

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

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GOVERNMENT OF THE VIRGIN ISLANDS, )

Plaintiff, )

vs. )

CASE NO. ST-10-CV-526

1,275 SQ. FT. OF PARCEL NO. 56A-A ESTATE )

THOMAS IN FEE SIMPLE AND 396 SQ. FT. )

OF PARCEL NO. 56A-1A ESTATE THOMAS IN )

FEE SIMPLE AND 11,810 SQ. FT. OF PARCEL )

NO. 10A ESTATE THOMAS IN FEE SIMPLE OF )

NO. 6 NEW QUARTER, SAINT THOMAS, )

U.S. VIRGIN ISLANDS; LOCKHART REALTY )

INC.; 10 ESTATE THOMAS, INC.; UNKNOWN )

OWNERS AND ALL OTHERS CLAIMING AN )

INTEREST THEREIN, )

Defendants. )

ACTION FOR CONDEMNATION

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**CHRISTIAN, ADAM G., Judge**

**MEMORANDUM OPINION**

(Filed: November 22, 2010)

In the above-captioned eminent domain proceeding, the Government of the Virgin Islands (“Government”) and Defendants Lockhart Realty, Inc. (“Lockhart”) and 10 Estate Thomas, Inc. (“ETI”) have submitted a Stipulation for approval by this Court. In this submission, the parties jointly request that the Court release the funds presently deposited with

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the Clerk of the Court in connection with this case to the attorneys for said Defendants to be held in counsels' escrow account. These funds total Two Hundred Thirteen Thousand Five Hundred Fifty Dollars (\$213,550.00) and were deposited with the Court on September 14, 2010. Also before the Court is the Government's Motion for Order Vesting Title, which was filed on October 25, 2010. The Court disposes of these requests below.

**I. Legal analysis.**

**a. Stipulation or release of deposited funds.**

In the Stipulation, the parties rely upon V.I. CODE ANN. tit. 28, § 421(b), which provides that "Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding." The deposit made in court is "...to the use of the persons entitled thereto...". 28 V.I.C. 421(a).

The Court observes that 28 V.I.C. § 421 is patterned after the federal Declaration of Taking Act, 40 U.S.C. § 3114, formerly 40 U.S.C. § 258a, and will therefore take guidance from precedent construing that federal law. *See, Virgin Islands Gov't Hosps. and Health Facilities Corp. v. Gov't of the Virgin Islands*, 47 V.I. 430, 442(V.I. Super. Ct. 2006) ("...where a Virgin Islands statute is patterned after a statute from another jurisdiction, the borrowed statute shall be construed to mean what the highest court from the borrow[ed] statute's jurisdiction, *prior* to the Virgin Islands enactment, construed the statute to mean.") (italics in original). Decisions interpreting the federal Declaration of Taking Act which were rendered subsequent to the enactment of 28 V.I.C. § 421 may still be treated as persuasive authority. *Id.* As one treatise construing 40 U.S.C. § 3114(c) notes, the

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“...discretion of the court to withhold distribution in whole or in part of the deposit should be exercised sparingly, inasmuch as one of the purposes of 40 U.S.C. § 3114(c)(2) is to provide for prompt distribution, and the purpose of the court’s denying withdrawal of the deposit should be the protection of other interested parties. In making partial disbursements, the court should satisfy itself that the amount remaining in the registry is probably sufficient to take care of other possible claimants.” 7 John J. Dvorske & Ann K. Wooster, *Federal Procedure, Lawyers Edition* § 14:178 (Database updated Sept. 2010) (citations omitted).

The Court is concerned about releasing the funds in its registry at this juncture of the proceeding for two reasons.

First, one of the parties requesting the disbursement is not a party in interest. In paragraph 5 of its complaint, the Government alleges that Lockhart is the owner of two of the three parcels that are the subject of this action, specifically: 1) Parcel No. 56A-A Estate Thomas; and 2) Parcel No. 56A-1A Estate Thomas.<sup>1</sup> In response thereto, Lockhart denies that it owns these pieces of real property, and affirmatively alleges that the owner thereof is Sugar Estate Park, Inc. (“SEPI”). Although SEPI is averred to be affiliated with Lockhart, there is nothing in the record which provides a basis for the Court to disregard SEPI as a separate entity from Lockhart.

The grant of the Government’s instant motion would deprive SEPI of its interest, if established, in the res in the Court’s registry without being named or served with process in this eminent domain proceeding. Although SEPI may not be able to challenge the taking and vesting of title in the Government<sup>2</sup>, any order regarding compensation issued by this Court under these circumstances would not be binding on SEPI. *See, United States v. 125.2 Acres of Land*, 732 F.2d 239, 243-244 (1st Cir. 1984). Further, because “It is an elementary principle in the law of condemnation, whether exercised by the government of the United States or by state or public

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<sup>1</sup> The third parcel involved in this case is Parcel No. 10A Estate Thomas.

<sup>2</sup> *See, Section I.b., infra.*

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bodies, that all persons having any interest in the property be made parties defendant”, *United States v. Adamant Co.*, 197 F.2d 1, 4 (9th Cir. 1952), the Court will direct the Government to amend its complaint to add SEPI as a party to this action pursuant to FED. R. CIV. P. 71.1(f). *See*, 28 V.I.C. § 416(b).<sup>3</sup>

Second, the Government has alleged that there are unknown persons who may have an interest in the properties which are the subject of this action. However, it does not appear from the record that the Government has made any effort thus far to serve these unknown persons. As with SEPI, without proper service of process, any order or judgment issued by the Court in this case would be void as against any other person who may come forward and sustain a valid interest in the subject properties. Because 28 V.I.C. § 421 mandates that “...the right to just compensation for property condemned lies in anyone who has any interest whatsoever of value in the property...”<sup>4</sup>, all unknown persons with potential claims at the least should be given notice and an opportunity to be heard before the Court begins to distribute any funds in this case.

The Court recognizes, as discussed in the treatise cited above, that one of the policies of 28 V.I.C. § 421 is to provide for a prompt allotment of condemnation proceeds in the registry of the Court to the appropriate persons. However, this Court must always be guided by notions of due process. Therefore, the Court will disapprove the instant Stipulation at this time without prejudice. In addition, the Court will require the Government to promptly amend its complaint to add SEPI as a defendant to this cause, and also direct the Government to expeditiously serve the unknown persons in the manner described in FED. R. CIV. P. 71.1(d)(3)(B).

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<sup>3</sup> 28 V.I.C. § 416(b) actually refers to Rule 71A of the Federal Rules of Civil Procedure. However, in the restyling amendments to the federal rules promulgated in 2007 this rule was renumbered to 71.1.

<sup>4</sup> *See, United States v. 376.21 Acres of Land*, 240 F. Supp. 163, 165 (W.D. Pa. 1965) (construing the similar federal Declaration of Taking Act).

**b. Government's motion to vest title to property.**

Turning to the Government's Motion for an Order Vesting Title, Lockhart and ETI have not responded to said motion, and the Court therefore deems any objections to said motion waived.<sup>5</sup> The Court concludes that the above-described concerns regarding the absence of proper service of process on SEPI and the unknown owners do not dictate a denial of said motion. Rather, upon a showing that the taking is for a valid purpose, and the deposit of the estimated sum into the registry of the Court, title to the condemned property passes to the Government even if the property owner and other interest holders do not receive advance notice of the action. *See, Long v. Area Manager, Bureau of Reclamation*, 236 F.3d 910, 914 (8th Cir. 2001) (“[a]fter providing for the taking and then for compensation, it appears clear that the [Declaration of] Taking Act vests title in the government prior to any requirement to notify the owner of his right to compensation.”) (citations omitted); *United States v. 125.2 Acres of Land*, 732 F.2d at 243.<sup>6</sup>

Herein, the asserted purpose for the taking is “...roadway improvements as part of the Virgin Islands Department of Public Works' Raphune Hill Road Project.”<sup>7</sup> Under Virgin Islands law, the improvement of roads constitutes a public use for which the exercise of eminent domain is appropriate. 28 V.I.C. § 411(3). Also, the Governor, who signed the Declaration of Taking, is authorized to exercise the power of eminent domain for Virgin Islands road projects. *See also*, 20 V.I.C. §§ 41, 44(a). Finally, as noted above, the Government deposited the sum of Two

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<sup>5</sup> Because the Government served the motion on said Defendants via mail on October 25, 2010, and the time for Lockhart and ETI to act thereon was less than eleven days, their response to said motion, if any, was due to be filed and served by November 16, 2010. *See*, SUPER. CT. R. 7, 9; FED. R. CIV. P. 6(d); LRCi 7.1(e)(1).


<sup>6</sup> “While the failure to notify the owner of the right to such compensation preserves the owner's compensation rights against the passage of time and may necessitate the government paying interest, *see infra*, such failure does not imbue the owner with the power to vitiate the entire taking.” (Emphasis added).

<sup>7</sup> Declaration of Taking at ¶ 1.

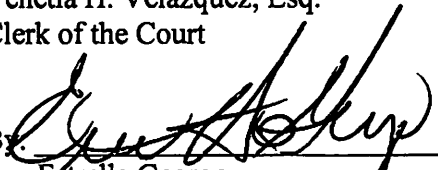
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Hundred Thirteen Thousand Five Hundred Fifty Dollars (\$213,550.00) with the Court on September 14, 2010. As a result of the foregoing justification, authorization, and deposit of funds, title to the subject properties has passed to the Government under Virgin Islands law. Therefore, the Court will grant the Government's Motion for an Order Vesting Title. An appropriate order of even date will be entered by the Court.

Dated: November 22, 2010

  
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**Hon. Adam G. Christian**  
Judge of the Superior Court  
of the Virgin Islands

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

By:   
\_\_\_\_\_  
Estrella George  
Court Clerk Supervisor 11/23/2010