

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

SBP, I., LLC and SABA BAY, LLC, Plaintiff )

CASE NO. ST-10-CV-0000357

ACTION FOR: BREACH OF  
CONTRACT - CIVIL

vs )

FAMILY PROPERTIES )  
CARIBBEAN, LLC., )

Defendant

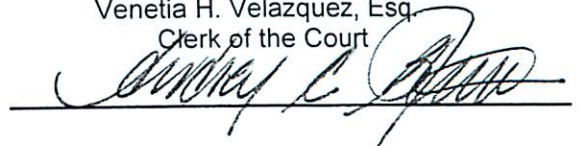
**NOTICE OF ENTRY OF  
MEMORANDUM OPINION  
AND ORDER**

TO: SUPERIOR COURT MAGISTRATES  
SUPERIOR COURT JUDGES  
IT, LOG BOOK, CLERK OF THE COURT  
RAFAEL F. MUILENBURG, ESQ.  
RAVINDER S. NAGI, ESQ., LISA MICHELLE KOMIVES,  
ESQ.

Please take notice that on November 12, 2010 a(n) MEMORANDUM  
OPINION AND ORDER dated November 08, 2010 was entered by the Clerk in  
the above-entitled matter.

Dated: November 12, 2010

Venetia H. Velazquez, Esq.  
Clerk of the Court



AUDREY BRIN  
COURT CLERK II

**SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS AND ST. JOHN**

|  |   |                              |
|--|---|------------------------------|
| <b>SBP, I., LLC and SABA BAY, LLC,</b>   | ) |                              |
|  | ) |                              |
| <b>Plaintiffs,</b>                       | ) |                              |
|  | ) |                              |
| <b>vs.</b>                               | ) | <b>CASE NO. ST-10-CV-357</b> |
|  | ) |                              |
| <b>FAMILY PROPERTIES CARIBBEAN, LLC,</b> | ) |                              |
|  | ) |                              |
| <b>Defendant.</b>                        | ) |                              |
|  | ) |                              |

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**MEMORANDUM OPINION**

Pending before the Court is Plaintiffs' motion to dismiss Defendant's counterclaim for slander of title.<sup>1</sup> For the following reasons, Plaintiffs' motion will be granted.

**FACTUAL AND PROCEDURAL HISTORY**

On March 24, 2010, Plaintiff SBP, I., LLC ("SBP") entered into an agreement with Defendant for the purchase of realty in St. John (the "Property") and placed \$765,000.00 in escrow with Defendant's real estate agent as a deposit. During the course of the negotiations between SBP and Defendant, the owner of SBP formed a new company, Saba Bay, LLC ("Saba Bay"), to purchase the Property in lieu of SBP. Defendant agreed to abandon the March 24, 2010, contract and prepare a new agreement pertaining to the Property and an additional tract of land. The \$765,000.00 deposit paid by SBP was to serve as Saba Bay's deposit in accordance with the new agreement.

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<sup>1</sup> Plaintiffs filed their motion on September 20, 2010; Defendant filed an opposition on October 8, 2010; and Plaintiffs filed a reply on October 18, 2010.

However, Saba Bay never signed the new agreement, which was drafted by Defendant on or about April 8, 2010.

Plaintiffs filed this action on June 28, 2010, seeking damages, or, alternatively, specific performance on theories of breach of contract, breach of the duty of good faith, fraud, intentional misrepresentation, and negligent misrepresentation. On June 29, 2010, Plaintiffs filed a notice of *lis pendens* with respect to the Property, and on August 27, 2010, Defendant filed counterclaims for breach of contract and slander of title.

#### ANALYSIS

Fed. R. Civ. P. 12(b)(6), adopted by the Virgin Islands Superior Court through SUPER. CT. R. 7, provides that, upon motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a “failure to state a claim upon which relief can be granted” by the claimant. A motion to dismiss a complaint should be denied if the factual allegations are “enough to raise a right to relief above the speculative level.” *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In addition to the factual allegations, a court considers any documents that are referenced in the claims when reviewing a facial attack. *Church of Universal Broth. v. Farmington Tp. Sup'rs*, 296 Fed.Appx. 285, 288, 2008 WL 4636495, at \*1 (3d Cir. 2008); see also *Pension Ben. Guar. Corp. v. White Consol. Industries, Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993).

To prove slander of title, a claimant must show “(1) publication, (2) with malice, (3) of false allegations concerning the claimant’s property, (4) causing pecuniary harm.” *Thompson v. Florida Wood Treaters, Inc.*, 2009 WL 4730784, at \*10 (D.V.I. 2009)

(citing *System Operations, Inc. v. Scientific Games Dev. Corp.*, 555 F.2d 1131, 1140 (3d Cir. 1977)). Here, Defendant has alleged that Plaintiffs' filing of a notice of *lis pendens* concerning the Property constitutes slander of title.

A notice of *lis pendens* makes the public aware that certain property is the subject matter of litigation. See Black's Law Dictionary, at 950 (8th ed. 2004). See also 28 V.I.C. § 130. A buyer's action for specific performance of a purchase and sale agreement for real property "is a classic example of an action in which a *lis pendens* is both appropriate and necessary." *Del Valle v. Mortgage Bank of California*, 2009 WL 3786061, at \*10 (E.D. Cal. 2009). See also *Ross v. Canada Life Assurance Co.*, 1995 WL 745041, at \*2 (E.D. Pa. 1995) (courts permit a *lis pendens* to stand "when specific performance relating to the title of the property in question is an available remedy").

Considering that Plaintiffs seek specific performance requiring Defendant to convey the Property pursuant to the terms of either the March 24, 2010, contract or the April 8, 2010, contract, the filing of the notice of *lis pendens* was appropriate as it informed the public that this action might affect the Property.

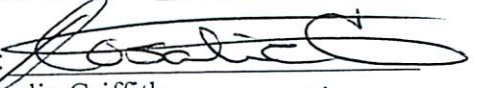
In addition, Defendant has failed to allege in its counterclaim or otherwise demonstrate that the content of the notice of *lis pendens* is malicious and contains false allegations. See *Vanderford Co., Inc. v. Knudson*, 165 P.3d 261, 271 (Idaho 2007) (*lis pendens* not defamatory in an action by lender to foreclose on deeds of townhouses as the notice "merely informs the public that the property is involved in litigation"); *LZG Realty LLC v. H.D.W. 2005 Forest LLC*, 2010 WL 2163812, at \*5 (N.Y. Sup. Ct. 2010) ("mere filing of a *lis pendens* does not constitute the tort of slander of title"); *Ringier America,*

*Inc. v. Enviro-Technics, Ltd.*, 673 N.E.2d 444, 447 (Ill. App. Ct. 1996) (notice of *lis pendens* was not false where it stated nothing more than the fact that litigation was pending).

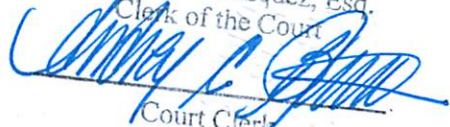
As a result, Defendant's counterclaim for slander of title fails to state a claim upon which relief can be granted and Plaintiffs' motion to dismiss will be granted. An Order consistent with this Opinion shall follow.

Dated: November 8, 2010

ATTEST: Venetia H. Velazquez, Esq.  
Clerk of Court \_\_\_/\_\_\_/\_\_\_

by:   
Rosalie Griffith  
Court Clerk Supervisor 11/9/10

  
HON. MICHAEL C. DUNSTON  
JUDGE OF THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY  
Date: 11/9/10  
Venetia H. Velazquez, Esq.  
Clerk of the Court  
By:   
Court Clerk

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

|                                   |   |                       |
|-----------------------------------|---|-----------------------|
| SBP, I., LLC and SABA BAY, LLC,   | ) |                       |
|                                   | ) |                       |
| Plaintiffs,                       | ) |                       |
|                                   | ) |                       |
| vs.                               | ) | CASE NO. ST-10-CV-357 |
|                                   | ) |                       |
| FAMILY PROPERTIES CARIBBEAN, LLC, | ) |                       |
|                                   | ) |                       |
| Defendant.                        | ) |                       |
| <hr/>                             |   |                       |

**ORDER**

UPON CONSIDERATION of the premises, it is hereby

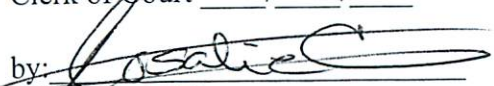
ORDERED that Plaintiffs' motion to dismiss Defendant's counterclaim for slander of title is GRANTED; and it is


ORDERED that Count II of Defendant's counterclaim is DISMISSED with prejudice; and it is

ORDERED that a copy of this Order be directed to counsel of record.

Dated: November 8, 2010

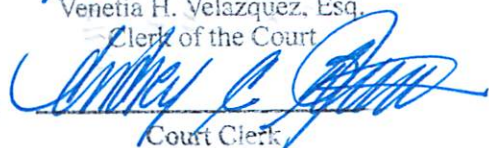
ATTEST: Venetia H. Velazquez, Esq.  
Clerk of Court \_\_\_/\_\_\_/\_\_\_

by:   
Rosalie Griffith  
Court Clerk Supervisor 11 19 10

  
HON. MICHAEL C. DUNSTON  
JUDGE OF THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY

Date: 11/19/10  
Venetia H. Velazquez, Esq.  
Clerk of the Court

By:   
Court Clerk

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF EDUCATION

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