

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

VINCENT A. FULLER, JR. AND	)	
ARTHUR NEWMAN, individually and jointly,	)	
	)	
Plaintiffs,	)	ST-10-CV-183
vs.	)	
	)	Action for Forcible Entry, Detainer
ROSEMARY SAUTER-FRETT AND	)	and Restitution
JACOB A. FRETT, TRUSTEES OF	)	
THE SAUTER-FRETT FAMILY	)	
TRUST	)	
	)	
Defendants.	)	

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**MEMORANDUM OPINION AND ORDER**

This action for Forcible Entry and Detainer came on for hearing on Monday, June 14, 2010, before the Honorable Alan D. Smith, Magistrate of the Superior Court of the Virgin Islands. The Plaintiffs, Vincent A. Fuller, Jr. (“Fuller”) and Arthur Newman (“Newman”), appeared *pro se*. The Defendant, Jacob A. Frett, Jr.<sup>1</sup>, appeared as Trustee of the Sauter-Frett Family Trust (“Trust”) and was represented by Robert A. Eberhart, Esq. The Defendant, Rosemary Sauter-Frett<sup>2</sup>, Trustee of the Sauter-Frett Family Trust, was not found for service.

Both parties offered sworn testimony and evidence, and thereafter the Court took the matter under advisement to determine whether the Defendants offered sufficient evidence to demonstrate a “facially bona fide and good faith claim of right” to continued possession of the property in dispute.

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<sup>1</sup> The Court notes that Jacob A. Frett, the Defendant named in the caption, and Jacob A. Frett, Jr. are one and the same. During trial, Frett argued that the signature “Jacob A. Frett” was a material defect to the Warranty Deed execution, but never argued that he was a different person than the Defendant named in the caption.

<sup>2</sup> The Court notes that the Defendant, Rosemary Sauter-Frett, did not sign the Lease & Option Agreement in her individual capacity. She signed the agreement as Trustee of the Sauter-Frett Family Trust. Accordingly, the Court will dismiss Sauter-Frett, in her individual capacity, as a named party in the case.

## **I. Background**

The following relevant evidence was presented at trial:

1. On or about October 25, 2002, Jacob A. Frett, Jr. (“Frett”) and Rosemary Sauter-Frett (“Sauter-Frett”) created the Sauter-Frett Family Trust. Plaintiff’s Ex. No. 1.
2. Under Article IX, Paragraph C of the Trust, each Trustee is authorized “[t]o sell or dispose of or grant options to purchase any property, real or personal . . . .” Plaintiff’s Ex. No. 1.
3. Under Article IX, Paragraph J of the Trust, each Trustee is authorized “[t]o enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.” Plaintiff’s Ex. No. 1.
4. On or about October 25, 2002, Frett and Sauter-Frett transferred Parcel No. 3a-2 Estate Bakero, No. 5 Frenchman’s Bay Quarter, St. Thomas, U.S. Virgin Islands, to the Sauter-Frett Family Trust. Plaintiff’s Ex. No. 1.
5. On or about February 23, 2009, Frett and Sauter-Frett, as Trustees of the Sauter-Frett Family Trust, executed a warranty deed transferring Parcel No. 3a-2 Estate Bakero, No. 5 Frenchman’s Bay Quarter to Newman and Fuller for Ten Dollars (\$10.00). Frett and Sauter-Frett were represented by Attorney George Ethridge in the transaction. The warranty deed was filed and recorded on February 26, 2009. Plaintiff’s Ex. No. 2; Plaintiff’s Ex. No. 11; Plaintiff’s Ex. No. 12.

6. On or about February 26, 2009, Frett and Sauter-Frett filed a Trustee's Certificate asserting their authority "[to] sell real estate and execute a Deed on behalf of the Trust." Plaintiff's Ex. No. 6.
7. On or about February 26, 2009, Frett and Sauter-Frett signed a document granting authorization for Newman and Fuller to pay the \$347,635.15 owed to the Sauter-Frett Family Trust directly to Sauter-Frett. Plaintiff's Ex. No. 8.
8. On or about February 26, 2009, Newman and Fuller entered into a Lease & Option Agreement with the Sauter-Frett Family Trust for Parcel No. 3a-2 Estate Bakero, No. 5 Frenchman's Bay Quarter. Frett and Sauter-Frett signed the Lease & Option Agreement as Trustees of the Sauter-Frett Family Trust. Plaintiff's Ex. No. 3.
9. Clause 5 of the Lease & Option Agreement provides that the Sauter-Frett Family Trust was to pay \$5,032.86 in rent for a lease period of forty-five days. Plaintiff's Ex. No. 3A.
10. Clause 21 of the Lease & Option Agreement provides that, in order to exercise the option to purchase, the Sauter-Frett Family Trust must be current in all payments. Clause 21 specified that the option fee was \$85,000.00 and should be paid within forty-five days of execution of the lease. The lease also provided that the forty-five day period could be extended. Plaintiff's Ex. No. 3A.
11. At some unspecified time, the parties orally modified the Lease & Option Agreement and extended the Defendants' possession of the property from the original forty-five day lease period. Under the modified agreement, the Sauter-Frett Family Trust would

have the right to buy property within two years of February 2009 provided that the monthly rent was current and that the option fee was paid timely.

12. The parties' oral modification of the Lease & Option Agreement was never put in writing despite Frett's demand for a written copy.
13. As of the date of trial, Frett and Sauter-Frett made approximately \$45,000 in option payments on behalf of the Sauter-Frett Family Trust.
14. The Plaintiffs filed this action on April 7, 2010. Thereafter, the parties filed an Amended Complaint on April 26, 2010. The Plaintiffs submitted a Notice to Quit to Frett on May 15, 2010.

## II. Discussion

In *Inter Car Corp. v. Discount Car Rental*, 21 V.I. 157, 159 (Terr. Ct. 1984), the Court held that:

[A] FED action will lie if any of the following conditions exists and is properly pleaded and proved to the Court:

1. Entry on the premises by force;
2. Entry on the premises peaceably but possession is detained or continued by force;
3. There is an undisputed oral or written lease agreement, and rent is due and owing thereon; or
4. There is an undisputed oral or written lease which has expired. . . .

[H]owever, a FED cause of action will not lie where:

1. Title to the premises is in question; or
2. Where there is proved to the Court to exist a bona fide question of the existence of a lease at law or in equity, which has not yet expired.

The Virgin Islands Supreme Court, in *Virgin Islands Port Auth. v. Joseph*, 49 V.I. 424, 431 (V.I. 2008), reiterated the long standing rule that a court's FED jurisdiction ceases upon a showing that the evidence is sufficient to establish a "facially bona fide and good faith claim of right" in the defendant to continued possession of the premises. See *Estate of Thomas Mall*, 923 F.2d 258, 260 (3d Cir. 1991); *C.M.L., Inc. v. Dunagan*, 904 F.2d 189, 191 (3d Cir. 1990); and *Inter Car Corp. v. Discount Car Rental*, 21 V.I. 157, 158-159 (Terr. Ct. 1984). The Court in *Joseph* also took note of the fact that "in *Thomas Mall*, the Court recognized that the trial judge in an FED action cannot 'adjudicate a right of possession that depends on an equitable interest in the premises [] or inquire into equitable rights and give relief to which the party might be entitled in equity.'" *Joseph* at 430 (discussing *Thomas Mall* at 264).


The Superior Court of the Virgin Islands, in *Virgin Islands Community Housing Ltd. Partnership v. Rivera*, ST-07-CV-655, 2008 V.I. LEXIS 16, at \*2 (V.I. Super. Ct. Dec. 24, 2008), reiterated the long standing rule that "As soon as a defendant in possession in an FED action raises a colorable defense requiring construction of an agreement between the property owner and the party in possession, an FED action will not lie." See *Estate of Thomas Mall*, 923 F.2d at 264; *Inter Car Corp.*, 21 V.I. at 159; see also *Four Winds Plaza Corp. v. White*, D.C. Civ.App. No. 2005-203, 2008 WL 3539791, at \*1, 5 (D.V.I. App. Div. Aug. 5, 2008).

The evidence offered by the parties during the FED proceeding raises issues as to whether the Defendants have an equitable interest in the property. To make a determination of the Defendants' equitable interest in the property, if any, the Court would have to construe the parties' original and modified Lease and Option Agreement in violation of the principles set forth in *Rivera* and *Estate of Thomas Mall*. Accordingly, this Court lacks jurisdiction under the

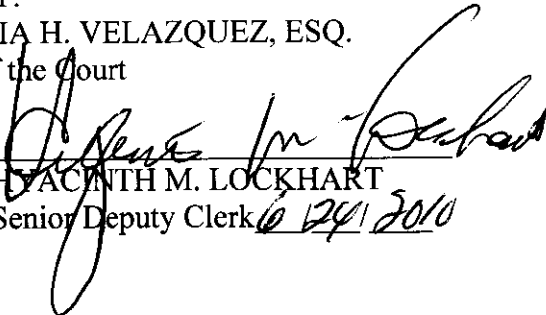
Vincent A. Fuller, Jr. and Arthur Newman, individually and jointly, vs. Rosemary Sauter-Frett and Jacob A. Frett, Trustees of the Sauter-Frett Family Trust  
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FED statute, and the action will be dismissed. The Plaintiffs may file an appropriate action in the Civil Division of the Superior Court.

Dated: June 23, 2010

  
ALAN D. SMITH  
Magistrate of the Superior Court  
of the Virgin Islands

ATTEST:  
VENETIA H. VELAZQUEZ, ESQ.  
Clerk of the Court

By:   
HYACINTH M. LOCKHART  
Senior Deputy Clerk 6/24/2010