

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

FIRSTBANK PUERTO RICO,)	CASE NO. SX-09-CV-497
)	
Plaintiff)	ACTION FOR FORCIBLE ENTRY,
)	DETAINER AND RESTITUTION
v.)	
)	
DANIEL SIMIOLKJIER and CHARMAINE)	
PAUL,)	
)	
Defendants)	

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants', Daniel Simmiolkjier and Charmaine Paul, (hereinafter "Defendants") Motion to Dismiss For Lack of Subject Matter Jurisdiction filed on December 8, 2009. For the reasons that follow, Defendants' Motion will be DENIED.

The Defendants contend that this Court lacks subject matter jurisdiction to address Plaintiff's, FirstBank Puerto Rico (hereinafter "Plaintiff") Action for Forcible Entry, Detainer, And Restitution ("FED") because the Defendants have raised facially bona fide and good faith defenses to the Plaintiff's claim for possession.

Initially, the Court notes that on November 10, 2009 the Defendants filed an Answer And Counterclaim to this action and asserted in paragraph "1." of their counterclaim that "this Court has jurisdiction pursuant to 4 V.I.C. §76." One month later this jurisdiction has vanished.

In any event we will examine Defendants' Motion. Defendants continue to raise arguments that should have been raised years ago. Yes "It is well-settled that the jurisdiction of the Court in FED cases is confined to determining the issue of peaceable

possession and does not extend to (a) an adjudication of title or (b) the right to possession. *Estate of Thomas Mall, Inc. v. Territorial Court*, 923 F.2d 258, 259 (3d Cir. 1991). But, in the instant action the right to possession has already been determined by this Court in its Default Judgment, Summary Judgment and Order of Foreclosure dated November 22, 2006. This Court, in Civil No. SX-05-CV-021, on page 5 stated that:

"in the event that any party purchases the subject real property at Marshal Sale that party is entitled to exercise the right of possession as of the date of confirmation of sale."

The Order of Confirmation of Territorial Marshal's Sale to Plaintiff was signed on June 21, 2007. Thus, there is no question that the Plaintiff has the right to possess the subject property.

Given the fact that Plaintiff is the legal owner of the property in question (Defendants' six month right of redemption under Title 28 V.I.C. §535 expired on December 21, 2007) and Defendants are in possession of said property, the Defendants' burden under an Action For Forcible Entry, Detainer and Restitution is to "raise a colorable defense requiring construction of an agreement between Defendant and the property owner...." Id at 264. If Defendants are successful then forcible entry and detainer will not lie. After reviewing the pleadings and all of Defendants' arguments this Court finds that the Defendants have failed to raise a colorable defense to Plaintiff's Action For Forcible Entry, Detainer and Restitution.

Furthermore, Defendants' reliance on Fed. R. Civ. P. 60(b)(3) is untimely. Although, this rule does provide for relief from a Judgment or Order for "(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an

opposing party;"; the Motion "must be made within a reasonable time - and for reasons (1), (2), and (3) no more than a year after the entry of the Judgment or Order or the date of the proceedings." The confirmation of the Marshal's Sale was entered over three (3) years ago, on June 21, 2007.

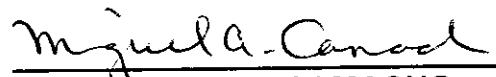
Finally, as there has been no evidence or suggestions that the Judgment rendered by this Court on November 22, 2006 was in any way fraudulent or lacked integrity, the Court will deny Defendants' request for further judicial inquiry into said judgment.

The Court having considered the pleadings and being well advised in the premises, it is hereby

ORDERED that Defendants' Motion to Dismiss For Lack of Subject Matter Jurisdiction is hereby **DISMISSED**; and it is finally

ORDERED that all parties shall be served with a copy of this Memorandum Opinion and Order.

Dated: July 27, 2010



MIGUEL A. CAMACHO
Superior Court Magistrate

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 

Court Clerk Supervisor

7/30/10