

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

**VIRGIL K. SERRANT, SR., individually
and as Administrator for the ESTATE OF
ALLISON PEARL C. SERRANT a/k/a
ALLISON SERRANT,**

Plaintiffs,

vs.

**DONNA SERRANT THOMAS, CARLINE
SERRANT, YVETTE SERRANT BOYNES,
CURTNEY SERRANT, HILLARY SERRANT
TURNBULL, CHERYL SERRANT,
CALINSTON SERRANT, and NATHANAE
SERRANT,**

Defendants.

Case No. ST-16-CV-478

ACTION FOR DECLARATORY
JUDGMENT and QUIET TITLE

Cite as: 2019 VI SUPER 9U

MEMORANDUM OPINION

¶1 Before the Court are Plaintiff's Motion for Judgment on the Pleadings¹ and Defendants' Motion to Disqualify Attorney Hodge². In this action, Plaintiff seeks to quiet title in his name to property recorded in the name of Plaintiff's now deceased mother. For the reasons set forth below, the Motion For Judgment on the Pleadings will be denied and the Court will reserve ruling on the Motion To Disqualify Attorney Hodge.

¹ Defendants did not file any response to the Motion for Judgment on the Pleadings.

² "Attorney Hodge" refers to Attorney George Hodge, who represents the plaintiff in this matter. The motion to disqualify was filed by Defendants Hillary Serrant Turnbull, Yvette Serrant Boynes, Curtney Serrant, Cheryl Serrant, and Calinston Serrant, who are all jointly represented.

FACTS

¶2 Plaintiff Virgil K. Serrant, Sr. (hereinafter “Virgil”) filed this action on August 12, 2016. He alleges that on November 17, 1998 he purchased certain plots of land in Estate Contant, St. Thomas, U.S. Virgin Islands (the “Property”).³ He alleges that he recorded the Property in the name of his mother, Allison Pearl C. Serrant (“Allison”), for her to hold legal title on his behalf, to shield the property from creditors or liens, while he exclusively occupied the premises.⁴

¶3 Allison Serrant died intestate on January 17, 2015, survived by her spouse, Felix Llewellyn Serrant (“Felix”), Virgil himself, and Virgil’s siblings, Defendants herein. Virgil now seeks to quiet title in his name.

¶4 To support his claim to ownership, Virgil submits (1) an Affidavit from his father Felix, wherein Felix attests that Virgil purchased the Property but had legal title recorded in Allison’s name, that Virgil is the sole occupant on the Property at which he resides and operates a business, and that neither Felix nor any of his and Allison’s children have any inheritance rights to the Property; (2) a receipt dated January 30, 1997, for “Payment on Land at 9D Contant”, in the sum of \$10,000, “Received from Kelvin Serrant”; (3) a Warranty Deed dated November 17, 1998 where Enez Harvey conveyed the Property to Allison Serrant in fee simple absolute

³ The Property consists of two plots: Parcel No. 9DB and Parcel 9DD, Estate Contant, No. 7A Southside Quarter, St. Thomas, V.I.

⁴ As Virgil describes it, “to exclusively occupy . . . for his own quiet enjoyment without fear of creditors or liens.” Compl. ¶ 3.

for the sum of \$62,680.00; and (4) a Quitclaim Deed dated February 18, 2016 where Felix conveys all his interest in the Property to Virgil for consideration of \$10.00.⁵

¶5 Defendants dispute Virgil's version of events and instead aver that the Property was purchased and owned by their mother Allison.⁶ In addition, Defendants maintain that to the extent Felix, their father, executed his Affidavit and the Quitclaim Deed, both were done under undue influence as Felix was "ill in his mind" and not capable of forming the requisite intent to execute those documents.⁷

ANALYSIS

I. Genuine Issues of Material Fact Preclude Entry of Judgment on the Pleadings.

¶6 Under Virgin Islands Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed -- but early enough not to delay trial -- a party may move for judgment on the pleadings."

A motion for judgment on the pleadings should not be granted unless the moving party has established that there is no material issue of fact to resolve, and that it is entitled to judgment in its favor as a matter of law. [A Court views] the facts alleged in the pleadings and the inferences to be drawn from them in a light most favorable to the [non-moving party], and [is] foreclosed from considering evidence from any source outside of the pleadings and the exhibits attached to the pleadings.

⁵ See attachments to Serrant's Statement of Undisputed Facts in Supp. of J. on the Pleadings. The February 18, 2016 Quitclaim Deed does reflect that it has been recorded at the Office of the Recorder of Deeds.

⁶ Answer ¶¶ 2, 3.

⁷ *Id.* ¶¶ 5, 6.

Bonelli v. Gov't of the V.I., 67 V.I. 714, 719 (V.I. 2017) (citations and internal quotations omitted).

¶7 Virgil's motion for judgment on the pleadings relies on exhibits submitted for the first time with his Statement of Undisputed Facts in Support of Judgment on the Pleadings. However, the Court is foreclosed from considering evidence from any source outside the pleadings and exhibits attached to the pleadings. *Id.* Therefore, the Court will treat Virgil's Motion as a motion summary for judgment, though the standard of review remains the same. *United Corp. v. Hamed*, 64 V.I. 297, 306 (V.I. 2016).

¶8 Virgil's Motion misses the mark by a long shot. Specifically, Virgil has provided no receipt or other documentation showing he paid the full purchase price for the Property. The receipt he submitted is for the sum of \$10,000, while the Warranty Deed that transferred the Property to Allison Serrant recites that it was in exchange for consideration of \$62,680. In other words, the Court has before it no evidence showing who paid the remaining sum of \$52,680. Virgil does provide an affidavit from his father Felix that states Virgil purchased the Property for his mother to hold in trust, but the Warranty Deed where Allison took title to the property states that she took title in fee simple absolute. Hence, there is a genuine dispute of material facts: whether Virgil in fact paid the total purchase price for the Property, and whether he did so with the understanding that his mother would hold

it in trust for him.⁸ These genuine issues of material fact preclude the Court from granting summary judgment.

¶9 Without conclusive evidence that Virgil in fact paid the full purchase price for the Property, the Court cannot conclude, as Virgil urges, that a resulting trust arose from the purchase of the Property. Virgil himself argues, a resulting trust arises, “where a transfer of property is made to one person and the purchase price is paid by another[.]” Mot. 3 (citing *Wallace v. Kilbride*, 319 F. 2d 760, 763 (3d Cir. 1963). Without proof that Virgil paid the full purchase price of the Property an element necessary to establish a resulting trust is absent here.

¶10 Finally, Virgil’s reliance on the Quitclaim Deed executed by Felix, his father, does not resolve the ownership status of the Property. In that Deed, Felix purports to convey all his rights in the Property to Virgil in fee simple absolute. However, Allision Serrant died intestate; under Virgin Islands law, “[t]he real property of a deceased person . . . not devised, shall descend, and the surplus of his or her personal property, after payment of debts and legacies . . . shall be distributed . . . [o]ne-third to the surviving spouse, and the residue in equal portions to the children, and such persons as legally represent the children if any of them have died before the deceased.” V.I. Code Ann. Tit. 15 § 84(1). On the pleadings and facts before the Court, Felix, as Allison’s husband, would be entitled to inherit only an undivided one-third (1/3) interest in the Property and could thus convey no more than his 1/3 interest to

⁸ Especially since the Warranty Deed to Allision Serrant recites that the Property is conveyed to her in “fee simple absolute forever.”

Virgil. Hence, the Quitclaim Deed cannot resolve the issue of who is entitled to ownership of the Property.⁹

¶11 The documents that Virgil relies upon to support his motion reveal genuine material issues of fact. The Motion for Judgment on the Pleadings must be denied.

II. The Court Will Reserve Ruling on the Motion To Disqualify Attorney Hodge.

¶12 Defendants' move to disqualify Attorney Hodge, Virgil's counsel. Defendants assert that Attorney Hodge has a direct conflict of interest because he represents Virgil in this matter and simultaneously represents the estate of Allison Serrant in the separate probate matter before the Court. They assert that Hodge "cannot represent the interests of the Estate and at the same time sue the heirs/defendants of that same Estate in a different judicial forum."¹⁰

¶13 In response, Attorney Hodge argues his representation in the related probate matter is limited to representing Virgil, as Administrator of the Estate of Allison Serrant. Hodge states that "at no time [has he] ever made an appearance on behalf of the estate nor defendant heirs in any proceeding." However, an Administrator of

⁹ Nor does Hillary Serrant-Turnbull's May 27, 2016 Letter to the Court in *In the Matter of the Estate of Alliston Pearl C. Serrant a/k/a Allison Serrant*, Probate No. ST-15-PB-44, resolve the issue of who owns the Property. Virgil points out Serrant-Turnbull wrote, "I am aware of [the Property] in my mother's name which belongs to Virgil." Ex. 5, Pl.'s Statement of Undisputed Facts. However, Serrant-Turnbull's understanding of who owned the Property does not mean that understanding was accurate or legally probative. Also, the fact that Serrant-Turnbull seems to concede Virgil's ownership of the property does not preclude Defendants from taking an opposing position in this litigation—indeed Defendants (including Serrant-Turnbull) do so in their Answer.

¹⁰ Defs.' Mot. to Disqualify Att'y Hodge 6.

an estate has the duty, inter alia, to gather and identify the assets of an Estate, report them to the Court, identify the heirs and devisees, pay the Estate's expenses and debts, handle claims against the estate, collect debts owed to the estate (or decedent) and oversee the distribution of the assets to the heirs or devisees following entry of adjudication. Thus, Virgil has all those duties. But, he is also claiming the Property titled to the decedent, his mother, as his own. Virgil seeks to wear two conflicting hats: one that tells the Probate Court that he accepts responsibility for managing Property of the Estate, and another hat that tells this Court he is solely entitled to the Property of the Estate. Therefore, the primary conflict here lays with Virgil, not Attorney Hodge. Also, the Court cannot overlook the fact the Estate of Allison Serrant is named as a Plaintiff. However, since the Estate holds title to the Property, the Estate should be named as a Defendant, not Plaintiff. Thus, the Court will direct Virgil to amend the complaint to name Allison's Estate as a defendant.¹¹ The Court will reserve ruling on the Motion To Disqualify Attorney Hodge until the complaint is amended and Virgil has an opportunity to decide how he wishes to proceed.

CONCLUSION

¶14 Because Virgil submits exhibits with his Motion for Judgment on the Pleadings that were not attached to his original pleading, the Court will treat the Motion as a motion for summary judgment. Virgil must show that there are no material issues

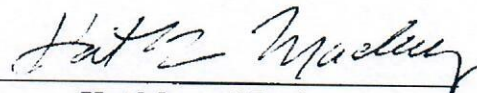
¹¹ At that point, it will likely be impossible for Virgil to be both a plaintiff and a defendant. But the Court will allow Virgil to consult with his counsel and determine how he wishes to proceed.

of fact to resolve, and that he is entitled to judgment as a matter of law. However, there are material issues of fact —whether Virgil paid the full purchase price for the Property and whether his mother held it in trust for him. These material issues of fact prevent the Court from granting Virgil's motion.

¶15 The Court will direct Virgil to amend the complaint to name the Estate as a Defendant and will reserve ruling on the motion to disqualify Attorney Hodge until after the amended complaint is filed.

¶16 An Order consistent with this Memorandum will immediately follow.

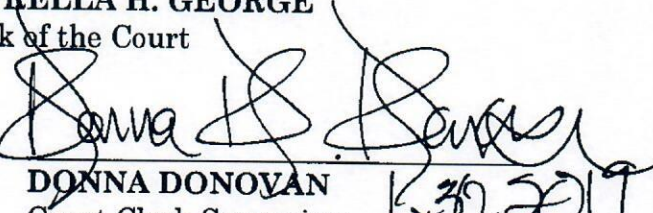
DATED: January 29, 2019



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:



DONNA DONOVAN
Court Clerk Supervisor

1/30/2019