two months. So we struggled keeping up
10 with the rent and WAPA. But WAPA was a priority because
11 we didn't want -- if the power got shut off we would lose
12 all of our food in our freezers so we kept that up. But,
13 you know, sometimes it was late. There was a little
14 tension between us.

15 Q. To your knowledge, was the power ever cut off?

16 A. It was not or we would have lost more than we
17 had lost.

18 Q. And did you absorb -- observe whether or not Hal
19 Rosbach seemed to have other problems with you and Joe?

20 A. Uhm, he started to complain. Our full moon
21 parties were getting larger and larger. Bigger crowd.
22 More cars parking in the area. So a little bit more
23 trash. So he complained to me that -- they opened
24 earlier on Sunday than we did for our Sunday brunch, so
25 one time I saw some of his employees out there picking up

1 trash so I made sure my employees and myself would be out
2 there picking up trash so that they wouldn't have any
3 more complaints with us.

4 Q. Now, did you ever receive a proposed lease from
5 Mosler/Hanley?

6 A. We did.

7 Q. And can you recall when you got that lease?

8 A. Uhm, it must have been March 2004. It was
9 before our fire.

10 MS. ROHN: Your Honor, this has been
11 stipulated to. I'd like to publish Exhibit 7.

12 THE COURT: I'm sorry, Counsel?

13 MS. ROHN: Exhibit 7.

14 THE COURT: Thank you. Exhibit 7 has been
15 preadmitted. You may publish.

16 MS. ROHN: It was being on the screen and
17 now it's not. There we go.

18 BY MS. ROHN:

19 Q. And did you receive this March 1st, 2004? Did
20 you receive this lease on or about March 1, 2004?

21 A. We did.

22 Q. And how did you receive it?

23 A. Mosler's intern, Matt, handed it to us.

24 Q. And where were you when he handed it to you?

25 A. In the bar, in the restaurant.

1 MS. ROHN: Your Honor, it's already been
2 moved in.

3 THE COURT: I'm sorry, Counsel. Exhibit 7
4 has already been preadmitted.

5 MS. ROHN: Yes.

6 THE COURT: Okay. Counsel approach,
7 please.

8 MS. ROHN: Certainly.

9 (Sidebar conference at 2:05 p.m. as follows:)

10 THE COURT: For some reason, it just
11 dawned on me that my law clerk, Alice Kuo --

12 MS. ROHN: I can't hear you. Why can't I
13 hear you?

14 THE COURT: Is that better?

15 MS. ROHN: I forgot to turn it on. That's
16 why.

17 MR. HOLT: You might need to turn it up.

18 THE COURT: Okay. I just realized that I
19 need to disclose that my other law clerk, Alice Kuo,
20 did some work or worked for Mosler several years
21 ago. She had nothing to do with this case but then
22 I just realized that I should reveal that for you.
23 For some reason it just slipped me.

24 MS. ROHN: I was aware of that because she
25 actually worked for Mosler directly for a period of

1 time and I know her so I knew that. But I don't --
2 as long as she's not working on this case, I have no
3 problem.

4 THE COURT: She had nothing to do with
5 this case. Well, the only thing that she did on
6 this case was my other law clerk, Fitzroy, just
7 simply went and asked her about a format for the
8 jury instructions that I have reviewed. So that was
9 her only involvement. It's just when the topic was
10 going on, I realized she had left my chambers and I
11 believe had gone to work for Mosler and so I just
12 wanted the parties to be aware of that. You can
13 voice your objections or concerns for the record.

14 MS. ROHN: Plaintiff has none.

15 MR. HOLT: My only objection is she didn't
16 keep the case when she was there. No objection.

17 THE COURT: All right. Thank you.

18 (Sidebar conference concluded at 2:07 p.m.)

19 BY MS. ROHN:

20 Q. Now, was there anything wrong with the lease you
21 received in March of 2004?

22 A. The first one was a terrible lease. We'd asked
23 for seven years, because you need -- you won't make
24 profit for at least three years. This lease was two or
25 two and a half years. We couldn't assign it; so in the

1 future if we did want to turn the bar over to someone
2 else, we would have to have them get a new lease. There
3 was a late fee, penalty and attorney fees. There was --
4 we had to decline our right to a trial by jury if there
5 was a conflict. And they were not obligated to do any
6 repairs, like the repairs we've been talking about, on
7 the building.

8 Q. And did they do anything with the rent?

9 A. It was going to go from 1,500 to 2,000.

10 Q. And what did you do then?

11 A. We talked to Chris about it and said it was a
12 terrible lease. And he actually agreed and said that
13 they'd work on a better one.

14 Q. Okay. And how long after you got it on or about
15 March 1st did you go to Chris and say, this isn't what
16 we're talking about?

17 A. Shortly after. Probably within the month.

18 Q. And at some point did you get a second lease?

19 A. We did. About six months later, after we had
20 had a fire and we asked them, before we do all these
21 repairs, are we going to get a seven-year lease before we
22 put a bunch of money into this place? And so we were
23 closed August, September. And we -- I believe we
24 received it around November.

25 Q. And was that the lease you had asked for?

1 A. No. It wasn't seven years. I think the only
2 change is they changed Joe's name to our corporation
3 name. I think they took out the late fees and then they
4 went from 2,000 to 1,500 - I mean 2,000 and then it would
5 bump up to 2,500.

6 Q. Okay. And were you able to -- and when you got
7 that lease, did you express your position on that lease?

8 A. Yes.

9 Q. Well, what did you do with that lease?

10 A. We -- we ended up taking that one to the lawyer
11 we used to do our corporation.

12 Q. And who was that?

13 A. Jerry Groner.

14 Q. And did you sign that lease?

15 A. We did not.

16 Q. Did you attempt to obtain the lease back from
17 Jerry Groner?

18 A. We did --

19 Q. And were you able to get it back?

20 A. -- because we were asking him for his advice.

21 We didn't hear anything. We asked for it back.
22 He said he misplaced it and he doesn't have it anymore.

23 Q. After that November 2004 lease, did you give up
24 on trying to get a lease or did you continue to try to
25 get one?

1 A. We continued to try to get one.

2 Q. Okay. Go ahead.

3 A. We continued to try to get one but we were
4 starting to get discouraged.

5 Q. So you've mentioned that there was a fire in the
6 kitchen in August of 2004, correct?

7 A. Correct.

8 Q. And as a result of that fire, what happened to
9 your ability to operate the restaurant?

10 A. We had to close.

11 Q. And for how long were you closed?

12 A. We were closed for two months while we were
13 waiting for all the things we ordered from the States to
14 be shipped in.

15 Q. And what --

16 THE COURT: I'm sorry. Attorney Rohn, I
17 apologize for interrupting.

18 Marshal, can you get the control for --
19 it's getting a little warm.

20 MS. ROHN: It's usually freezing. That's
21 amazing.

22 THE COURT: Thank you.

23 I apologize, Attorney Rohn. Go ahead,
24 please.

25 Ladies and gentleman of the jury, if it

1 gets too cold, you can just simply know. But I
2 don't know if it's the -- ladies and gentleman of
3 the jury, if it gets too cold, you can just let me
4 know, but I guess it's a little warm because of the
5 enclosures here. But once it gets too cold, raise
6 your hand and I'll adjust it.

7 Attorney Rohn.

8 MS. ROHN: Yes, Your Honor.

9 THE COURT: Thank you.

10 BY MS. ROHN:

11 Q. So how long did you close?

12 A. Two months.

13 Q. And what caused the fire?

14 A. The hood that came with the bar when we moved in
15 was actually too small and inadequate for the size of the
16 kitchen. And on top of that, our volume kept growing and
17 it was too small for the amount of food we were doing.

18 Q. And what got destroyed in the fire?

19 A. The hood, exhaust fan and roof. And then the
20 backsplash behind the stove and part of the wall and all
21 the electrical.

22 Q. All right. And so as a result of that, what did
23 you have to do?

24 A. We had to order and ship and install another
25 hood, a larger hood, exhaust fan, new fire suppression

1 Ansul system, electrical, backsplash for the kitchen.

2 Q. Did you ever approach Mr. Hanley or Mr. Mosler
3 and ask for assistance?

4 A. We did, after the fire. We asked them to come
5 check it out and see all the damage that was done.
6 That's when we again talked about whether we could get a
7 lease before we started work or if they could help or if
8 they could give forgiveness on the rent while we were
9 closed.

10 Q. And what was their answer?

11 A. No. Besides allowing the rent to be late, we
12 had to pay it all and we had to do all the work out of
13 our pocket.

14 Q. And what did they say about giving you a lease?

15 A. Uhm, it was like starting back at square one.
16 They wanted to wait until we fixed everything and got up
17 and running and then we'd talk about it again.

18 Q. And who was it that you told you that if you
19 made the repairs on the kitchen, that he would give you a
20 seven-year lease?

21 MR. HOLT: Objection; leading.

22 THE COURT: Overruled.

23 BY MS. ROHN:

24 Q. Do you remember which one of those said it to
25 you?

1 A. Mosler.

2 Q. Did you do the repairs?

3 A. We did.

4 Q. Okay. And how much did the repairs cost?

5 A. Uhm, at least 15, between 15 and 20. Not
6 only -- I mean while we were waiting for everything to
7 ship in, we --

8 THE COURT: Excuse me, ma'am. 15 and 20
9 what?

10 THE WITNESS: Thousand.

11 THE COURT: Thank you.

12 THE WITNESS: While we were waiting -- we
13 were closed and waiting for everything to ship in,
14 we did another full cleaning, painting, just like we
15 did a year ago, in August 2003. We did it again
16 while we were closed in August 2004.

17 BY MS. ROHN:

18 Q. And did you add those costs into the amount?

19 A. Yes.

20 Q. After you expended that amount, did they ever
21 give you a lease --

22 A. Yes.

23 Q. -- after that?

24 A. No, not -- they gave us paperwork for a lease in
25 November.

1 Q. That's the one we've already discussed?

2 A. Yeah.

3 Q. Now, when you initially met with Hanley and
4 Mosler and they said, don't worry, stay in the
5 restaurant, did you have any discussion about payment of
6 the rent and when it was due and those kinds of things?

7 A. Initially, they didn't mind if it was late.
8 Initially, Chris should come pick it up. And then
9 eventually he told me where to drop it off in town and
10 said whenever we went to run errands in town to drop the
11 check off. Uhm --

12 Q. Go ahead.

13 A. But they were pretty casual about it, you know,
14 not being on the 1st of every month.

15 Q. And did you have discussions -- did they have
16 any discussions with you about the, you know, having to
17 make repairs versus pay rent?

18 A. The repairs came first. They wanted us to get
19 up and running.

20 Q. Now, initially when you started doing business
21 with Hanley and Mosler, did you have an address to send
22 the checks to?

23 A. Initially, no. Chris would come pick them up.

24 Q. And once he told you where to drop them off,
25 where did he tell you to drop the checks off at?

1 A. At his office. Farchette & Hanley office, in
2 town.

3 Q. How would you describe your relationship with
4 Chris Hanley initially when this whole thing started?

5 A. It was really good. We were really friendly,
6 amicable. He really wanted us to succeed, it felt like.
7 He was really friendly and helpful.

8 Q. When he was picking up the rent, did he ever --
9 did he come on the 1st of the month for the rent?

10 A. No.

11 Q. So how -- how would you go about it?

12 A. Uhm, when he would come pick it up, I would
13 write the date that he came as my date on my check or
14 eventually when I dropped it off at the office, I would
15 write the date I dropped it at the office so I knew when
16 it was given to them.

17 MS. ROHN: And I'd like the witness to be
18 shown Exhibit 47. May I briefly inquire if there's
19 a stipulation?

20 THE COURT: I'm sorry?

21 MS. ROHN: May I briefly inquire as to
22 whether there's a stipulation to 47?

23 THE COURT: You may.

24 (Counsel confer.)

25 MS. ROHN: It's stipulated to, Your Honor.

1 THE COURT: Very well. Plaintiff Exhibit
2 Number 47 will be admitted by stipulation.

3 (Plaintiffs Exhibit Number 47 was admitted.)

4 MS. ROHN: I'm going to put the Exhibit 47
5 up so everybody can see it. Here it is.

6 THE COURT: You may.

7 MS. ROHN: And do you need this blown up?
8 Let me see if I can figure that one out.

9 THE WITNESS: I think that was brightness,
10 darkness.

11 MS. ROHN: Whoops. Let's see if that
12 works better. There we go.

13 BY MS. ROHN:

14 Q. Can you identify what date this check was
15 written?

16 A. October 7th is when I turned it over.

17 Q. 2003?

18 A. 2003.

19 THE COURT: Counsel, please stop leading
20 the witness. Thank you.

21 BY MS. ROHN:

22 Q. And the amount of that check?

23 A. 1,500.

24 Q. And what day did that check clear?

25 A. October 20th, 2003.

1 Q. And if you look at the second check, that
2 says -- what month does that check cover?

3 A. For November and December.

4 Q. Okay. And --

5 A. Of 2003.

6 Q. -- why was it for two months?

7 A. Because I was late for rent.

8 Q. Had Hanley come by to pick up the November
9 check?

10 A. Oh, no. He wouldn't have come by or -- I don't
11 think he came by until the date of the check.

12 Q. And what date is that check?

13 A. December 19th, 2003.

14 Q. And when did it clear?

15 A. December 29th, 2003.

16 Q. And the amount of the check?

17 A. 3,000.

18 Q. And can you identify --

19 A. I think that's the first one.

20 Q. Well, that looks like a blown-up copy of the two
21 checks. Sorry.

22 In 2004, what date did you pay the January rent?

23 A. January 5th, 2004.

24 Q. And what amount did you pay?

25 A. 1,500.

1 Q. Okay. And when did it clear?

2 A. January 7th, 2004.

3 Q. Okay. And February, what date did you pay the
4 February check?

5 A. February 1st, 2004.

6 Q. And the amount?

7 A. 1,500.

8 Q. And when did it clear?

9 A. February 5th, 2004.

10 Q. And in March 2004, what date did you pay the
11 rent?

12 A. March 12th, 2004.

13 Q. And when did it clear?

14 A. 1,500 -- or I'm sorry. April 7th, 2004.

15 Q. And how much was the -- whoopsie. I'm rushing
16 myself. How much was the check?

17 A. For 1,500.

18 Q. April. What date did you write that check?

19 A. Written in March, the 22nd, 2004.

20 Q. And up at the top, can you read your
21 handwriting?

22 A. Minus half the plumber bills okayed by Chris
23 Hanley.

24 Q. And then it cleared when?

25 A. March 29th, 2004.

1 Q. And the notation at the bottom is what?

2 A. Minus half -- minus plumber bills. April rent
3 minus plumber bills.

4 Q. And the amount of the check?

5 A. 921.

6 Q. Was that what was owed minus the plumbing bills?

7 A. Correct.

8 Q. And if you look at the next check, what is that
9 for?

10 A. May and June, written in June. June 7, 2004.

11 Q. And the amount?

12 A. 3,000.

13 Q. Now, either -- at either the two times where
14 you -- the one where in November, December where Hanley
15 didn't come, and this one in May and June, did you
16 receive any conversation or any discussion about the rent
17 being late?

18 A. No. I mean Chris was happy we were paying rent.
19 So he didn't -- he was just --

20 THE COURT: There's no question before
21 you, ma'am.

22 Next question, Attorney Rohn.

23 MS. ROHN: And if we could have the lights
24 again. Thank you.

25 BY MS. ROHN:

1 Q. This is -- can you read what this is?

2 A. This is July and August.

3 Q. And what is the notation at the top?

4 A. Minus \$1,000 for roof repairs.

5 Q. And who made those roof repairs?

6 A. We did.

7 Q. And where it says "okayed by Hanley," why did
8 you put that on there?

9 A. He allowed us to take \$1,000 off the rent for
10 roof repairs.

11 Q. All right. And the amount paid was?

12 A. 2,000.

13 Q. And then the next check written by you was when?

14 A. January 23rd, 2005.

15 Q. And for what months was that check?

16 A. September and October of 2004.

17 Q. Did you have any discussions with Mr. Hanley
18 about the fact -- about not being able to pay rent until
19 then?

20 A. Well, they knew we were behind from being closed
21 for two months, not having any income, and it seemed okay
22 that we were going to be running behind on our rent.

23 Q. Well, did they ask you for the rent at any time
24 before you paid it?

25 A. Not that I recall.

1 Q. All right. And then November, can you read what
2 it says at the top?

3 A. This check is for November, December, January.
4 November, December 2004, January 2005.

5 Q. And you paid that when?

6 A. February 7, 2005.

7 Q. And did that check bounce?

8 A. Yes.

9 Q. And did you redeposit the -- reclear it?

10 A. I did. It cleared March 2nd, 2005.

11 Q. When you gave that check, was there any
12 discussion about late checks or "we're unhappy"?

13 A. No. They were happy we were paying at all.

14 Q. Okay. And then the next check is what day?

15 A. Written March 15th, 2005. For February and
16 March.

17 Q. And as of that payment, were you up to date on
18 your rent payments?

19 A. Yes.

20 Q. And thereafter, go to the top. I'm not really
21 good at this. Whoops, I should go to the bottom.

22 What date did you -- what date did you pay the
23 April rent?

24 A. April 19th, 2005.

25 Q. What date did you pay the May rent?

1 A. May 3rd, 2005.

2 Q. And what day did you pay the June rent?

3 A. June 9th, 2005.

4 Q. When did you vacate the premises?

5 A. The end of June, 2005.

6 Q. Do you owe the Mosler -- Mr. Mosler or
7 Mr. Hanley or Chrismos any rent?

8 A. No.

9 Q. Have you ever been told -- well, have you been
10 accused of owing rent?

11 A. Accused, yes.

12 Q. And who has been accusing you of owing rent?

13 A. Warren Mosler.

14 Q. How often does he do that?

15 A. He didn't before. It started about March of
16 2005.

17 Q. Shortly after you became up to date with the
18 rent, did Mr. Mosler come to you, to the restaurant?

19 A. Yes.

20 Q. And was he expected?

21 A. No.

22 Q. And what happened?

23 A. He came without Chris. He told us he did not
24 like the direction we were taking the bar and restaurant.
25 He had issues with the full moon parties and the crowds

1 and element that the parties brought. He wanted to turn
2 it in a white, middle-class restaurant and he had
3 somebody in place to take over from us and we needed to
4 make this transaction within a month.

5 Q. And what did you say to him?

6 A. Uhm, we didn't understand. We didn't
7 understand. Uhm, we said we didn't want to leave and
8 what happened to giving us a seven -- seven-year lease?

9 Q. And what did he say when you said that?

10 A. The conversation was over by then. He left.

11 Q. And then what happened next?

12 A. We called Chris and asked him what was
13 happening, what is he talking about. You know, we don't
14 want to leave. We -- we barely got back up and running
15 again. We'd barely -- we just got back on our feet and
16 things were -- you know, the beginning of June, we
17 were -- I mean the beginning of 2005 we were doing great
18 and, uhm, we asked if we could have a sit-down.

19 Q. And what did Mr. Hanley say back to you?

20 A. He said Warren had a guy in place, an
21 acquaintance of Warren's or Chris's and they wanted --
22 Warren wanted that guy to take over.

23 Q. Well, what was your response when you learned
24 that's what was -- Mosler's idea was?

25 A. It was pretty shocking. Confused. Confusing.

1 Uhm, and, uhm, we were just thrown for a loop. We -- we
2 just felt, you know, we'd gone through a bunch of up and
3 downs and we were just back on track.

4 Q. Did you say, okay, we'll let them have it?

5 A. No. No. We didn't want to sell because we just
6 were barely starting to make a profit. We just -- just
7 got back, like, on our feet and we were about to start to
8 take off from there.

9 Q. So did you tell Mr. Hanley you don't want to
10 sell?

11 A. Yeah, we told him we didn't want to sell.

12 Q. So did you have a sit-down meeting?

13 A. Yes.

14 Q. How much later did you have a sit-down meeting?

15 A. About a week later, they came and sat down with
16 us.

17 Q. And by the time you had the sit-down meeting,
18 had your March rent check cleared?

19 A. Yes.

20 Q. So you didn't owe them -- did you owe them any
21 rent?

22 A. Did not.

23 Q. And so what happened in the March 2007
24 meeting -- I mean 2005 meeting? What did Mosler tell
25 you?

1 A. Mosler told us we were not getting a lease.
2 Uhm, he did not like the way we were running the
3 restaurant. He thought it was dirty.

4 MS. ROHN: Excuse me.

5 THE COURT: Attorney Rohn, is there a
6 problem?

7 MS. ROHN: Yeah, I can hear him
8 (indicating Attorney Holt). And if I can hear him,
9 the jury can hear him.

10 THE COURT: Please speak quieter, please.
11 Continue, Attorney Rohn.

12 BY MS. ROHN:

13 Q. What was he telling you about your clientele?

14 A. He reiterated he didn't like the direction we
15 were going and the clientele we were bringing in and he
16 wanted to be able to bring his clients to have meetings,
17 more like a white, middle-class restaurant, and we needed
18 to come up with an exit strategy. Uhm, and that was
19 that.

20 Q. Did he give you a date to be out by?

21 A. I think it was by the end of the month.

22 Q. And did he make any accusations to support why
23 he claimed he was doing this?

24 A. He said we were behind on rent, we owed rent.

25 Q. Did he discuss the restaurant itself?

1 A. He said it was dirty.

2 Q. Complain about anything else?

3 A. There were too many dogs around.

4 Q. And did he have -- did he have an opinion on
5 your ability to run a restaurant?

6 A. He said we just weren't making a go of it, that
7 we didn't know what we were doing.

8 Q. When he made those accusations against you, how
9 did you react?

10 A. This is when I just felt upset and distraught
11 and I -- this is when I -- I just couldn't believe it was
12 happening and I knew I was going to cry and I didn't want
13 to cry in front of them. So this is when I walked away.

14 Q. Where did you go?

15 A. Oh, I went to the back, in through the kitchen
16 into the back room.

17 Q. And when you got there, what did you do?

18 A. Embarrassingly, I wailed enough that I know
19 everybody outside heard me.

20 Q. And how were you feeling?

21 A. It's like we lost everything. And it's not just
22 money, it's energy. You know, we were there like ten, 12
23 hours a day every day. You know, you put a lot of
24 passion into it. We loved that place and the people
25 that -- that became our patrons and it just stunk. It

1 was -- it was an overwhelming feeling.

2 Q. And when you left, what did Joe do?

3 A. He came back to find me and console me.

4 Q. Okay. And how long were you in the back?

5 A. Quite a while, trying to recompose myself, and
6 we were chatting about how much in disbelief we were, you
7 know, like we got punched in the stomach and it just --
8 it just stunk. It was --

9 Q. And --

10 A. -- terrible.

11 Q. -- what did you observe how Joe looked?

12 A. He was pretty quiet at first, in shock, which
13 was -- he's not usually quiet. So he was just in shock.
14 We -- we were both in shock. It was just --

15 Q. Did you go back to go to the meeting?

16 A. Well, when we went back out, they were gone.
17 They probably heard me wailing.

18 THE COURT: Miss Vooys, please answer
19 questions that are asked only.

20 BY MS. ROHN:

21 Q. So, Miss Vooys, did you know how to run a
22 restaurant?

23 A. We finally figured it out. Yes.

24 Q. And from your knowledge of the cycle of starting
25 a new restaurant, can you tell me whether you were or

1 were not within that acceptable cycle?

2 A. As far as not making a profit yet?

3 Q. Yeah.

4 A. Yeah. We -- we were just barely on track to
5 make a profit.

6 Q. Were your bathrooms dirty?

7 A. Absolutely not, not with me there.

8 Q. So after that, what happened next?

9 A. Uhm, Chris actually came back, I don't remember
10 how many days later, to talk about facilitating that
11 transfer from us to their guy they wanted to come in and
12 take over, to see if --

13 Q. To see if what?

14 A. To try to get us something that we could walk
15 with.

16 Q. And did you tell him you didn't -- what did you
17 tell him about whether or not you wanted to walk or not?

18 A. Well, we -- he knew we didn't want to sell. But
19 it was clear that Mosler didn't want us there anymore and
20 he wasn't going to give us a lease and we didn't really
21 have a leg to stand on at that point. And...

22 Q. And was there any discussion of giving you a
23 lease for a special purpose?

24 A. They were finally going to give us a lease so
25 that we could give it to this guy so that he could buy it

1 from us.

2 Q. And when he said, well, we're going to give you
3 a lease but only so you could sell it to someone else,
4 what was your reaction?

5 A. Well, that stunk. I mean, uhm, we had no
6 choice.

7 Q. And then after that, what publicly did Hanley
8 and Mosler do to you on the media?

9 A. Well, after we started negotiating with this
10 guy, Mosler started like a smear campaign on why he was
11 getting rid of us on the radio and TV.

12 Q. And how frequently did that happen?

13 A. Frequently. There was -- he was on the radio or
14 he read things on -- things were read on the radio and he
15 was on the radio and TV and newspaper.

16 Q. Did you actually see a tape of him on the TV?

17 A. I did.

18 Q. And what kinds of things was he saying about
19 you?

20 A. In --

21 MR. HOLT: Objection; hearsay.

22 MS. ROHN: That's --

23 THE COURT: Counsel, you may make your --
24 you may respond.

25 MS. ROHN: I beg your pardon?

1 THE COURT: There's an objection. I'm
2 waiting for you to make your response.

3 MS. ROHN: Your Honor, seeing somebody on
4 the tape saying something is not hearsay. That is
5 that person speaking.

6 THE COURT: That's that person's feeling.

7 MS. ROHN: That's that person's feelings
8 on a tape, but it's still that person.

9 THE COURT: I'll hear from Attorney Holt.

10 MR. HOLT: Excuse me?

11 THE COURT: Do you wish to respond to what
12 Attorney Rohn said?

13 MR. HOLT: Yeah. I mean if they have the
14 tape, they can play the tape. But to say I heard
15 something on a tape, it's hearsay.

16 THE COURT: Okay. I've heard enough.
17 Thank you.

18 The person to whom we're speaking is
19 Mosler, who is here. The witness has -- it is a
20 videotape and it is his words and therefore it's
21 permissible.

22 You may ask the question.

23 MS. ROHN: Thank you.

24 BY MS. ROHN:

25 Q. What did you hear him saying about you and Joe?

1 A. That he was getting rid of us because we didn't
2 know what we were doing, we were always late on rent, we
3 were behind on rent, we didn't know how to run a
4 restaurant. Uhm...

5 THE COURT: Next question, Attorney Rohn.

6 BY MS. ROHN:

7 Q. The accusation about the dogs in the restaurant,
8 did you have dogs in your restaurant?

9 A. No. No. The beach was full of dogs.

10 Q. And did he make any comments about you borrowing
11 money from family?

12 A. He did. He claimed we borrowed 150,000 from
13 family.

14 THE COURT: Attorney Rohn, can you -- are
15 you transitioning now from what she heard on the
16 video --

17 MS. ROHN: Yes, sir.

18 THE COURT: -- to something else?

19 MS. ROHN: Yes, sir.

20 THE COURT: Okay. I just don't want the
21 jury to misunderstand all of this.

22 MS. ROHN: I'm sorry, I should have
23 referenced that.

24 THE COURT: Thank you.

25 MS. ROHN: I'm sorry.

1 BY MS. ROHN:

2 Q. On that tape, did he make any references about
3 borrowing money from family?

4 A. Yes. He said we borrowed \$150,000 from family.

5 Q. Was that true?

6 A. No.

7 Q. Now, did he make any statements about reducing
8 the rent?

9 A. Yes. He also told everybody he reduced our
10 rent.

11 Q. Has Mr. Mosler ever reduced your rent?

12 A. No. No. It was the same since before he bought
13 the property.

14 Q. And did you have a conversation with Mr. Hanley
15 after this stuff on the radio started?

16 A. Uhm...

17 Q. I'm just asking if you recall if you had any
18 conversations.

19 A. Well, we -- he called after we got that letter
20 served to us and we talked to him.

21 Q. I'll get to that.

22 So did the Avis newspaper pick up the story?

23 A. They did. They -- because they heard all the
24 media that Mosler was slinging, they -- they came and
25 asked me if I wanted a rebuttal and they put an ad --

1 they put an article in the newspaper.

2 Q. Was it on the front page?

3 A. I don't recall.

4 Q. Okay. Do you recall the date of that article?

5 A. It was April.

6 Q. So I'm going to show you Exhibit 10.

7 MS. ROHN: I believe this is the
8 exhibit -- may I inquire if this has been
9 stipulated?

10 THE COURT: Exhibit 10 was stipulated to
11 previously, 1 through 10.

12 MS. ROHN: I'd like the witness -- I will
13 show the witness a stipulated Exhibit 10.

14 THE COURT: Very well.

15 MS. ROHN: Oh, we got a scratch on your
16 screen again. Somehow there are lines.

17 THE COURT: Call IT, please.

18 Attorney Rohn.

19 MS. ROHN: I'm just waiting for him to
20 stop talking so I can go ahead.

21 THE COURT: Let's move ahead. Time is
22 wasting.

23 BY MS. ROHN:

24 Q. Did you receive this letter of April 12th, 2005?

25 A. Yes. It was actually delivered by a marshal.

1 Q. Was it served on you?

2 A. Served, correct.

3 Q. And this letter indicates, Dear Joe and Vic --

4 THE COURT: Sustained. Counsel, I
5 sustained it. The letter has been admitted into
6 evidence.

7 (Plaintiffs Exhibit Number 10 was admitted.)

8 MR. HOLT: No, I can't see very clearly up
9 there, but it looks like --

10 THE COURT: No.

11 MR. HOLT: -- these side screens are
12 clear.

13 THE COURT: Yes, that may be true. But
14 counsel is getting ready to read it into evidence
15 and I'm saying it's been admitted into evidence.

16 MR. HOLT: It has. I don't mind if she
17 reads parts of it.

18 THE COURT: Well, I do because the jury
19 can read it to themselves.

20 MS. ROHN: Okay. I will slowly let them
21 see the body of the letter.

22 Can you guys read that little --

23 THE COURT: No, Counsel. You address me,
24 not the jury. That's --

25 MS. ROHN: I'm sorry. Can you ask them if

1 they can see it?

2 THE COURT: That's my jury. You don't
3 address them. No, Counsel. Is there a point that
4 you wish on the letter? The letter is going to go
5 in to them. They can -- while it's there, they can
6 read it if they wish to. It's going to go into the
7 jury deliberation room. Ask questions on the letter
8 and let's move ahead, please.

9 BY MS. ROHN:

10 Q. Did you or Joe enter into agreement with Warren
11 Mosler or Chris Hanley that your rights to occupy the
12 Cane Bay Beach Bar will terminate on April 30th?

13 A. Did we agree? No.

14 Q. Did you agree that you would vacate the premises
15 April 30th?

16 A. No.

17 Q. Did you offer to do that?

18 A. No.

19 Q. And what did you understand would happen to your
20 personal property if you didn't remove it by April 30th,
21 from that letter?

22 A. It would be confiscated.

23 Q. And it says at the bottom --

24 MS. ROHN: Well, now I see why you said
25 that.

1 Q. Did you respond to that letter?

2 A. To --

3 Q. To the letter of April 12th?

4 A. To Logan -- to Hunt Logan?

5 Q. Yes.

6 A. No.

7 Q. Did you hire anyone to respond to that letter?

8 A. We contacted you as an attorney.

9 MS. ROHN: I believe Exhibit 14 has been
10 stipulated to.

11 THE COURT: Attorney Holt?

12 (Counsel confer.)

13 MS. ROHN: Yes, it has.

14 THE COURT: Very well.

15 BY MS. ROHN:

16 Q. Did -- can you tell me whether or not you
17 authorized -- can you tell me whether or not this letter
18 has an inaccuracy in it?

19 A. It does.

20 Q. And what is that?

21 A. We kept asking for a seven-year lease. They
22 gave us a two-year lease. That's not a good lease. We
23 did not want a two-year lease.

24 Q. And did you agree through that letter to leave
25 on April 30th, 2005?

1 A. No, we didn't.

2 MS. ROHN: I should be sending -- handing
3 these exhibits, shouldn't I, to the marshal? I'm
4 putting them back on my desk. I just thought of
5 that. Sorry.

6 THE COURT: Attorney Rohn.

7 MS. ROHN: It's just COVID time.

8 THE COURT: Yes, I understand. Can you
9 also give Exhibit 7 also?

10 MS. ROHN: Yes. Ten --

11 THE COURT: And 7.

12 MS. ROHN: Can we do this at the end of
13 the day?

14 THE COURT: No.

15 MS. ROHN: Okay. Thank you.

16 THE COURT: Because once it's been
17 admitted, the clerk has to hold those exhibits.

18 You may proceed.

19 THE MARSHAL: Where's 7?

20 MS. ROHN: I'll give it to you in a
21 minute.

22 BY MS. ROHN:

23 Q. So as a result of --

24 MS. ROHN: I'm sorry, Marshal.

25 THE MARSHAL: Yes.

1 MS. ROHN: No, no. I was talking while
2 you were walking. I apologize.

3 THE COURT: Excuse me. The only person to
4 whom the attorneys address is me. Why were you
5 talking to my marshal?

6 MS. ROHN: I was talking while he was
7 walking.

8 THE COURT: No. No. You address me. Not
9 my marshal. Not my jury. Me. I'm very jealous
10 about my people, my jury and my marshals. Please
11 address me. Is there a problem?

12 MS. ROHN: No, I -- yes, sir. I wasn't
13 asking him to do anything. I was just apologizing
14 for being rude.

15 THE COURT: Address me --

16 MS. ROHN: Yes, sir.

17 THE COURT: -- not my marshal.

18 MS. ROHN: Would you tell the marshal I'm
19 sorry I was rude?

20 THE COURT: You were rude to my marshal?

21 MS. ROHN: I was. I was talking while he
22 was walking. I apologize.

23 THE COURT: I don't suggest you do it
24 again. All right. Thank you.

25 THE MARSHAL: Accepted.

1 BY MS. ROHN:

2 Q. Now, as a result of writing the letter that
3 said, no, we're not leaving and, no, you can't evict us,
4 what happened?

5 A. This is when Chris called the bar and was upset
6 about the letter.

7 Q. And what was his manner?

8 A. He was not friendly anymore.

9 Q. And what was his tone?

10 A. Pretty nasty and aggressive.

11 MS. ROHN: Can I have Exhibit 17? Oop, I
12 got it.

13 BY MS. ROHN:

14 Q. And as a result, did you request that I
15 contact Mr. -- Attorney Logan and make any requests about
16 Chris speaking to you like that again?

17 A. Just so that they could talk to you from now on
18 and not talk to us.

19 MS. ROHN: And I'd like to show the
20 witness Exhibit 17. It's stipulated to.

21 THE COURT: Very well. Plaintiff Exhibit
22 17 will be admitted by stipulation.

23 (Plaintiffs Exhibit Number 17 was admitted.)

24 BY MS. ROHN:

25 Q. And do you recognize this as the asset purchase

1 agreement from May of 2005?

2 A. Yes.

3 Q. And at that point, how much was Mr. Jordan
4 willing to pay you?

5 A. \$50,000.

6 THE COURT: Attorney Rohn, you're starting
7 that again. The exhibit -- are you finished with
8 the exhibit?

9 MS. ROHN: I was going to put them all in
10 a pile.

11 THE COURT: No, ma'am.

12 MS. ROHN: Okay.

13 THE COURT: As they go in, please give it
14 to the marshals. Okay.

15 MS. ROHN: And I need Exhibit 19. Thank
16 you.

17 BY MS. ROHN:

18 Q. At some point in time, did you learn that you
19 were being accused of having abandoned the property and
20 taken all the equipment out of it?

21 MR. HOLT: Objection; leading.

22 THE COURT: Sustained.

23 BY MS. ROHN:

24 Q. At some period in time, were you made aware of
25 accusations made about you after we wrote the letter to

1 Mr. Hanley not to contact you again?

2 A. Yes. Before we finished our deal with Jim
3 Jordan, we got a letter saying that we had a -- we had
4 abandoned the property.

5 Q. And did they describe, talk about anything about
6 the fixtures and equipment?

7 A. They said we took our equipment.

8 Q. Did you do that?

9 A. No. No.

10 Q. Okay. And what had actually happened to the
11 property?

12 A. We were not open.

13 Q. Were you not open for --

14 A. The restaurant was closed at the moment.

15 Q. Was it -- how long was it closed?

16 A. It was just that day.

17 Q. Okay. And can you describe to the ladies and
18 gentleman of the jury whether or not Mr. Jordan would
19 have been able to see in the building to see whether or
20 not you had taken anything?

21 A. You can't see -- when the flaps are down, you
22 can't see in the kitchen or in the building, but there's
23 still table and chairs and bar equipment and a freezer
24 cooler still on the deck. You know, nothing was taken.

25 Q. When you left the building, did you leave any

1 WAPA bills outstanding?

2 A. No. I didn't leave any bills.

3 Q. When you left the building, did you leave any
4 debts to the dive shop?

5 A. No.

6 Q. And Exhibit 20. Did you have a letter written
7 back to Mr. Jordan's lawyer clarifying what had actually
8 happened?

9 A. Yes. You wrote a letter describing that we did
10 not abandon, take anything. We were just closed.

11 MS. ROHN: And Exhibit 21. It's one
12 that's stipulated to.

13 THE COURT: Excuse me?

14 MS. ROHN: Exhibit 21 is one that's
15 stipulated to.

16 THE COURT: Very well. Plaintiffs Exhibit
17 21 will be admitted by stipulation.

18 (Plaintiffs Exhibit Number 21 was admitted.)

19 BY MS. ROHN:

20 Q. This is an asset purchase agreement dated what?

21 A. June 17th, 2005.

22 Q. So -- and between you and whom?

23 A. Jim Jordan.

24 Q. And by this time, how much was he willing to pay
25 you?

1 A. 30,000.

2 Q. Did you have any choice in the matter?

3 A. We had no choice.

4 Q. When you signed that purchase -- asset purchase
5 agreement, emotionally, what did that do to you?

6 A. By the time we signed and left, we just felt
7 like total failures.

8 MS. ROHN: And Exhibit 22, stipulated to.

9 THE COURT: Hold on. Plaintiff Exhibit 22
10 will be admitted by stipulation.

11 (Plaintiffs Exhibit Number 22 was admitted.)

12 BY MS. ROHN:

13 Q. And can you identify this check?

14 A. Jim Jordan wrote a thousand dollars at closing
15 for the --

16 Q. Was this earnest money?

17 A. Earnest money.

18 MS. ROHN: And Exhibit 25, stipulated.

19 THE COURT: Very well. Plaintiff Exhibit
20 25 will be admitted by stipulation.

21 (Plaintiffs Exhibit Number 25 was admitted.)

22 BY MS. ROHN:

23 Q. This is a closing statement; is that correct?

24 A. Correct.

25 Q. And of the 30,000, how much were you actually

1 paid at closing?

2 A. 27.

3 Q. And what happened to the other \$3,000?

4 A. It was held in escrow if we had any outstanding
5 bills.

6 Q. Did you agree with that?

7 A. Did we agree with it? Yes. We had to.

8 THE COURT: All right. Again, Miss Vooy's,
9 ma'am, once you've answered the question, please
10 wait for Attorney Rohn to ask another question.
11 Thank you.

12 THE WITNESS: Yes, sir.

13 MS. ROHN: And Exhibit 34, it's stipulated
14 to.

15 THE COURT: Plaintiff Exhibit 34 will be
16 admitted by stipulation.

17 (Plaintiffs Exhibit Number 34 was admitted.)

18 MS. ROHN: Whoops. I am so bad at this.

19 (Adjusting Elmo.)

20 BY MS. ROHN:

21 Q. On what date did you receive back the \$3,000
22 that was held in escrow to make sure you paid your bills?

23 A. October 3rd, 2005.

24 Q. Did Mr. Mosler or Mr. Hanley or Chrisomos make
25 any claim that you owed any rent from that \$3,000?

1 A. No.

2 Q. Did you owe any rent?

3 A. No.

4 Q. Were there any claims that there were any WAPA
5 bills that supposedly you owed from that money?

6 A. No.

7 Q. Did you owe any WAPA bills?

8 A. No.

9 Q. Was there any claim from Mr. Rosbach that you
10 owed him any money?

11 A. No.

12 Q. When, in June -- well, let me ask, not lead you.
13 When did you leave the restaurant?

14 A. Shortly after that, at the end of June.

15 Q. End of June?

16 A. Yeah.

17 Q. Would the statement that you were out of that
18 restaurant in May be correct --

19 A. No.

20 Q. -- or not?

21 A. No.

22 MS. ROHN: I'd like the witness to be
23 shown Exhibit 30. It's stipulated to.

24 THE COURT: I'm sorry, what's the number?

25 MS. ROHN: Three-zero.

1 THE COURT: Plaintiff Exhibit 30 will be
2 admitted by stipulation.

3 (Plaintiffs Exhibit Number 30 was admitted.)

4 BY MS. ROHN:

5 Q. Can you tell the ladies and gentleman of the
6 jury what Exhibit 30 is?

7 A. It looks like a rundown of our receipts that
8 we -- everything we spent on repairs from the time we got
9 there 'til the time we left.

10 Q. Did you prepare this document?

11 A. Yes, I added up all my receipts but...

12 THE COURT: Miss Vooy's, the question was,
13 did you prepare the document?

14 THE WITNESS: Oh.

15 THE COURT: I'm sorry? Miss Vooy's?

16 THE WITNESS: Uhm...

17 MS. ROHN: If I can show her what it came
18 from? May I?

19 THE COURT: Well, I haven't heard an
20 answer.

21 THE WITNESS: I --

22 THE COURT: Miss Vooy's, listen. Excuse
23 me. The question is, were you the one who prepared
24 this document? It's a yes or a no, ma'am.

25 MS. ROHN: Oh, sorry. (Showing document.)

1 THE WITNESS: I don't know what the Bates
2 number column is. I don't think I prepared that.

3 THE COURT: I'm sorry. Attorney Holt?

4 MR. HOLT: Your Honor, just for the
5 record, we stipulated -- we did this as a
6 stipulation to assist in the effort. So while she
7 didn't prepare it, it's a summary that she put
8 together.

9 MS. ROHN: I'll accept that.

10 THE COURT: It's fine. I was just trying
11 to get the answer to the question Attorney Rohn
12 asked.

13 BY MS. ROHN:

14 Q. Do you know, Miss Vooy's, how much you spent on
15 repairs?

16 A. The whole time we were there?

17 Q. Uh-huh (affirmative response).

18 A. Over 40,000.

19 Q. And how much did you pay for equipment that you
20 added that went to Mr. Jordan?

21 A. Over 20,000.

22 Q. And how much did you invest in the restaurant to
23 build good will?

24 A. To build good will. Such as promotions
25 and advertising?

1 Q. Advertising and --

2 A. Probably 50,000 total the whole time.

3 Q. And do you have a -- based upon your knowledge
4 of culinary school and all you've learned, did you have a
5 projection of what you would have been able to profit in
6 2005?

7 THE COURT: Just a second, please.

8 Attorney Holt?

9 MR. HOLT: This is Rule 702 testimony.

10 THE COURT: Sustained.

11 BY MS. ROHN:

12 Q. So when Mosler and Hanley started going on the
13 radio and TV and essentially declaring you deadbeats,
14 what happened to your clientele?

15 A. Uhm, that was in April. It started dying off.

16 Q. What started dying off?

17 A. The volume in the restaurant.

18 Q. During the time that you were in the -- let me
19 just show you Exhibit 48 before I get to that.

20 MS. ROHN: Your Honor, stipulated to,

21 Exhibit 48. It's a huge volume.

22 BY MS. ROHN:

23 Q. Can you tell --

24 THE COURT: I'm sorry. Is that the same
25 as the spreadsheet?

1 MS. ROHN: No, it's different. It's
2 receipts.

3 MR. HOLT: It's backup.

4 MS. ROHN: It's backup.

5 THE COURT: Okay. I'm sorry, I didn't
6 hear.

7 MS. ROHN: It's been stipulated to and
8 it's backup. It's copies of the expenses.

9 THE COURT: Oh. Very well. Plaintiff
10 Exhibit Number 48 is admitted by stipulation.

11 (Plaintiffs Exhibit Number 28 was admitted.)

12 MS. ROHN: Thank you, Your Honor. I don't
13 think I need to publish it. It's huge. The jury
14 can have it.

15 THE COURT: No, Attorney Rohn. The --

16 MS. ROHN: I put it on the screen.

17 THE COURT: I know, but I'm saying, is
18 that 48? Oh, okay.

19 MS. ROHN: I got a stack.

20 THE COURT: Good. You still owe me
21 Plaintiff Exhibit Number 7 off your desk.

22 MS. ROHN: I'm going to find it.

23 BY MS. ROHN:

24 Q. Now, let's talk about gross receipts taxes. Did
25 you file gross receipts taxes while you were in the

1 business?

2 A. I filed them.

3 Q. Were you able to pay them?

4 A. I didn't pay them until after I was gone.

5 Q. Do you currently owe any gross receipts tax for
6 that building --

7 A. No.

8 Q. -- for that business?

9 A. No.

10 Q. And over what period of time did you pay them?

11 A. Uhm, I don't know. I paid them a couple years
12 later, when there was some moratorium at the VIBR and
13 they took off the penalties and fees.

14 Q. After you left the restaurant -- well, first of
15 all, tell the ladies and gentleman of the jury how it
16 felt to leave that restaurant the last day?

17 A. Uhm, like I said before, we felt like failures.
18 We were totally depleted. Mentally exhausted. Wanted to
19 hide in a hole.

20 Q. And so what did you do?

21 A. We left for a little bit. Went home to visit
22 family.

23 Q. And then what did you do?

24 A. Then we came back.

25 Q. And how were you mentally when you came back?

1 A. Not much better. The noise did not stop.
2 Everywhere we went on island it was still the talk of
3 everything.

4 Q. How long were you out of work?

5 A. We started our next business in August,
6 September 2005 but we still had to start putting money
7 down in order to make it --

8 THE COURT: Ask your next question,
9 Counsel.

10 THE WITNESS: Okay.

11 THE COURT: The question was answered.
12 Let's move on.

13 BY MS. ROHN:

14 Q. Were you able to go back to the north shore?

15 A. We did not go back.

16 Q. And why did you not go back?

17 A. It was too emotional. Too emotional, too
18 painful. Too embarrassed.

19 Q. When was the first time you've been back since
20 then?

21 A. I -- I went two nights ago, to the beach.

22 Q. Did you go to the restaurant?

23 A. No. I still can't go in the restaurant.

24 Q. And are you still in the culinary industry?

25 A. I am not.

1 Q. And why are you not?

2 A. That was -- I -- I -- I don't know. It's --

3 THE COURT: I'm sorry?

4 THE WITNESS: I -- it was a terrible
5 experience and I ca- -- I don't know. I'm done with
6 that.

7 BY MS. ROHN:

8 Q. Did the experience have an impact on your
9 relationship with Joe?

10 A. Absolutely. It was strained. We kept blaming
11 each other for things.

12 Q. Have you ever gotten over what happened to you
13 in that restaurant?

14 MR. HOLT: Objection, Your Honor.

15 Stipulated that everything ended in 2004.

16 THE COURT: Sustained.

17 MS. ROHN: I have no further questions.

18 THE COURT: Ladies and gentleman, this
19 would be a good time to take a brief five-minute
20 recess to stretch your legs. Recess for five
21 minutes.

22 (The jury was escorted out at 3:17 p.m.)

23 (Recess was taken.)

24 (The judge entered the courtroom at 3:29 p.m.)

25 MR. HOLT: I'm going to show her the

1 promissory note for \$30,000. There's no dispute
2 that she signed it. It was signed. I just want to
3 make sure that it goes into evidence.

4 MS. ROHN: Your Honor, it's irrelevant.
5 They dropped their counterclaim against her. We
6 have dropped our claim against them. Those facts as
7 to whether or not she owed them money is irrelevant.
8 They didn't file a cross-claim against her, the
9 Bentleys. They didn't ask for contri- --

10 THE COURT: May I see the document,
11 please?

12 MS. ROHN: Huh?

13 THE COURT: Marshal. May I see the
14 document, please?

15 You may be seated.

16 Attorney Holt, as to Attorney Rohn's
17 argument that it's irrelevant?

18 MR. HOLT: It's relevant because they
19 signed the note. Then they didn't pay it. Then
20 they spent the whole time worrying about whether
21 they should pay it, which is one of the things which
22 is causing them the angst and the other emotional
23 distress that they're trying to claim. And it goes
24 to the fact that they signed an agreement for
25 80,000. They only paid 50. They never paid the

1 rest. And I talked about it in my opening without
2 an objection. And it goes to the fact that they
3 owed \$30,000. Now, if you don't want me to use the
4 promissory note --

5 THE COURT: Attorney Holt, really? That's
6 not how I do it in my court. You don't tell me what
7 I don't want to do.

8 MR. HOLT: I apologize.

9 THE COURT: I will listen to Attorney
10 Rohn's argument and then I'll decide what's going to
11 be used. Okay.

12 MR. HOLT: Your Honor --

13 THE COURT: Let's not go down that road.
14 Thanks.

15 MR. HOLT: That's the purpose of the
16 exhibit, Your Honor.

17 MS. ROHN: Your Honor, if we do this, then
18 we're going to have a mini trial on the Bentley case
19 as to why they didn't pay it because they didn't get
20 a lease, they didn't get a trade -- a trade name.
21 The conversations between the Bentleys and them, the
22 agreements that were made between the Bentleys and
23 them, this whole part of the case is not in the case
24 anymore.

25 THE COURT: However, Attorney Rohn, it

1 is -- for her to say she was under stress and so
2 forth, there's no expert witnesses or testimony as
3 to what's the cause of this stress. Clearly, if
4 monies are owed, that may be a result of the stress
5 or the jury can consider that it wasn't just the,
6 quote, unquote, issue in terms of Cane Bay but there
7 was other factors involved.

8 But, Attorney Holt, to what purpose are
9 you going to use that and how long -- how many
10 questions will be based on that?

11 MR. HOLT: One or two. And I will tie it
12 up a little bit later in the trial with Mr. Gerace.

13 THE COURT: Very well. I'll allow it.

14 MS. ROHN: But, Your Honor, wouldn't he --
15 in order to do that --

16 THE COURT: Counsel, Attorney Rohn, I've
17 already made my decision.

18 MS. ROHN: All right.

19 THE COURT: I mean whoever disagrees,
20 there's the appellate process. I'm not going to
21 waste time discussing it. I've made my ruling.
22 Let's move on.

23 Attorney Holt, be advised if I see you
24 going beyond, I am going to sustain.

25 (The jury was escorted in at 3:33 p.m.)

1 THE COURT: Attorney Holt,
2 cross-examination.

3 CROSS-EXAMINATION AT 3:34 PM

4 BY MR. HOLT:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. So why don't you go back to culinary for one
8 second. When you went to culinary school, there's
9 actually a class that taught you about what type of lease
10 you should ask for when you rent a restaurant?

11 A. Yeah. They suggest --

12 Q. And did they tell you a seven-year lease was
13 better than a ten-year lease?

14 A. No. They said a seven-year was typical.

15 Q. Okay. Which is better, a five-year lease with a
16 five-year option or a seven-year lease?

17 A. Seven-year lease.

18 Q. Seven years would be better than five and five?

19 A. Because you're not sure if you're going to get
20 the second five.

21 Q. Okay. And when you were in Phoenix before you
22 came here, were you working?

23 A. Yes.

24 Q. And you were earning money working?

25 A. At a bakery.

1 Q. And then you decided that you all would come to
2 the Virgin Islands?

3 A. Yes.

4 MR. HOLT: Your Honor, if I could publish
5 Exhibit Number 1?

6 THE COURT: Yes.

7 MS. ROHN: Objection, Your Honor.

8 THE COURT: Approach, Counsels.

9 (Sidebar conference at 3:36 p.m. as follows:)

10 THE COURT: Attorney Rohn, is that
11 Plaintiffs Exhibit Number 1?

12 MS. ROHN: I object to Exhibit Number 1.
13 It was proffered --

14 THE COURT: Okay. I'm sorry. Which one
15 are you objecting to, Plaintiff Exhibit Number 1 or
16 Defense Exhibit 1?

17 MS. ROHN: Plaintiffs Exhibit 1.

18 MR. HOLT: Defendants Exhibit Number 1.

19 MS. ROHN: That was in -- that was the
20 Bentley case. It has to do with what the Bentleys
21 advertised as the property. It has nothing to do
22 with this case and I -- and it was agreed to as a
23 Bentley exhibit and then we -- as something that
24 would be against the Bentleys and then we
25 subsequently dismissed the Bentleys. It's not a

1 relevant document what the Bentleys represented to
2 them.

3 MR. HOLT: So --

4 THE COURT: Just a second, please.

5 (Pause.) That's the real estate listing?

6 MR. HOLT: Yes, Your Honor. You wish for
7 me to respond?

8 MS. ROHN: It's a hearsay document.

9 THE COURT: Wait just a second. Let me
10 see it.

11 MR. HOLT: Your Honor, I'd like to
12 respond.

13 THE COURT: Give me a second, please.

14 (Pause.)

15 Attorney Rohn, your objection, besides
16 being hearsay, is what?

17 MS. ROHN: It's -- it's not anything that
18 any of the parties in this case created. It's a
19 hearsay listing. The person who did the listing is
20 not here. And it has to do with what was being
21 sold, but there's no one to authenticate that
22 document or to say that anything in that document is
23 correct. It's hearsay.

24 MR. HOLT: Your Honor, if I may?

25 THE COURT: Just a second, please. This

1 is --

2 Attorney Holt, what is -- this is -- I
3 can't even read this. What is this?

4 MR. HOLT: This is a real estate listing
5 showing that the property was listed on one day and
6 taken off the market about four days later and it
7 shows the total amount of the sale.

8 And, Your Honor, this is my -- the point
9 I'd like to make is this, you directed the parties
10 to get together, you directed us to go over all
11 exhibits, and Lee Rohn filed a document objecting to
12 exhibits and she did not object to Exhibits 1 or 2.
13 And that was resolved. And we had a hearing last
14 Thursday and these were not objected to. And so
15 it's a complete surprise to me to come into trial --

16 MS. ROHN: Please don't say it so loud.

17 MR. HOLT: Okay. So if you just read her
18 objection, she's waived these objections. We all
19 put in writing our objections to these documents and
20 these two were not objected to.

21 MS. ROHN: Your Honor --

22 MR. HOLT: And that's the purpose of --

23 MS. ROHN: -- would you ask him to talk
24 lower, please?

25 MR. HOLT: That's the purpose of trying to

1 get the trial so it goes smoothly and I can rely
2 upon what she's doing without having to worry about
3 authenticating documents.

4 MS. ROHN: Would you let me put on the
5 record he's speaking so loudly the jury can hear
6 him?

7 THE COURT: Attorney Holt, please keep
8 your voice down. Well, they can't hear because it's
9 a white noise so they won't be able to hear.

10 MR. HOLT: I mean, if you want me to take
11 the time to file the pleading. I mean we actually
12 filed objections to each other's exhibits before we
13 came to the hearing.

14 MS. ROHN: Your Honor, that document was
15 okay with me when Bentley was still in the case.

16 MR. HOLT: No, it --

17 MS. ROHN: Can I --

18 THE COURT: Listen.

19 MS. ROHN: It's irrelevant to the case
20 now.

21 THE COURT: I'm going to address it
22 eventually because we did have an evidentiary
23 hearing and I saw no objection to this document.
24 And as of up to I believe last week, there were no
25 objections to this document.

1 What -- Attorney Holt, tell me again what
2 the relevance of this is.

3 MR. HOLT: I'm -- just like they went over
4 some background testimony with her, I just want to
5 get some dates and the money. I don't want to spend
6 a lot of time on it.

7 THE COURT: All right. I'll allow it.

8 MR. HOLT: And then she's also said that
9 she objects now to Exhibit 2.

10 MS. ROHN: Could you lower your damn
11 voice?

12 THE COURT: Attorney Holt, it's white
13 noise but you're attempting to speak and they can
14 hear some mumbling.

15 MR. HOLT: Okay.

16 THE COURT: Lower your voice.

17 MS. ROHN: What is that?

18 MR. HOLT: She also indicated she objects
19 now to Exhibit Number 2 that she's not objected to
20 last Thursday, which is an asset purchase agreement
21 with Maria Bentley.

22 MS. ROHN: I don't have an objection to
23 that. That's okay. I said I had an objection to 1.
24 I didn't --

25 THE COURT: Well, let's move on, please.

1 I'd like to get at least two more witnesses and it
2 seems like we're not going to finish with her until
3 5 o'clock. So let's move on.

4 MS. ROHN: Okay. Thanks. Thanks.

5 (Sidebar conference concluded at 3:40 p.m.)

6 BY MR. HOLT:

7 Q. All right. I'm showing you Exhibit Number 1.
8 This is a real estate listing for the Cane Bay Beach Bar.
9 I just want to ask you a couple things about this.

10 THE COURT: Just a second, please.

11 Attorney Holt, take that off, please, and
12 approach. Counsels approach, please. Take it off
13 the screen, please. Take it off the screen, please,
14 Mr. Holt.

15 MS. ROHN: Do you want us back?

16 THE COURT: Yes.

17 (Sidebar conference at 3:41 p.m. as follows:)

18 THE COURT: I thought you were just going
19 to ask the questions about the document and not put
20 it before the jury.

21 MR. HOLT: I will do that. That will be
22 fine, Your Honor. That will be fine. I'll do that.

23 THE COURT: I'm sorry, I can't hear you.

24 MR. HOLT: I will do that.

25 THE COURT: Yeah, because you just

1 published it in front of the jury.

2 MS. ROHN: Yeah.

3 THE COURT: And that's why I called you
4 back. I thought you were just going to ask
5 questions, but it's on the Elmo. It shows in front
6 of the jury. So if you're going to do that, simply
7 give it to the marshal to give to her. Okay.

8 MR. HOLT: I'm sorry?

9 MS. ROHN: Give it to the marshal to give
10 to her.

11 THE COURT: Once you put it on the Elmo,
12 it's displayed in front of the jury. If it's a
13 document you need for her to look at, or any other
14 witnesses to look at it, before it's admitted, hand
15 it to the marshal.

16 MR. HOLT: Okay.

17 THE COURT: All right. Thank you.

18 (Sidebar conference concluded at 3:42 p.m.)

19 BY MR. HOLT:

20 Q. Miss Bentley (sic), you testified that the
21 property came on for sale and you saw it on the internet
22 and you came down and bought it, correct?

23 A. You mean Miss Vooy's? Yes.

24 MS. ROHN: You said Miss Bentley.

25 BY MR. HOLT:

1 Q. I'm sorry. Miss Vooy's. I apologize.

2 You indicated that the property, you saw it on
3 the internet and you decided to buy it, correct?

4 A. Correct. Joe went to go see it.

5 Q. And do you remember the listing date was June
6 19th and it went under contract on July 4th, two weeks
7 later; is that right?

8 A. With us under contract.

9 Q. The asking price was 95,000 and you paid 80,000;
10 is that correct?

11 A. We had agreed to 80,000.

12 Q. Okay. And after this document, I take it that
13 Joe came to St. Croix?

14 A. Yes.

15 Q. And he looked at the property and put \$5,000
16 down?

17 A. Yes.

18 Q. And then at some point you came down to
19 St. Croix as well; is that correct?

20 A. Yes.

21 Q. And you all had a real estate closing and closed
22 this transaction, correct?

23 A. Yes.

24 MR. HOLT: Your Honor, could I have the
25 witness shown Plaintiffs Exhibit 1?

1 THE COURT: P-1, yes.

2 MS. ROHN: No objection.

3 BY MR. HOLT:

4 Q. Let me know when you've had time to look at it.

5 THE COURT: Attorney Holt, how many pages
6 is Exhibit Number 1? Just one page?

7 MS. ROHN: We can't -- I can't hear you.

8 THE COURT: I'm sorry.

9 MS. ROHN: I've got old ears.

10 THE COURT: How many pages is Defense
11 Exhibit Number 1? Is it just --

12 MR. HOLT: This is Plaintiffs Exhibit 1.

13 THE COURT: Oh, Plaintiffs Exhibit 1.

14 MR. HOLT: Which has already been
15 admitted.

16 MS. ROHN: Well, it hasn't been admitted
17 but I stipulated to it.

18 THE COURT: Yeah, I understand, but I
19 thought we were referencing Defense Exhibit 1.

20 MR. HOLT: Plaintiff's Exhibit 1.

21 THE COURT: Okay. Just so I'm clear, so
22 the document that came up before me was Defense
23 Exhibit 1.

24 MS. ROHN: Yes.

25 THE COURT: So now you're switching to

1 Plaintiffs Exhibit 1?

2 MR. HOLT: I'm coming to Defendants
3 Exhibit 1.

4 THE COURT: All right. Thank you.

5 BY MR. HOLT:

6 Q. Have you read that document?

7 A. Not thoroughly, but skimmed -- I just skimmed
8 it.

9 Q. I'm sorry, I didn't hear your response.

10 A. Not thoroughly. I just skimmed it.

11 Q. Is your signature on the end of this document?

12 A. No. That's Joe's.

13 Q. So did Joe buy this restaurant or did you?

14 A. Well, just Joe's name is on it.

15 Q. Okay. And in this particular document, was
16 there an agreement to give an assignment of the trade
17 name Cane Bay Beach Bar?

18 A. Yes, I see that.

19 Q. And what date was this document signed?

20 A. August 7, 2003.

21 Q. Is that when the closing took place?

22 A. Yes.

23 Q. And how much was it agreed to pay for the
24 property?

25 MS. ROHN: Your Honor, asked and answered.

1 THE COURT: Overruled.

2 THE WITNESS: 80,000.

3 BY MR. HOLT:

4 Q. 80,000?

5 A. Uh-huh (affirmative response).

6 Q. Okay. And showing you -- well, you've already
7 seen Exhibit Number 2. That's a copy of the check --

8 A. 45, yes.

9 Q. -- for \$45,000, correct?

10 A. Correct.

11 Q. Okay. So you had already paid 5. You paid
12 another 45. You paid \$50,000 to close this transaction?

13 A. Correct.

14 Q. And did this \$50,000 come from your account or
15 from Joe's account --

16 A. The forty --

17 Q. -- or both your account?

18 A. The 45 came from my account.

19 Q. Okay. And on this 45,000, you indicated to
20 the -- well, first of all, did the first check clear or
21 did it bounce?

22 A. It bounced.

23 Q. So you had to replace that check?

24 A. Correct.

25 Q. Okay. And you testified to the jury that you

1 did not borrow the money, the 45,000, correct?

2 A. Correct. I sold my condo in Phoenix.

3 Q. And do you remember being asked this in your
4 deposition --

5 MS. ROHN: Can I have a page and line,
6 please?

7 MR. HOLT: Page 48, Lines 22 to 25.

8 MS. ROHN: 48 what?

9 MR. HOLT: 48, Lines 20 to 25; and 62,
10 Lines 9 to 11.

11 THE COURT: Thank you. You may proceed.

12 MS. ROHN: If you could just do 48 and
13 then take me to the next page.

14 THE COURT: Counsel.

15 MR. HOLT: Sure.

16 THE COURT: Counsel, again, please address
17 me.

18 Go ahead, Attorney Holt.

19 BY MR. HOLT:

20 Q. So on Page 48, you were asked, Line 20:

21 When you bought this restaurant, who did you
22 borrow the money from to buy it?

23 Answer, I had a lot. I sold a condo before I
24 went to move here. My dad lent me money --

25 MS. ROHN: Your Honor, I'm going to

1 object. This is the money to buy Club 54. This is
2 not -- this is not impeachment. This is a question
3 of where she got the money to buy Club 54.

4 MR. HOLT: I'll start up higher and you
5 can --

6 THE COURT: Attorney Holt, it does say on
7 Line 6 --

8 MR. HOLT: Okay. So I'll just go to --
9 I'll just go to Line 62 -- Page 62, Lines 9 to 11.
10 Question --

11 MS. ROHN: Excuse me. Can I get there,
12 please?

13 BY MR. HOLT:

14 Q. Question, How much money did you borrow from
15 your family in order to buy this business?

16 Answer, \$45,000, I think.

17 Do you remember that testimony?

18 A. I do. I didn't use it to buy the restaurant but
19 I did borrow it later.

20 Q. So this \$45,000 check was money that you
21 borrowed from your family; isn't that correct?

22 A. That 45 was from my condo.

23 Q. Well, then in your deposition when you said you
24 borrowed it from your family, that's a different \$45,000?

25 A. That is a different 45,000.

1 Q. And where did that \$45,000 go?

2 A. The second forty -- which 45?

3 Q. The second 45,000.

4 A. I did borrow 45,000 from my dad, later.

5 Q. Okay. So let's go to Page 48, Line 2 to Line
6 16.

7 And before I do that, the business you bought
8 afterwards was Club 54, correct?

9 A. Correct.

10 Q. Question, And there was a time that you started
11 operating another business?

12 Answer, August 2005.

13 Question, What was that business?

14 Answer, Club 54.

15 And when did you purchase that business?

16 August 2005.

17 How much did you pay for that business?

18 \$30,000.

19 Question, Is that the \$30,000 you got from James
20 Jordan?

21 No.

22 Where did you get that \$30,000 from?

23 Answer, We borrowed it.

24 Question, Who did you borrow it from?

25 Mike Belcheff.

1 MS. ROHN: Your Honor, I -- I --

2 BY MR. HOLT:

3 Q. Is that correct?

4 MS. ROHN: Excuse me.

5 THE COURT: Just a second.

6 MS. ROHN: I'm objecting to the relevancy
7 of where they got the money to buy Club 54.

8 THE COURT: Overruled.

9 BY MR. HOLT:

10 Q. So --

11 A. That's correct.

12 Q. -- you borrowed the \$30,000 to buy Club 54 from
13 Mike Belcher.

14 Didn't you borrow the money, the \$45,000, to buy
15 this restaurant from your family as you testified to in
16 your deposition?

17 A. No. I borrowed it to help out with our living
18 expenses as we were running it and not making any money.

19 Q. Okay. So you did borrow \$45,000 from your
20 family, correct?

21 A. Correct. But not \$150,000.

22 Q. But you did borrow 45,000?

23 A. 45,000.

24 Q. And so the question was: When you bought this
25 restaurant, Cane Bay, who did you borrow the money from

1 to buy it?

2 I had a lot. I sold a condo before I went to
3 move here. My dad lent me some money.

4 Okay.

5 His mom lent me some money.

6 You didn't borrow money to buy this restaurant?

7 A. Not to buy it. I had money to buy it. I
8 borrowed money as we were running it and not making a
9 profit and then when we closed for two months, we had no
10 income.

11 Q. Okay. So when did you borrow this money from
12 your family?

13 A. I honestly don't remember. It wasn't for the
14 closing.

15 MR. HOLT: Your Honor, can I have the
16 witness shown Exhibit D-3?

17 THE COURT: Attorney Rohn? Was D-3
18 admitted by stipulation?

19 THE MARSHAL: On the Elmo?

20 THE COURT: Yes, sure. Good ahead.

21 THE MARSHAL: Counsel Rohn?

22 MS. ROHN: I'm sorry. It's stipulated to.

23 MR. HOLT: All right. So --

24 THE COURT: I'm sorry. Excuse me.

25 Attorney Rohn, has that been admitted by

1 stipulation?

2 MS. ROHN: I have no objection to that
3 document.

4 THE COURT: All right. Defense Exhibit
5 Number 3 will be admitted by stipulation.

6 (Defendants Exhibit Number 3 was admitted.)

7 THE COURT: You may publish.

8 BY MR. HOLT:

9 Q. Showing you Exhibit Number 3, this is a
10 promissory note for \$30,000 dated August 7, 2003. Do you
11 see that?

12 A. Yes. Yes.

13 Q. Okay. And that was an agreement to pay Maria
14 Bentley for the purchase of the Cane Bay Beach Bar?

15 A. Yes.

16 Q. And it was to be paid in the amount of \$1,500 a
17 month over a 12-month period; is that correct?

18 A. Yes.

19 Q. And this document was signed on August 7, 2003,
20 correct?

21 A. Yes.

22 Q. Okay. I'll come back to that document in a
23 second.

24 A. Okay.

25 Q. Showing you Exhibit Number -- well, after you

1 closed on the restaurant and had signed the promissory
2 note and started operating the restaurant, did there come
3 a time that you formed a corporation?

4 A. Yes. I believe it was August.

5 Q. Okay. And what was the name of that
6 corporation?

7 A. Barabus.

8 MR. HOLT: Your Honor, could I have the
9 witness shown Exhibit D-5?

10 THE COURT: Yes.

11 MS. ROHN: No -- I'm stipulating to it.
12 No objection.

13 THE COURT: Very well, the exhibit --

14 BY MR. HOLT:

15 Q. Showing you Exhibit D-5 --

16 THE COURT: Attorney Holt.

17 Defense Exhibit D-5 will be admitted by
18 stipulation.

19 (Defendants Exhibit Number D-5 was admitted.)

20 BY MR. HOLT:

21 Q. Showing you Exhibit Number D-5, do you see that
22 this is from the Lieutenant Government of the Virgin
23 Islands indicating that Barabus, Inc. is recognized as a
24 Virgin Islands corporation as of August 12th, 2003?

25 A. Yes.

1 Q. Okay. Now, after you arrived, how much rent had
2 Maria Bentley been paying?

3 MS. ROHN: I'm sorry, I couldn't hear that
4 question.

5 BY MR. HOLT:

6 Q. How much rent had Maria Bentley been paying?

7 A. Uhm...

8 MS. ROHN: Your Honor, again, I object to
9 these as relevance.

10 THE COURT: Overruled.

11 THE WITNESS: She told us \$1,500.

12 BY MR. HOLT:

13 Q. So did you hear that someone was paying \$2,300?

14 A. I saw it later in some of the depositions.

15 Q. All right. Maria Bentley told you \$1,500?

16 MS. ROHN: Objection; hearsay.

17 BY MR. HOLT:

18 Q. Why did you start paying \$1,500 rent?

19 A. It was even on the purchase -- the bar for sale.

20 Q. So you understood from Maria Bentley that you
21 were supposed to --

22 MS. ROHN: Objection, Your Honor.

23 MR. HOLT: May I finish the question,
24 please?

25 THE COURT: Just a second. Please allow

1 him to finish the question.

2 BY MR. HOLT:

3 Q. So it was your understanding from Maria Bentley
4 that the rent was \$1,500?

5 A. Correct.

6 Q. You never had that discussion --

7 MS. ROHN: Objection, Your Honor.

8 THE COURT: Attorney Holt, I need to rule
9 on the objection.

10 The objection is overruled.

11 BY MR. HOLT:

12 Q. So no landlord ever told you it was \$1,500, did
13 they, prior to Chrismos coming?

14 A. I believe we talked to Baris Lampert once.

15 Q. And he told you it was 1,500?

16 A. I'm sure we talked about the rent.

17 MR. HOLT: Okay. Your Honor, I'd like to
18 show the witness Exhibit 4, which I think is
19 Plaintiffs Exhibit 4.

20 THE COURT: Plaintiff 4? Plaintiff 4 has
21 been admitted by stipulation. You may.

22 (Plaintiffs Exhibit Number 4 was admitted.)

23 BY MR. HOLT:

24 Q. Showing you Exhibit Number 4, these are Articles
25 of Organization of Chrismos Cane Bay, LLC. Do you see

1 that?

2 A. Yes.

3 Q. And these were filed on September 7, 2003. Do
4 you see that, on the next page?

5 A. Yes.

6 Q. And indicating in here that Chris Hanley and
7 Warren Mosler were the people that organized this LLC.
8 Do you see that?

9 A. Yes.

10 Q. And so you understood that Warren Mosler and
11 Chris Hanley were actually members or owners or the
12 representatives for Chrismos, LLC?

13 A. I don't know when I found that out.

14 Q. But you understood you were writing checks to
15 Chrismos for rent, correct?

16 A. No.

17 Q. You didn't write checks to Chrismos?

18 A. No.

19 Q. You've never wrote a check to Chrismos for rent?

20 A. No.

21 Q. Who did you write a check to?

22 A. Farchette & Hanley.

23 Q. So who did you think your landlord was?

24 A. Hanley and Mosler.

25 Q. So you didn't think Chrismos, LLC was your

1 landlord?

2 Who do you think owned the property?

3 A. Mosler and Hanley.

4 Q. So you didn't -- you never saw the deed who said
5 who owned it?

6 A. I don't recall.

7 MR. HOLT: Your Honor, I'd like to show
8 the witness Exhibit Number 6 which has been admitted
9 by stipulation.

10 THE COURT: Attorney Holt, I just need you
11 to say either it's Plaintiffs Exhibit 6 or Defense
12 Exhibit 6.

13 MR. HOLT: Plaintiff Exhibit 6.

14 THE COURT: Plaintiff Exhibit 6 has been
15 admitted previously.

16 MS. ROHN: Yeah. I -- yeah.

17 BY MR. HOLT:

18 Q. So this is a warranty deed dated September 8th,
19 2003. Do you see that?

20 A. Yes.

21 Q. And it's from Evabond Development Corporation.
22 Do you know who that is?

23 A. Baris Lampert.

24 Q. So that was the landlord when you bought the
25 property?

1 A. Correct.

2 Q. And then it says, to Chrismos Cane Bay, LLC. Do
3 you see that?

4 A. Yes.

5 Q. And so Chrismos bought -- and you see it says
6 110 Estate Cane Bay down there. Do you see that?

7 A. Yes.

8 Q. Okay. And so even though Chrismos bought this,
9 you never understood that Chrismos owned this property?

10 A. When would I have found out their name was
11 Chrismos?

12 Q. What's that?

13 A. When would I have found out the corporation name
14 was Chrismos?

15 Q. I don't know. If you never --

16 THE COURT: Excuse me. Ma'am, please
17 answer the question instead of asking the question.

18 BY MR. HOLT:

19 Q. So are you saying that you never knew that
20 Chrismos was the owner of the property?

21 A. I did eventually. I was -- I think it was on
22 that eviction letter.

23 Q. Was that the first time you were aware that
24 Chrismos owned the property?

25 A. I can't recall.

1 Q. So after you started operating the property, who
2 did you pay the rent to?

3 A. Farchette & Hanley.

4 Q. Farchette & Hanley?

5 A. You mean wrote the checks to or handed the
6 checks to?

7 Q. Wrote the checks to?

8 A. Farchette & Hanley.

9 Q. Okay. So we'll come back to that.

10 MR. HOLT: I'm going to need Exhibit
11 Number 14 at some point. I'm sorry. I gave you the
12 wrong number.

13 Your Honor, I'd like to show the witness
14 Exhibit D-9.

15 THE COURT: Very well. Has that been
16 admitted by stipulation or you just want to show the
17 witness?

18 MS. ROHN: I did not stipulate to this.

19 THE COURT: I'm sorry?

20 MS. ROHN: I did not stipulate to this.

21 THE COURT: All right. You may show the
22 witness.

23 MS. ROHN: I've seen it. I've got it.

24 Thank you.

25 BY MR. HOLT:

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. And what is that document?

4 A. I don't know what it's called.

5 Q. Is it a letter from a lawyer?

6 A. Yes.

7 Q. It's to you and to Joe?

8 A. No. It's to Joe.

9 Q. It's indicating that payments are owed?

10 MS. ROHN: Your Honor, this document is
11 not in admission yet.

12 BY MR. HOLT:

13 Q. Have you ever seen this document before?

14 THE COURT: Sustained.

15 THE WITNESS: I'm not sure.

16 MR. HOLT: All right. Then I'll withdraw
17 that document and go on.

18 THE COURT: Very well.

19 BY MR. HOLT:

20 Q. Now, you indicated that it -- you indicated that
21 right after you bought the property, you knew that there
22 was not a lease for the property, correct?

23 MS. ROHN: Objection. That's not her
24 testimony.

25 BY MR. HOLT:

1 Q. You can answer.

2 THE COURT: Sustained. She did testify
3 that she knew they did not have a lease. Proceed.

4 BY MR. HOLT:

5 Q. So you knew when you arrived that there was no
6 lease for the property, correct?

7 A. I learned the day before, correct.

8 Q. Excuse me?

9 A. I learned the day before.

10 Q. And you closed the sale anyway, correct?

11 A. Yes.

12 Q. And then you testified that at some point you
13 then met with Warren Mosler and Chris Hanley and talked
14 about a lease?

15 A. Yes.

16 Q. And at that time, you stated that they actually
17 told you that they would give you a seven-year lease?

18 A. Yes.

19 Q. So I'd like to revisit your deposition as well
20 here, and I'm going to go to Page 18, Line 6. I'm going
21 to read over to Page 18 (sic), Line 5.

22 It says: You were aware then at some point the
23 property was sold?

24 Yeah, we found out. We spoke -- or Joe spoke
25 with either Bentley or -- I'm sorry -- Hanley or Mosler

1 or both --

2 THE COURT: Excuse me. Attorney Holt,
3 what page was it?

4 MR. HOLT: Page 18.

5 THE COURT: What line, please?

6 MR. HOLT: Line 6.

7 THE COURT: Okay. Thank you.

8 BY MR. HOLT:

9 Q. Yes, we found out. We spoke -- or Joe spoke to
10 either Bentley or -- I'm sorry -- Hanley or Mosler or
11 both about getting the lease going because we realized we
12 didn't have one.

13 Do you know about when that conversation took
14 place?

15 That must have been in August of 2003. Yeah.

16 Even before the sale took place?

17 Well, the sale was August 7th.

18 The sale when you bought the property?

19 Yeah.

20 Okay. Did you talk to Mosler and Hanley about a
21 lease even before they purchased the property?

22 Answer, I'm not sure if it was before or after.

23 And who was that conversation with? And who had
24 that conversation with him?

25 And you said Joe.

1 And it says, So what was your understanding of
2 that conversation?

3 That they were going to give us a lease.

4 So now that I've read your deposition, were you
5 present when that conversation took place?

6 A. Yes.

7 Q. Then how come in your deposition you indicated
8 that only Joe had that conversation?

9 A. Joe did the talking.

10 Q. Excuse me?

11 A. Joe did the talking.

12 Q. Okay. So you weren't having the conversation,
13 you were just listening?

14 A. I was a part of the conversation.

15 Q. Excuse me?

16 A. I was a part of the conversation.

17 Q. Okay. Do you remember answering interrogatories
18 in this case?

19 A. Do I remember what?

20 Q. Do you remember having to answer interrogatories
21 in this case?

22 A. I'm not sure what an interrogatory is.

23 Q. Do you remember having to read answers and sign
24 them?

25 A. For the closing?

1 Q. No. For this case.

2 A. Uhm, what year was that?

3 Q. You don't recall answering interrogatories? You
4 don't recall doing that?

5 A. Is that the same time as the deposition?

6 Q. All right. Well, you indicated in your direct
7 testimony that you were told about a seven-year lease
8 sometime August, September 2003 or sometime in 2004,
9 another time in 2004, another time in 2005. Did I get
10 that right?

11 A. We talked about it often. We have asked for it
12 often.

13 Q. Okay. And they promised it all the time is what
14 you said?

15 A. They led us to believe that they were going to
16 give us a seven-year lease, yes.

17 Q. Okay. So they made representations to you
18 multiple times that they were going to give you a
19 seven-year lease between 2003 and 2005; is that correct?

20 A. Correct.

21 MR. HOLT: Your Honor, could I have the
22 witness shown Exhibit D-44?

23 THE COURT: Yes. Yes, it was stipulated.

24 MS. ROHN: No, I haven't stipulated. Oh,
25 yes, I did. Yes, I did.

1 MR. HOLT: Yes.

2 BY MR. HOLT:

3 Q. So showing you Exhibit D-44, these are Plaintiff
4 Victoria Vooy's Response to Chrisomos Cane --

5 THE COURT: I apologize, Attorney Holt. I
6 take it D-44 was admitted by stipulation?

7 MS. ROHN: Yes, Your Honor.

8 THE COURT: All right. D-44 is admitted
9 by stipulation. Thank you.

10 (Defendants Exhibit Number 44-D was admitted.)

11 BY MR. HOLT:

12 Q. It says Plaintiff Victoria Vooy's Response to
13 Chrisomos Cane Bay, LLC Interrogatories. Do you see that?

14 A. Yes.

15 Q. And over on the last page there's a
16 certification that you swear or affirm that the answers
17 to the above interrogatories are true and correct, dated
18 August 7, 2009. Do you see that? Victoria Vooy's.

19 A. Yes. Vooy's.

20 Q. And in these interrogatories you were asked in
21 Interrogatory Number 10: Please identify each alleged
22 misrepresentation referenced in Count Eight of the
23 complaint, which is a claim for fraudulent inducement,
24 misrepresentation, who made the statement and to whom it
25 was made, the date and place, and what was allegedly

1 said.

2 And in the first sentence, under oath, you say:
3 Hanley and Mosler stated several times to us around early
4 March of 2005 that once certain improvements were
5 finished that they would give us a lease.

6 Do you see that?

7 A. Yes.

8 Q. So your sworn statement in these interrogatories
9 in August of 2009 is directly contrary to the testimony
10 you gave here today under oath, isn't it?

11 A. Yes. That date makes no sense.

12 Q. Excuse me?

13 A. I said that date makes no sense.

14 Q. I'm sorry, I didn't understand the answer.

15 A. I'm sorry, that March 2005 makes no sense.

16 Q. Well, it gives one date, March of 2005. And
17 you're saying it should be March of 2004?

18 A. Yes.

19 Q. Okay. So it says: Hanley and Mosler stated
20 several times to us around early March of 2004, if we
21 allow -- you can correct it; go ahead.

22 You don't mention anything about seven years?
23 You don't mention anything about second promise, the
24 third promise or the fourth promise, do you? Do you see
25 that?

1 A. Yes.

2 Q. And it says: Question, What was said which you
3 allege constitutes a misrepresentation?

4 And you don't say anything other than they
5 promised you a lease in -- and you're now saying March of
6 2004. You don't say anything about seven years here, do
7 you?

8 A. No.

9 Q. Now, showing you Exhibit Number 14 --

10 MS. ROHN: Is that D or P?

11 MR. HOLT: Plaintiffs Exhibit 14 which has
12 already been admitted.

13 BY MR. HOLT:

14 Q. This is a letter to Attorney Logan and this is
15 in April of 2005. Do you see that?

16 A. Yes.

17 Q. And that letter is from Attorney Rohn. Do you
18 see that?

19 A. Yes.

20 Q. And it's copied to you and to Victoria Vooy's,
21 correct?

22 A. Me and Joe.

23 Q. And it says in the second sentence: It is their
24 position there was a promise made to them to enter into a
25 two-year lease with them and they relied on that promise

1 in expending fund to improve the premises.

2 Do you see that?

3 A. Yes.

4 Q. So it doesn't say seven years, does it?

5 A. No. But that was incorrect.

6 Q. Just like your interrogatory answers were
7 incorrect; is that correct? Because that's under oath.

8 A. Well, Attorney Rohn and I talked about that two
9 number being incorrect.

10 Q. Did you ever send a letter correcting that?

11 A. No, we did not.

12 Q. All right. Showing you Exhibit Number 7 --

13 MR. HOLT: I apologize. I need to get
14 Plaintiffs Exhibit Number 7, please.

15 BY MR. HOLT:

16 Q. Showing you Exhibit Number 7, so this is an
17 email from Hunt Logan to M. Lorig. Did you know who
18 M. Lorig was?

19 A. Matt.

20 Q. And Matt Lorig worked for --

21 A. Mosler.

22 Q. For Mosler. Okay. And this document then has,
23 attached to it, a lease agreement. Do you see that?

24 A. Yes.

25 Q. And you received this document?

1 A. Yes.

2 Q. Okay. And the lease agreement on the next page
3 actually has some blank lines; is that correct?

4 A. You mean right there?

5 Q. Yes.

6 A. Yes.

7 Q. So the lease is still a draft. It's just a
8 draft, isn't it?

9 A. Yes.

10 Q. Okay. And it says: This lease is an agreement
11 between Chrismos Cane Bay, LLC, as landlord.

12 Do you see that?

13 A. Yes.

14 Q. So at least by March of 2004 you recognized that
15 Chrismos was the landlord, didn't you?

16 A. Okay. Yes.

17 Q. Okay. And this document purported to give a
18 lease for 24 -- excuse me -- for 30, didn't it?

19 A. Yes.

20 Q. It said that: The tenant agrees to pay the
21 minimum rent of \$1,500 from March 1 through October 31 of
22 2004.

23 Do you see that?

24 A. Yes.

25 Q. And it says: Beginning November 1, 2004, the

1 monthly rent shall be \$2,000.

2 Do you see that?

3 A. Yes.

4 Q. Okay. And so the first six months of this
5 lease, it's the same rent you've been paying, correct?

6 A. Yes.

7 Q. And then the next two years of this lease would
8 be at \$2,000 if you signed it, correct?

9 A. Yes.

10 Q. Okay. And you didn't sign this lease, did you?

11 A. No.

12 Q. And you ultimately gave this lease to your
13 lawyer, Mr. Groner, correct?

14 A. Not the first one.

15 Q. Was there another lease?

16 A. There was another one after the fire.

17 Q. After the fire. So it's your test- -- this
18 testimony is you didn't give this to Mr. Groner?

19 A. We gave one of them to Mr. Groner.

20 Q. What did you do with this lease?

21 A. We didn't sign it.

22 Q. Excuse me?

23 A. We didn't sign it.

24 Q. You didn't sign it. What did you do with it?

25 A. I don't think we did anything with it.

1 MR. HOLT: Your Honor, if I may have a
2 moment?

3 THE COURT: You may.

4 BY MR. HOLT:

5 Q. Okay. I'd like to go to your deposition on Page
6 22. And on Line 22 -- I'm going to start with Page 22,
7 Line 12. And you were shown Deposition Exhibit Number 12
8 as marked for identification. Deposition Exhibit Number
9 12, if you'd like to see it, is the lease. This is the
10 same lease. Would you like to review it before we go
11 through the rest of it?

12 MS. ROHN: Your Honor, we'll stipulate
13 that was the March 2004 lease.

14 BY MR. HOLT:

15 Q. Showing you what's been marked as Exhibit 12,
16 this is the blank listing Joe Gerace d/b/a Cane Bay.

17 Do you see that?

18 Yes.

19 Is this lease that either Chris or Warren Mosler
20 gave you?

21 It kind of looks like it but the dollar amounts
22 are wrong.

23 So you think you actually received something
24 different than this?

25 Yes.

1 Who do you think you received it from?

2 I think it was their kid, Matt. Matt Lorig.

3 And who was Matt Lorig?

4 He was Mosler's gopher.

5 And he brought this to you or -- lease to you?

6 Yes.

7 And you mentioned that the amounts were wrong.

8 What amounts do you recall being in there?

9 \$2,000, \$2,500.

10 Now I've never seen a copy of that lease. Do
11 you have a copy?

12 No. We gave it to Jerry Groner. Never got it
13 back.

14 Why did you give it to Jerry Groner?

15 At the time, he was the only lawyer we knew. We
16 started our corporation.

17 And so you gave it to Jerry Groner and you
18 didn't keep a copy?

19 No. I've never done that.

20 Does that refresh your recollection about
21 when --

22 MS. ROHN: Excuse me. That's not what it
23 says. It says: I've never done this before.

24 THE COURT: Attorney Rohn, if there's an
25 objection, please make it.

1 MR. HOLT: Objection; incorrectly read.

2 BY MR. HOLT:

3 Q. No, I've never done this before. I didn't think
4 about that.

5 Do you see that?

6 A. (Nodding head.)

7 Q. So does that refresh your recollection about
8 giving this lease to Jerry Groner?

9 A. That was the wrong amount. I don't think that
10 was the same lease.

11 Q. Well, whatever lease you received in March of
12 2004, did you give that to Mr. Groner?

13 A. I don't think we gave him that -- the first one.

14 Q. Excuse me?

15 A. I don't think we gave him the first one. It was
16 the second one.

17 Q. What did you do with the first one?

18 A. We rejected it.

19 Q. Do you know where your copy is?

20 A. I don't.

21 Q. You got a second lease that you say you gave to
22 Jerry Groner?

23 A. Correct.

24 Q. And do you know what he did with it?

25 A. He apparently misplaced it.

1 Q. Do you know if he ever called Mr. Mosler,
2 Mr. Hanley or their lawyer, Hunt Logan, to see if he
3 could negotiate a new lease?

4 A. I'm not positive if he called.

5 Q. Did you ever follow up with him to see if he
6 might have had the lease?

7 A. We did.

8 Q. And what did he tell you?

9 MS. ROHN: Objection; calls for hearsay.

10 THE COURT: Overruled.

11 THE WITNESS: He couldn't find it.

12 BY MR. HOLT:

13 Q. Excuse me?

14 A. He couldn't find it, that he misplaced it.

15 Q. So you don't know if there were ever any
16 negotiations between Mr. Groner and Mr. Logan about any
17 of the terms?

18 A. I'm not positive.

19 Q. And you never had any negotiations with
20 Mr. Hanley or Mr. Mosler about any of the terms of that
21 lease?

22 A. We told them -- especially the first one, we
23 told them was a crappy lease. I don't know if we used
24 the word crappy. And then the second one was still two
25 years.

1 Q. Did you make a counterproposal to them?

2 A. That's what we were hoping Jerry could write up
3 for us.

4 Q. But you, yourself, never made a counterproposal?

5 A. I did not, no.

6 Q. All right. So you indicated that you were on
7 reliance of all these promises undertook to make repairs
8 and improvements to the property; is that correct?

9 A. Correct.

10 MR. HOLT: Your Honor, could I have the
11 witness shown Exhibit Number 48?

12 THE COURT: Is that Defense or Plaintiff?

13 MR. HOLT: It's been admitted.

14 THE COURT: Defense --

15 MR. HOLT: Plaintiffs Exhibit 48.

16 THE COURT: Plaintiffs, okay. Thanks.

17 Yes. Do you wish it to be placed on the Elmo?

18 MR. HOLT: Excuse me?

19 THE COURT: Do you wish it to be placed on
20 the Elmo?

21 MR. HOLT: I wish for her to have it while
22 I ask her questions about it.

23 THE COURT: Okay. Sure.

24 BY MR. HOLT:

25 Q. And before we begin, I've seen different dates

1 on different documents. Wasn't the fire in September of
2 2004?

3 A. It was in August.

4 Q. August of 2004?

5 A. (Nodding head.)

6 Q. Okay. And how did that fire -- you talked about
7 the fire and something wrong with the hood. How did that
8 fire start?

9 A. In the hood. Grease fire.

10 Q. And were you there that day that it happened?

11 A. I was.

12 Q. And was someone in the kitchen cooking when it
13 happened?

14 A. Yes. It was burger night.

15 Q. Excuse me?

16 A. It was burger night.

17 Q. Okay. And during dinner, the kitchen caught on
18 fire?

19 A. Yes.

20 Q. Okay. So looking at this document here -- you
21 have in front of you the actual exhibits that match up
22 for this. So the first two documents, one's dated
23 October 2003, one is dated November 2003, and one is for
24 locks at \$70 and one's for a toilet float, \$9.33.

25 Do you have any receipts for 2003 other than

1 these two receipts for improvements or repairs to the
2 property made that year?

3 A. I didn't save them so I don't have them.

4 Q. Okay. But this is what you presented to the
5 jury as the improvements that you made, right?

6 A. For the whole time we were there.

7 Q. But for the year 2003, we only see \$79.33; is
8 that correct?

9 A. Those were all the receipts I kept from --

10 Q. And this --

11 A. -- 2003.

12 Q. And this for August --

13 MS. ROHN: Excuse me. Could the witness
14 finish her answer?

15 THE COURT: Attorney Rohn, when you
16 address me, please stand.

17 MS. ROHN: I'm sorry. I'm sorry, Your
18 Honor. I -- he stepped over the end of her answer.
19 I couldn't hear it.

20 THE COURT: Attorney Holt, please allow
21 her to answer the questions fully.

22 THE WITNESS: I spent way more than 79.33
23 in 2003. I just didn't keep the receipts.

24 BY MR. HOLT:

25 Q. Okay. And these are the receipts for August,

1 September, October, November, December, five months,
2 correct?

3 A. Those are all the receipts I had left.

4 Q. So if we look at your tax return, we'll see more
5 items spent on repairs to the property?

6 A. I'm not positive if it's on the taxes.

7 Q. Okay. We'll come back to that.

8 So then in January of 2004, we don't see any
9 entries, do we?

10 A. No.

11 Q. And in February of 2004, we see three entries,
12 \$362, \$67, \$75. Do you see that?

13 A. Uh-huh (affirmative response).

14 Q. Is that correct?

15 A. Yes.

16 Q. And that's for work on the ice machine,
17 padlocks, things like that; is that correct?

18 A. Yes.

19 Q. And then in March of 2004, when they gave you
20 the first lease, we don't see any expenses, do we?

21 A. Not recorded, no.

22 Q. And then in April of 2004, we see one expense
23 for \$24. I don't even know what that's for. Do you know
24 what that's for?

25 A. Something for the TV, entertainment.

1 Q. For TV and entertainment; is that correct?

2 A. I -- it looks like it's for a TV.

3 Q. And then in May of 2004, we see one, two, three,
4 four, five receipts that total, yeah, about \$800. Do you
5 see that?

6 A. Yes.

7 Q. And then in June of 2004, we start seeing some
8 more documents here. Do you see that?

9 A. Yes.

10 Q. I see one, two, three, four, five, six, seven,
11 eight, nine. And let's just go to those for a minute.
12 The very first one says American Metals, June 4th,
13 \$1,650. Do you see that?

14 A. Yes.

15 Q. Now, can you find that receipt in here, it's not
16 too far down, that ends up with the number 638 on it?

17 A. Are these not in order?

18 Q. They should be in order.

19 MS. ROHN: They're done by date.

20 THE COURT: Marshal, turn on the lights,
21 please.

22 MR. HOLT: Your Honor, I have a copy.

23 I'll just put it up if that's okay.

24 THE COURT: Okay.

25 MS. ROHN: I need to find the number. Do

1 you have an extra copy, Attorney Holt? Do you have
2 a copy instead of her going through the whole file?

3 MR. HOLT: I have a copy right here, yes.

4 THE COURT: Okay.

5 BY MR. HOLT:

6 Q. So this entry for \$1,650 -- and it references at
7 the bottom a number, you'll see there 638 under the Bates
8 number. So these documents have a Bates number on the
9 bottom. 638. I can't believe how ugly my fingers are
10 there.

11 MS. ROHN: Your Honor, could I ask him to
12 give me a copy of that document because these are
13 not in order? May I just have a copy of that?

14 THE COURT: It was admitted into evidence,
15 Counsel.

16 MR. HOLT: And it's exactly in order.

17 MS. ROHN: They're not in numerical order.

18 THE COURT: It's on the display, Counsel.

19 Let's move on.

20 BY MR. HOLT:

21 Q. And you see that this is a quotation for June 4,
22 2004?

23 A. Yes.

24 Q. Okay. So this isn't a bill that you paid. This
25 is a quote for work, correct?

1 A. I'm not positive.

2 Q. And you put this in as a bill that you paid even
3 though this is just a quote, didn't you?

4 A. I'm not positive if it was just a quote.

5 Q. I'm sorry, I can't hear.

6 A. I'm not positive if it was just a quote.

7 Q. Well, it says quotation, doesn't it? Do you see
8 that?

9 A. Yes, at the top.

10 Q. Is there any indication on this document that it
11 was paid?

12 A. No.

13 Q. Now, we'll come back to that in a second.

14 So then you see some more in June, and then in
15 July we see one, two, three, four, five items, faucets,
16 saw blades, couplings. Do you see those items? They
17 total under \$400. Do you see that?

18 A. I don't have that --

19 Q. Excuse me?

20 A. I don't have that paperwork.

21 Q. I'll put this back up. Do you see these
22 expenses for Two Thousand --

23 A. Yes.

24 Q. July of 2004?

25 A. Yes.

1 Q. 41. \$46. 765. 70. \$90. Do you see those
2 items?

3 A. Yes.

4 Q. Okay. And that's all the expenditures for July
5 of 2004?

6 A. Of the receipts I saved, yes.

7 Q. Excuse me?

8 A. Of the receipts I saved.

9 Q. Okay. And then now we get to August. And in
10 August, all of a sudden we see five on this page, but on
11 the next page, we see August goes all the way down almost
12 to the bottom of the page. We see a couple dozen
13 receipts, correct?

14 A. Correct.

15 Q. And that's when you had the fire, isn't it?

16 A. And that's when we closed and we did a bunch of
17 work.

18 Q. Okay. So you actually completely closed the
19 restaurant?

20 A. We were closed.

21 Q. The bar wasn't open?

22 A. Uhm, I don't think so because we --

23 THE COURT: No, ma'am. There's no
24 question before you.

25 THE WITNESS: Okay.

1 BY MR. HOLT:

2 Q. Was the bar open?

3 A. I don't think so.

4 Q. And then for September, we see from September
5 2nd all the way down to the bottom, do you see over on
6 the next page, all the way down to UVL Lumber, we see a
7 couple dozen entries. Do you see that?

8 A. Yes.

9 Q. And that was part of fixing the fire as well?

10 A. Yes. You can see the exhaust hood and
11 accessories.

12 Q. Okay. So we'll come back to that in a second.

13 A. Okay.

14 Q. And then you see in October of 2004, we're back
15 down to four bills. About \$500 worth of bills. Nuts and
16 bolts. Knives and putty. Do you see that?

17 A. Yes.

18 Q. And then in November of 2004, we see three
19 items, correct?

20 A. Yes.

21 Q. And in December we see one item, \$166 for a
22 thermostat, correct?

23 A. Yes.

24 Q. Okay. So in 2004, if we eliminated August and
25 September, the bulk of these expenses are almost nominal,

1 aren't they?

2 A. Are almost what?

3 Q. Nominal. There's almost nothing spent other
4 than those two months, correct?

5 A. Of what I have left, yes. Of the receipts as
6 I --

7 Q. And then in January of --

8 MS. ROHN: Excuse me. May the witness --
9 excuse me. May the witness finish her answer?

10 MR. HOLT: I thought she did.

11 THE COURT: Attorney Holt, please allow
12 the witness to finish her answer.

13 BY MR. HOLT:

14 Q. And in January of 2005 we see about six
15 expenses, correct? Charbroiler, gas grill, trash can.
16 Do you see those things?

17 A. Kind of. Up top, yes. I mean --

18 Q. Okay. Up at the top, do you see that?

19 A. Yes.

20 Q. And you see one that says: Mike Belcheff, paid
21 \$1,000?

22 A. Yes.

23 Q. Do you know what that was for?

24 A. He was always doing a lot of work around the
25 bar.

1 Q. Okay. And then in February of 2004 -- 2005,
2 excuse me, you've got about 15 lines. Do you see that?

3 A. Yes.

4 Q. You're buying chairs, more chairs. You have a
5 locksmith. Do you see those items?

6 A. Yes.

7 Q. And then in March you have one item, hood
8 cleaning. That's it. Correct?

9 A. Yes.

10 Q. In April, you have two items, hood cleaning and
11 Tropical Shipping for \$36, correct?

12 A. Yes.

13 Q. And in May, you have one item for \$75, correct?

14 A. Yes.

15 Q. And then in June 2005, you have one item for
16 \$34; is that correct?

17 A. Yes.

18 Q. And by the way, is it your testimony that you
19 were open in June?

20 A. Yes.

21 Q. All right. Back to your deposition for a
22 second, Line 47 -- I mean Page 47. I'm sorry, I've
23 got -- I'm sorry. I need one more page. I'm sorry.
24 Page 46 and 47.

25 So then if we go down to Line 23 on Page 46, it

1 says: But the numbers in 2005 per month were better than
2 2004.

3 I'm sorry. I'm sorry.

4 Question, 19. Okay. And 2004, I take it that
5 was your best year in the business?

6 Answer, It was the only full year.

7 Okay.

8 But the numbers in 2005 per month were better
9 than 2004.

10 Okay. In 2005 you showed \$92,000 gross receipts
11 and that's through June 30th.

12 Answer, No. Through the end of May.

13 Question, Through the end of May. Why is that?

14 Answer, We didn't -- we weren't open in June.

15 Do you see that?

16 A. Yes. But I actually have gross receipts in
17 June.

18 Q. Well, which is true? You answered under oath in
19 your deposition that you weren't open in June. Now
20 you're telling me that you were open in June. Which is
21 it?

22 A. I believe we were open in June. I don't know if
23 it was 'til the end of June.

24 Q. So you don't know if you were open in June or
25 not, do you?

1 A. I have gross receipts for June so I made money,
2 gross money.

3 Q. All right. Let's talk about gross receipts
4 before we get back to this interesting set of bills here.

5 I'm going to read your dep- -- your deposition,
6 by the way, was taken on May 28th -- excuse me -- June
7 28th of 2011. And that is five -- six years after you
8 left the premises, correct?

9 A. Yes.

10 Q. Okay. And in your deposition, you were asked,
11 starting on Page 45, Line 19:

12 Did you pay any gross receipts tax?

13 We filed a form. We didn't have the money for
14 them.

15 So you actually filed a gross receipts tax
16 return for 2004?

17 Answer, I believe so for all the years.

18 Question, You just didn't pay them?

19 Question -- Answer, Never had the money. It was
20 a lot. And we never had anything in the end.

21 Do you see that?

22 A. Yes.

23 Q. So it's your testimony as of this deposition in
24 2011 that you hadn't paid them, correct? Is that
25 correct?

1 A. I forgot I paid them.

2 Q. Excuse me?

3 A. I -- I did end up paying them when I was at 54.

4 Q. When did you leave St. Croix?

5 A. 2012.

6 Q. And so it's your testimony you paid them before
7 you left?

8 A. Yes.

9 Q. And you paid them before you testified in your
10 deposition that you didn't pay them?

11 A. Yes.

12 Q. You just didn't remember about it in your
13 deposition?

14 A. Yes.

15 Q. So let's go back to this chart here for a
16 second.

17 THE WITNESS: Can I ask something?

18 THE COURT: No, ma'am.

19 THE WITNESS: No?

20 THE COURT: Proceed, Attorney.

21 BY MR. HOLT:

22 Q. So you made a comment in going through this that
23 in 2004 you see where you paid to fix the vent, correct?
24 Is that correct?

25 A. Say that again.

1 Q. You said you saw a bill where you actually paid
2 to fix the vent, correct?

3 A. In September 2004?

4 Q. Yes. Is that correct?

5 A. Yes.

6 Q. So showing you document 649, which is part of
7 Exhibit 48, this is saying that: Raycon Mechanical is
8 pleased to provide this quote for installation of an
9 exhaust hood. All labor and materials provided.

10 Do you see that?

11 A. Yes.

12 Q. Down in the bottom left hand -- the quote is for
13 \$4,325. Down in the bottom left-hand corner, how much
14 does it say you paid?

15 A. I had written down that I paid 25 so far.

16 Q. Okay. So there's no evidence that you paid them
17 the rest of this, is there?

18 A. I wouldn't have left a bill open.

19 Q. And then looking over on the same document, the
20 document 648, this is another bill from Raycon.

21 Do you see this?

22 A. Yes.

23 Q. And it says: Sheetmetal one gallon. And then
24 it talks about labor and all of those items?

25 A. Yes.

1 Q. What was that bill for?

2 A. That was still working on the kitchen
3 backsplash.

4 Q. It says: Repair for exhaust. Do you see that?

5 A. Yes.

6 Q. Okay. Now, let's just look at your tax returns
7 for a minute. Showing you Plaintiffs Exhibit Number 46,
8 these are -- this is Plaintiffs Exhibit 46. Excuse me.
9 These are your individual tax returns for 2002. Do you
10 see that?

11 A. Yes.

12 Q. Okay. And that's the tax return that you filed
13 in the States showing \$23,000 worth of income. Do you
14 see that?

15 A. Yes.

16 Q. And that's because you worked in the States and
17 earned money and reported your income, correct?

18 A. Yes.

19 Q. All right. And then showing you Exhibit Number
20 15 --

21 MR. HOLT: The parties have agreed --

22 MS. ROHN: Yeah, that's fine. I have no
23 objection.

24 BY MR. HOLT:

25 Q. Showing you Exhibit D-15, this is a tax return

1 for -- first you see up in the left-hand corner, 2003.
2 It says Barabus.

3 THE COURT: It's been admitted by
4 stipulation.

5 (Defendants Exhibit Number D-15 was admitted.)

6 BY MR. HOLT:

7 Q. Do you see that?

8 A. Yes.

9 Q. And it says that you have gross sales of
10 \$38,000. Your cost of goods. I take it that would be
11 your hamburgers and beer and other things that you sell,
12 correct?

13 A. Yes.

14 Q. \$30,000. And that shows a gross profit of
15 \$7,000, correct?

16 A. Yes.

17 Q. And then down below, you have wages of \$10,000.
18 And then on Item Number 8, it says repairs and
19 maintenance. Excuse me. Item Number 9. Do you see
20 that?

21 A. Yes.

22 Q. And there's no entry for repairs and maintenance
23 that year, is there?

24 A. No. But there was a miscellaneous portion.

25 Q. I'll get to that.

1 A. Okay.

2 Q. So under the line where it says repairs and
3 maintenance, there's no entry, is there?

4 A. No.

5 Q. And then we get to rents. Do you see rents?

6 A. Yes.

7 Q. \$7,500, correct?

8 A. Yes.

9 Q. So that would be for five months' rent, correct,
10 August, September, October, November, December?

11 A. Yes.

12 Q. Five times 1,500 is 7,500, correct?

13 A. Yes.

14 Q. All right. And then you have other deductions.

15 Do you see that? It says: Other deductions, \$16,000.

16 Do you see that?

17 A. Yes.

18 MS. ROHN: Your Honor, I'm going to object

19 to this document because it was not signed by her.

20 This is a document prepared by Mr. Bansal.

21 THE COURT: Very well. May I see the

22 document, please, Marshal?

23 Attorney Holt?

24 MR. HOLT: Yes, sir.

25 THE COURT: Response to Attorney Rohn?

1 She said it was not signed by the witness.

2 MR. HOLT: I know, but it's a corporate
3 tax return. She submitted the information and we've
4 stipulated to this exhibit. As a matter of fact,
5 they marked this as their own exhibit last night.

6 MS. ROHN: But you keep saying "you
7 reported" and "you put down."

8 MR. HOLT: Okay. I'll --

9 THE COURT: All right. Rephrase your
10 question, please. Let's proceed. Rephrase your
11 question, Attorney Holt.

12 BY MR. HOLT:

13 Q. Then over on the last page of this document, you
14 have something called miscellaneous expenses of -- you
15 say you paid utilities of \$5,000 and miscellaneous
16 expenses of \$11,239?

17 A. Yes.

18 Q. And were those items that you did to repair and
19 maintain the building?

20 A. That's what I was thinking.

21 Q. Then how come those items wouldn't be entered up
22 here on repairs and maintenance?

23 A. I don't know. My -- the accountant did it.

24 Q. And you do recall that when we went through this
25 list that there were only two items for 2003?

1 A. I do.

2 Q. So do you have any evidence of any repairs or
3 maintenance that you did other than your say-so for 2003?

4 A. Unfortunately, I don't have any of those
5 receipts.

6 Q. Excuse me?

7 A. Unfortunately, I don't have any of those
8 receipts.

9 Q. All right. Showing you Exhibit Number D-6 --

10 MR. HOLT: Your Honor, this is --

11 MS. ROHN: I'm sorry, D what?

12 MR. HOLT: D-6.

13 MS. ROHN: D-6? Thanks.

14 THE COURT: Attorney Holt, you were
15 telling me about D-6?

16 MR. HOLT: I'm waiting for her to
17 acknowledge it to be admitted.

18 MS. ROHN: I got it. I don't know the
19 relevance.

20 THE COURT: Counsel, please don't have
21 your discussion in front of the jury.

22 MS. ROHN: Your Honor, I can't stipulate
23 to it. I don't know --

24 THE COURT: Well, then make your objection
25 and let's proceed.

1 MS. ROHN: I'm not objecting. I'm just
2 waiting to hear what the foundation is because I
3 don't know what it is.

4 THE COURT: Attorney Holt, will you
5 proceed?

6 MR. HOLT: It's a bill and receipt for
7 Cane Bay and stipulated to at the previous hearing.

8 MS. ROHN: If I stipulated to it, I'm just
9 not sure what the monthly trash is. If I stipulated
10 to it, it's fine.

11 THE COURT: Counsel, certain discussions I
12 don't want in front of my jury. If it's stipulated
13 to, let's move on, please.

14 Is it stipulated to, Attorney Rohn?
15 Attorney Rohn?

16 MS. ROHN: I'm sorry, I couldn't hear you.
17 I'm sorry.

18 THE COURT: Has it been stipulated to?

19 MS. ROHN: Yes.

20 THE COURT: All right. Let's proceed,
21 please.

22 MS. ROHN: It's a bill for Barabus.

23 THE COURT: Okay. Thank you.

24 BY MR. HOLT:

25 Q. In looking at this, it's a bill from Bates

1 Trucking?

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. And who is Bates Trucking? Who is that?

6 A. They do trucking and trash removal.

7 Q. Yes. And they picked up the trash; is that
8 correct?

9 A. Correct.

10 Q. And they billed Barabus; is that correct?

11 A. Correct.

12 Q. And without going through all of the items in
13 Exhibit Number 48, I take it that those were all bills or
14 invoices of Barabus, Inc.; is that correct?

15 A. Correct.

16 Q. Okay. And do you recall in looking through some
17 of those, they would be like Gallows Bay cash, then would
18 be another company with a check. So those would be cash
19 and check, correct?

20 A. Correct.

21 Q. They're all for Barabus, Inc.?

22 A. (Nodding head.)

23 THE COURT REPORTER: Is that -- what's
24 your answer?

25 THE WITNESS: I'm sorry. Correct.

1 BY MR. HOLT:

2 Q. All right. Now, looking at Exhibit --
3 Plaintiffs Exhibit Number 55, which the parties have
4 admitted into evidence, this is your individual tax
5 return for 2003 filed in the Virgin Islands. Do you see
6 this?

7 A. Yes.

8 Q. Okay. And on this return, you report income of
9 \$15,000. Do you see that?

10 A. Yes.

11 Q. And that was income that you actually earned in
12 Arizona before you came here, correct?

13 A. Yes.

14 Q. And then the business itself actually lost
15 \$13,000, correct?

16 A. Correct.

17 Q. Okay. So that offset the income that you had,
18 correct?

19 All right. Showing you Exhibit Number --

20 THE COURT REPORTER: I'm sorry, there was
21 no answer.

22 THE WITNESS: Correct.

23 BY MR. HOLT:

24 Q. I apologize. You hadn't finished your answer.
25 Do you want to look at it again?

1 A. No, no. I said correct.

2 Q. Showing you Exhibit Number D-16 --

3 MS. ROHN: I got it. Thanks.

4 BY MR. HOLT:

5 Q. -- this is the tax return for 2004 for Barabus.

6 Do you see that?

7 A. Yes.

8 Q. And in this tax return, again, it shows a loss
9 of \$28,000; is that correct?

10 A. Yes.

11 Q. And then on the rents, it shows \$18,000. Do you
12 see that?

13 A. Yes.

14 Q. And 18 -- if you paid \$1,500 a month for 12
15 months, that would be \$18,000, correct?

16 A. Yes.

17 Q. And where it gets to repairs and maintenance,
18 Line 9, you actually list \$20,000, correct?

19 A. Yes.

20 Q. And --

21 MS. ROHN: Your Honor, I'm going to have
22 the same objection, "where you list." It was
23 actually prepared by Mr. Bansal.

24 THE COURT: Rephrase.

25 BY MR. HOLT:

1 Q. The corporation listed \$28,000 for repairs and
2 maintenance, right?

3 A. Twenty --

4 MS. ROHN: Object to the form of that
5 question. The corporation's accountant listed.

6 THE COURT: Okay. Okay. Let's move on.

7 THE WITNESS: 20,000?

8 BY MR. HOLT:

9 Q. Do you see that, \$20,120, on Line 9?

10 A. Yes.

11 Q. And that's how much the corporation reported
12 that it incurred in repairs and maintenance, correct?

13 A. For 2004?

14 Q. 2004.

15 A. Correct.

16 Q. And if I represented to you that -- and the
17 jurors can do this if they wanted to -- that I added up
18 all the expenses on Exhibit Number 30 for 2004, it came
19 out to \$20,300, instead of \$20,100. Does that sound
20 about right?

21 A. Repeat the question.

22 Q. If I added up all the expenses for 2004 on this
23 list, it happens to match up perfectly with this number
24 on this list. Do you have any reason to dispute that?

25 A. No.

1 Q. But of course it would include things like the
2 quote that you didn't actually pay, wouldn't it?

3 A. I don't know.

4 Q. If it did, you would be telling the IRB that you
5 were actually incurring expenses that you weren't
6 incurring, correct?

7 A. I didn't realize.

8 Q. Now, are you telling this jury that you spent
9 more than \$20,000 between August of 2003 and December of
10 2004 on repairs to the premises that you've talked about
11 other than the \$20,000 reported on your tax return?

12 A. Yes.

13 Q. You just didn't keep the receipts for them?

14 A. No.

15 Q. And isn't it important to make sure you deduct
16 as many expenses as you legitimately can on a tax return
17 so that you can offset the income if you have legitimate
18 expenses, correct?

19 A. That was the first time I had done a business
20 tax with --

21 Q. I mean sometimes people think a business may not
22 report their income correctly, but they always think they
23 report their expenses correctly?

24 MS. ROHN: Your Honor, she can't answer
25 what people think. Object to the form.

1 THE COURT: Move on.

2 MR. HOLT: Okay.

3 BY MR. HOLT:

4 Q. And then attached to this tax return for 2004 --

5 MS. ROHN: Is there a number?

6 MR. HOLT: We're still on Exhibit D-16.

7 MS. ROHN: Okay.

8 BY MR. HOLT:

9 Q. -- is a Schedule K-1. Do you know what that is?

10 A. No.

11 Q. This is the corporation telling you as a
12 shareholder what your gain or loss is.

13 MS. ROHN: Objection, Your Honor. He's
14 testifying now.

15 THE COURT: Overruled.

16 BY MR. HOLT:

17 Q. And this indicates that you have a loss of
18 \$14,118. Do you see that?

19 A. Yes.

20 Q. From this business.

21 And then it indicates that Mr. Gerace is the
22 other shareholder. He has a similar loss of \$14,000. Do
23 you see that?

24 A. Yes.

25 Q. And then this is your tax return, Exhibit Number

1 54, Plaintiffs Exhibit Number 54. And this is your
2 income tax filed with the Government of the Virgin
3 Islands, and it shows that you actually lost money,
4 income, of \$15,690. Do you see that?

5 A. Yes.

6 Q. And on this one, it actually has a carryover of
7 last year of \$1,000. Do you see that?

8 A. Yes.

9 Q. Do you understand what that is?

10 A. Not exactly.

11 Q. Excuse me?

12 A. Not exactly.

13 Q. All right. Showing you Exhibit Number 17 --

14 MS. ROHN: D-17?

15 MR. HOLT: D-17.

16 MS. ROHN: Sure, I'm good.

17 THE COURT: I'll admit it.

18 (Defendants Exhibit Number 17 was admitted.)

19 BY MR. HOLT:

20 Q. Showing you Exhibit Number 17, this is the
21 corporate tax return for 2005 for Barabus, Inc. Do you
22 see that?

23 A. Yes.

24 Q. And this shows this year an actual profit of
25 \$7,9- -- -895. Do you see that?

1 A. Yes.

2 Q. So that's the first time we've seen a profit,
3 correct?

4 A. Yes.

5 Q. And on the Line Number 9, repairs and
6 maintenance, is there anything entered there?

7 A. No.

8 Q. So there are no repairs and maintenance claimed
9 in 2005, correct? Is that correct?

10 A. It doesn't look like it, claimed.

11 Q. Excuse me?

12 A. It doesn't look like there's any claims.

13 Q. And then on the rent, it says \$7,500. Do you
14 see that?

15 A. Yes.

16 Q. So that would be January, February, March,
17 April, May. Five times 15 is \$7,500, correct? Is that
18 correct?

19 A. Is that when we had the plumbing and roof bills
20 taken off?

21 Q. No. I'm just asking you --

22 A. I'm just --

23 Q. I'll come back to those.

24 A. Okay. Okay. Correct.

25 Q. So according to the tax returns that the

1 corporation filed in 2007, there are only five months
2 worth of rent paid in 2005, when you didn't surrender the
3 premise until the end of June, there should have been six
4 months' rent; isn't that correct?

5 A. Correct.

6 Q. So according to your taxes, you still owe a
7 month's rent, correct?

8 A. Unless that's when I took some bills off.

9 Q. Excuse me?

10 A. Unless that's the year I took the bills off the
11 rent.

12 Q. You're talking about deductions you made on --
13 where you paid rent --

14 A. The rent --

15 Q. -- and took a deduction?

16 A. The rent checks.

17 Q. I'll represent to you that's in 2004, but we'll
18 come back to that.

19 A. Okay.

20 Q. According to the tax return, you only paid for
21 five months, correct?

22 A. That's what it looks like.

23 Q. I just want to ask you one more question about
24 this. In 2003, you have an item on taxes and licenses of
25 \$500. Do you see that?

1 A. Yes.

2 Q. Did you ever get a business license?

3 A. The actual paper, no.

4 Q. And then in 2004, under taxes and license, on
5 12, we don't see any entry, do we? There's no entry
6 there, is there?

7 A. Can you move it down a little?

8 Q. Number 12. Whoops. It says: Taxes and
9 licenses. It doesn't have any entry, does it?

10 A. It does not.

11 Q. And then in 2005, where it says taxes and
12 licenses, you don't have a license for that year either,
13 do you?

14 A. There's no entry.

15 Q. And did the fire department or the health
16 department or anyone else ever come out to you at Cane
17 Bay and tell you that you needed to replace that hood in
18 the kitchen?

19 A. Not that I recall.

20 Q. After the fire, did the fire department -- well,
21 did the fire department come when there was a fire?

22 A. Yes.

23 Q. And after the fire, did the fire department tell
24 you you needed a different hood?

25 A. After the fire we had to replace the hood.

1 Q. Okay. So they didn't need to tell you you had
2 to replace the hood?

3 A. No.

4 Q. All right. And then coming back to your own
5 personal tax returns for 2005, real briefly, this is the
6 return you filed with the Virgin Islands Government, and
7 once again, you list your income as a negative income; is
8 that correct?

9 A. Is that Number 22?

10 Q. Yes. That you lost money?

11 MS. ROHN: Again, objection to the form of
12 the question. This isn't signed by her and it's
13 done by Mr. Sheets.

14 THE COURT: Overruled.

15 MR. HOLT: This is her personal tax
16 return.

17 THE COURT: Overruled. Proceed.

18 BY MR. HOLT:

19 Q. Is that correct, D-53?

20 A. It looks like I made \$13,000. 847?

21 Q. Do you see the amount lost, it says 13,000 at
22 the bottom. It says: Adjusted gross income, negative
23 13,000. Do you see that?

24 A. Yeah. It doesn't look like a negative. That's
25 why I wasn't sure.

1 Q. So you reported to the Government of the Virgin
2 Islands that you made no money that year, correct?

3 A. Personally?

4 Q. Yes.

5 A. Personal taxes?

6 Q. Income tax. Your personal income tax. You
7 reported to the government at that time that you made no
8 income, correct?

9 A. I don't know. I didn't -- I didn't see a
10 negative sign. I didn't understand the --

11 Q. Did you report that you made money or didn't
12 make money in 2005?

13 A. I don't remember.

14 Q. And that tax return doesn't refresh your
15 recollection? It doesn't refresh your recollection?

16 A. I just didn't understand it.

17 Q. All right. Before I get to the rent, let me ask
18 you to switch to another topic. I'd like to show you --
19 okay. Well, let's go back just in general.

20 So it's your testimony sometime in March of 2005
21 you started having conversations with either Warren
22 Mosler or Chris Hanley about how you were running the
23 business; is that correct?

24 A. Yes.

25 Q. And it's your understanding that they didn't

1 like the way you were running the business?

2 A. Correct.

3 Q. And they wanted you to tell them what your exit
4 strategy was?

5 A. Correct.

6 Q. And at some point you met a gentleman named Jim
7 Jordan who wanted to buy the restaurant?

8 A. They introduced him to us.

9 Q. And he wanted to buy the restaurant?

10 A. Yes.

11 Q. And you heard Mr. Jordan testify the other day,
12 didn't you?

13 A. Yes.

14 Q. He doesn't say that they introduced him. He
15 said he walked in the kitchen and asked you if it was for
16 the sale, didn't he?

17 A. Yes, I heard his testimony.

18 Q. And Mr. Jordan, you indicated, offered \$50,000?
19 Is that -- is that your testimony?

20 A. Yes.

21 Q. Didn't -- were you present when Joe Gerace
22 testified in his deposition?

23 A. Yes.

24 Q. And didn't he say that actually that he offered
25 you \$80,000?

1 A. We -- we both thought he offered 80, but we
2 don't have any record of that.

3 Q. Okay. And your statement was he offered you
4 \$80,000 until he found out that you didn't have the trade
5 name, and then he dropped it to \$50,000; is that correct?

6 A. Yes.

7 MS. ROHN: Do you have the page and line,
8 please?

9 THE COURT: Attorney Holt, can you give a
10 page and line?

11 MR. HOLT: Well, let me just see if she
12 has a recollection.

13 BY MR. HOLT:

14 Q. Do you recall that?

15 A. Uhm... Was that in my deposition?

16 Q. No. It was in Joe Gerace's deposition.

17 A. Oh.

18 MR. HOLT: Your Honor, I'm lost in my
19 paperwork. Just bear with me.

20 BY MR. HOLT:

21 Q. Looking at Joe Gerace, Line Number --

22 MS. ROHN: Excuse me, Your Honor. He
23 can't impeach her with someone else's testimony.

24 MR. HOLT: Well, I asked her if she
25 recalled his testimony because she was present --

1 THE COURT: Approach, please.

2 MR. HOLT: -- for his testimony and I'm
3 refreshing her recollection.

4 THE COURT: Approach, please.

5 Ladies and gentleman of the jury, I think
6 this might be a good time to take a brief
7 five-minute break. Take five minutes.

8 (The jury was escorted out at 5:03 p.m.)

9 THE COURT: You may be seated.

10 Attorney Holt, how much longer do you
11 anticipate?

12 MR. HOLT: I've probably got 30 more
13 minutes.

14 THE COURT: Well, apart from the fact that
15 I'm looking at the jury and I can almost hear them
16 snoring, it's been a long, long, long testimony, I
17 think we need to break. I think that the jury has
18 got to a point where they are just over papers from
19 counsels. I'm looking at the jury. I'm seeing at
20 least three to four of them falling asleep. As much
21 as I want to put this case on, I'm afraid that to
22 proceed further there is really not going to be any
23 substance. They're tired.

24 MS. ROHN: Can we at least finish his
25 cross and then we can do just -- my direct is

1 never --

2 THE COURT: Attorney Rohn.

3 MS. ROHN: I can do it in the morning.

4 THE COURT: We can do that and I will
5 guarantee that the jury doesn't even -- isn't
6 following a thing that's going on. The jury is
7 literally sleeping. I'm looking at them. I'm
8 seeing them nodding their heads. They're not --
9 they're tired. So it's --

10 MS. ROHN: I don't --

11 THE COURT: -- not about --

12 MS. ROHN: Sorry.

13 THE COURT: It's not about finishing it.
14 It's about having the jury following the case. And
15 I'm telling you, they are tired. And I mean, yeah,
16 I want to get through this case as quickly as
17 possible, but I still want the jury to understand
18 and listen intently. And they're not doing it.
19 Everybody's falling asleep. Only -- there was only
20 one or two jurors who are really staying awake. The
21 rest were nodding.

22 So if both of you wish to go ahead, it's
23 fine. Do it at your own peril. But I'm telling
24 you, the jury is out there so...

25 MS. ROHN: Well, my concern is we come

1 back tomorrow and he starts going over the same
2 testimony again.

3 THE COURT: And what am I here for again?
4 I don't understand.

5 MS. ROHN: Well, can we finish the number
6 game and then we can just go to something else
7 tomorrow so we don't have to redo any of this?

8 THE COURT: Attorney Rohn, are you looking
9 at the jury?

10 MS. ROHN: I'm looking at you. I'm just
11 trying to move this case along. I've got a lot of
12 witnesses.

13 THE COURT: Well, listen, at the same
14 token, I'm not going to torture my jury either. My
15 jury is worn and tired. And it's not -- I mean
16 these are evidentiary issues that must be dealt
17 with. I'm not blaming any of the counsels, but my
18 jury is tired. They're tired. It's a very long
19 day. And, you know, it's now 5:06. You know, I
20 mean, I will ask them if they want to go ahead until
21 5:30. If they say no, they're tired, that's it.

22 MS. ROHN: I think we should give them the
23 opportunity. But I agree.

24 MR. HOLT: I prefer to stop. I'm tired
25 myself.

1 MS. ROHN: I'll do whatever the jury
2 wants.

3 THE COURT: You know, it's one thing to
4 move a case. It's another thing to move a case
5 without a jury following. And I'm telling you, I'm
6 not even asking you, I'm telling you, that jury is
7 worn. So, you know, it is what it is. And I will
8 bet you, not that I'm a betting person, I poll that
9 jury, half of them is going to say they're sleepy
10 and want to go home and the other half is going to
11 say let's go ahead. And now I will end up looking
12 like a bad guy for one half because I have to rule.

13 So rather than going through all of that,
14 I think it's just time for us to just call it a day.
15 I'll have them come in, we can start 8:30 tomorrow
16 morning, and move this case hopefully a lot quicker.
17 I'm even more concerned because I was under the
18 impression, foolishly or not, that we would be
19 finished by Thursday, I'd be able to send the jury
20 in. I already have a calendar call on Friday which
21 we may have to start around 11:00 on Friday. So it
22 means we're definitely going into Monday.

23 All right. Call in the jury, please.

24 (The jury was escorted in at 5:08 p.m.)

25 THE COURT: You may be seated.

1 Good afternoon, ladies and gentleman of
2 the jury. I'm looking at your faces and I can see
3 that you all are intently listening to the
4 testimony. I can also see that it's -- that your
5 attentiveness is starting to put a drain on you all.
6 And I think that this may be a good time to recess
7 for the evening. Now, if any one of you or the jury
8 wishes to go ahead until 5:30 or more, we can do so,
9 but I see you guys may be a little tired. I think
10 it may be time for us to recess.

11 So is there any one of you who want to
12 say, well, let's go on, Judge, just raise your hand.
13 No hands. Okay. Do I know my juries or do I know
14 my juries?

15 All right, ladies and gentlemen --
16 gentleman, I'm sorry, we are going to recess. I'm
17 going to ask you -- we're really falling a lot
18 behind. I'm going to ask you to come in at 8:30, I
19 would like to start. We'll pick up on the testimony
20 hopefully by quarter to 9:00 and we're going to try
21 and move this case along very quickly.

22 And I do apologize. I know I said by
23 Friday, but apparently we may have to go into
24 Monday. So please make whatever arrangements for
25 Monday or Tuesday. Hopefully not Tuesday. But

1 please make whatever arrangements you need to make
2 and assume that we may go on to -- I promise you no
3 later than Monday or Tuesday. But make whatever
4 necessary arrangements you may have, please. Okay.
5 With that, we'll recess.

6 Again, please do not discuss this case
7 with anyone or amongst yourselves. If anyone was to
8 contact you involving this case, please notify me or
9 the marshals immediately. Please don't listen to
10 any newspapers, radio or any electronic media
11 concerning this case. And please keep an open mind
12 until you've heard all of the evidence and you
13 retire to deliberate. We'll recess until 8:30.
14 Thank you.

15 (The jury was escorted out at 5:11 p.m.)
16 (Proceeding were recessed for the day at 5:11 p.m.)

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CERTIFICATE OF REPORTER

I, CAROL GRECO, Registered Professional Reporter,
Official Court Reporter, of the Superior Court of the
Virgin Islands, Division of St. Croix, do hereby certify
that I reported by machine shorthand, in my official
capacity, the Jury Trial in the case of *Joe Gerace,*
Victoria Vooyoys, d/b/a Cane Bay Beach Bar, v. Warren
Mosler, Chris Hanley and Chrisomos Cane Bay, LLC.,
SX-2005-CV-00368, in said Court, on the 23rd day of
February, 2022.

I FURTHER CERTIFY that the foregoing pages are a
true and accurate computer-aided transcription of my
stenotype notes of said proceedings.

I HAVE HEREUNTO subscribed my name, this 9th
day of March, 2022.



CAROL GRECO, RPR
REGISTERED PROFESSIONAL REPORTER
Official Court Reporter, II