IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

GOLDEN RESORTS, LLLP	**Plaintiff**)	CASE NO. SX-08-CV-0000109
	)	
Vs.	)	ACTION FOR: DECLARATORY JUDGMENT
ANDREW C SIMPSON, ET AL	)	
	)	
	Defendant)	

NOTICE OF ENTRY OF MEMORANDUM OPINION AND ORDER

TO: JUDGES OF THE SUPERIOR COURT AND
MAGISTRATES
LEE J. ROHN, ESQ.
ANDREW SIMPSON, ESQ.
MR. RICHARD J. RIDGWAY
LIRARIAN
ORDER BOOK
LAW CLERKS

Please take notice that on April 13, 2010 a(n) MEMORANDUM OPINION AND ORDER dated April 09, 2010 was entered by the Clerk in the above-entitled matter.

Dated: April 13, 2010

Venetia H. Velazquez, Esq.
Clerk of the Court

ROXANNE SERRANO
COURT CLERK II

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

GOLDEN RESORTS, LLP, Plaintiff, v. ANDREW SIMPSON and RICHARD J. RIDGWAY, Defendants.	CASE NO. SX-08-CV-109 ACTION FOR DECLARATORY JUDGMENT; TRESPASS; SLANDER OF TITLE; TORTIOUS INTERFERENCE WITH CONTRACT; PUNITIVE DAMAGES; and INJUNCTIVE RELIEF JURY TRIAL DEMANDED
RICHARD J. RIDGWAY, Plaintiff, GOLDEN RESORTS LIMITED LIABILITY PARTNERSHIP; GOLDEN HOLDINGS LLC; GOLDEN GAMING, LLC; PAUL GOLDEN; JERICHO ALL WEATHER OPPORTUNITY FUND, LP; and ALL PERSONS CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD ON PLAINTIFF'S TITLE THERETO and DOES 1 THROUGH 10, INCLUSIVE, Defendants.	CASE NO. SX-08-CV-284 ACTION TO QUIET TITLE TO REAL PROPERTY (ADVERSE POSSESSION) JURY TRIAL DEMANDED

MEMORANDUM OPINION AND ORDER

THESE CONSOLIDATED MATTERS came before the Court on October 20, 2009 for a status conference and hearing on the Motion for Summary Judgment filed by the Plaintiff in SX-08-CV-109, *Golden Resorts, LLP v. Andrew C. Simpson and Richard J. Ridgway*. The Defendants filed an Opposition to the Plaintiff's Motion for Summary Judgment. The attorneys for the principal parties were present at the status conference and hearing and presented oral argument. The Plaintiff filed a Reply in Support of Motion for Summary Judgment.

I. Procedural History

SX-08-CV-109, Golden Resorts, LLP v. Andrew C. Simpson and Richard J. Ridgway

On February 22, 2008, the Plaintiff, Golden Resorts, LLP (Golden Resorts), brought an action for declaratory judgment, trespass, slander of title, tortuous interference of contract, and injunctive relief against the Defendants, Andrew Simpson and Richard J. Ridgway (Simpson and Ridgway). Several motions and oppositions were subsequently filed. Before the Court addressed these motions, Golden Resorts filed a Motion for Summary Judgment on September 29, 2008. Simpson and Ridgway filed a joint Opposition to the Motion for Summary Judgment on October 28, 2008. The Plaintiff filed a Reply in Support of Summary Judgment on December 9, 2009.

SX-08-CV-284, Richard J. Ridgway v. Golden Resorts Limited Liability Partnership, et. al.

On June 5, 2008, the Plaintiff, Richard J. Ridgway (Ridgway) filed an action seeking to quiet title to real property by adverse possession against the Defendants. As in SX-08-CV-109, several motions and oppositions were filed. On July 21, 2008, the Golden Defendants and Defendant Jericho All Weather Opportunity Fund, LP (Jericho) filed a Motion to Dismiss Complaint. The Plaintiff subsequently filed Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Complaint. On September 3, 2008, the Defendants filed a Reply in Support of Motion to Dismiss Complaint. Thereafter, the Court issued an Order on March 11, 2009 transferring this matter from Presiding Judge Darryl Dean Donohue, Sr. to Judge Francis J. D'Eramo. Judge D'Eramo issued an Order on March 19, 2009 scheduling a status conference for April 3, 2009 and requiring the Parties to file a stipulated scheduling order prior to the status conference. The Parties filed the requested scheduling order and a status conference was held on April 3, 2009. In an Order issued on April 8, 2009, Judge D'Eramo consolidated the instant matter with SX-08-CV-109, *Golden Resorts, LLP v. Andrew C. Simpson and Richard J. Ridgway,* a case already pending on the Court's docket to be heard by Judge Julio A. Brady. On

May 9, 2009, Judge Brady granted the Parties' stipulated scheduling order, setting a status conference on September 17, 2009. The Parties filed a Mediation Report on August 13, 2009 noting that "the parties have reached a total impasse, all issues require Court action." Mediation Report, p. 2. In an Order issued on September 18, 2009, the Court rescheduled the Parties' status conference to October 20, 2009.

The status conference was held on October 20, 2009 in which the parties, represented by counsel, presented oral argument. Thereafter, Golden Resorts filed its Reply in Support of Motion for Summary Judgment, in SX-08-CV-109, on December 9, 2009.

II. Factual Background

The following is an account of the history of the property (Property) at the center of the dispute between Golden Resorts and Simpson and Ridgway, taken from the pleadings and exhibits of the parties. The Property at issue in this lawsuit is vacant land of about 200 acres located in St. Croix, United States Virgin Islands, usually referred to as "Great Pond," and described on Public Works Drawing No. 4889 (and OLG 4389) dated July 15, 1987 as follows:

> Plot No. Remainder Matr. 52, Estate Hartmanns; Matr. 53 Estate Hartmanns; Matr. 54 Estate Hartmanns; Matr. 55 Estate Hartmanns; Matr. 57 Estate Hartmanns; Matr. 56 Estate Great Pond; Matr. 47 Estate Great Pond.
> *See* Plaintiff's Exhibit 10.

On December 30, 1986, Ridgway leased land at Plot No. 1, Estate Hartmanns from Castle Nugent Farms and was also given the right to use additional land at Remainder of Matriculate No. 52, Estate Hartmanns (Plot No. 52). After leasing the land, Ridgway purchased a herd of dairy cows from Castle Nugent Farms and equipment to run the dairy, Petronella Farms. Ridgway alleges that the cattle he purchased for the dairy operation grazed over all of the properties surrounding the Great Pond, not just the land he had leased or had permission to use, including all of the Property that is the subject of the instant lawsuit. Thus, Ridgway claims that

~~the adverse possession period for the Property at issue (but not including Plot No. 52) began to~~ run as of December 30, 1986.

On August 4, 1987, Great Pond Bay Realty Trust purchased the Property, including Plot No. 52. Ridgway claims that he continued to use all of the Property, as well as Plot No. 52 (which he had previously used as a lessee or with permission from the owner(s), without legal title. Therefore, with respect to Plot No. 52, Ridgway claims the adverse possession period began on August 4, 1987. In 1989, the Great Pond Bay Realty Trust had the Property rezoned for a resort development. From August 1987 through 1991, Golden Resorts alleges that Great Pond Bay Realty Trust regularly inspected the Property and never observed any livestock or other signs of adverse possession on the Property. *See* Plaintiff's Exhibit 2. Golden Resorts also claims that from 1991 through 2002, no owner of the Property had any knowledge that Ridgway was claiming adverse possession of the Property. *See* Plaintiff's Exhibit 3. Ridgway denies the Plaintiff's claim that there was no evidence of his use of the Property from 1987 through 2002. Ridgway asserts that during this time period he had cattle and horses on the Property, had erected fences, drilled for wells, engaged in bush cutting, pond building, firebreak plowing, road cutting, installation of pipelines, water troughs, generator houses and well pump houses, as well as creating hay rolls. *See, generally* Defendants' Opposition at 23 and cited exhibits. In 2000, Korrey Family Investments, LLC acquired the Property through a foreclosure action. *See* Plaintiff's Exhibit 6. In August 2002, Four J Funding LLC, pursuant to an agreement with Paul Golden (Golden), purchased the Property from Korrey Family Investments, LLC for Golden to develop. *See* Plaintiff's Exhibits 7, 8, and 9. From August 14, 2002 through February 12, 2004, Golden Resorts, pursuant to an agreement with Four J Funding LLC, leased the Property from Four J Funding LLC. On February 12, 2004, Golden Resorts purchased the Property from Four J Funding LLC and has held title to the Property since that time. *See* Plaintiff's Exhibits 9 and 10.

Golden Resorts claims that it has had its agents regularly walk the Property since October 2001 or has caused the Property to be inspected to ensure its maintenance. On November 2, 2001 Golden Resorts was issued a gaming license reservation, which according to Golden Resorts, could not have been issued without Golden Resorts having acquired the Property. From 2002 to 2007, Golden Resorts claims to have conducted a series of studies of the Property in preparation for its development. These studies included surveys, hydrology studies, and other environmental assessments. Golden Resorts asserts that during visits to the Property by Golden Resorts, its agents, and contractors to prepare the Property for development, there was little evidence of adverse possession. However, Golden Resorts acknowledges that there were a few instances where Golden Resorts took action against Ridgway for trespassing or putting up signage on the Property. For example, Golden Resorts concedes that Ridgway's horses were found grazing on the Property sometime during 2004 and 2006. Further, during 2007, Ridgway was observed on one occasion attaching "no trespassing" signs on the Property. On another occasion, Ridgway was removed from the Property when an agent of Golden Resorts called the police. Ridgway admits that his use of the Property dropped off after 2003 when he sold the last of his dairy herd, but maintains that he continued to keep horses on the Property, to maintain fences, and to exercise dominion and control over the Property. Ridgway claims that he continually used all of the lands in dispute until April 10, 2008. On that date, a brush fire cleared the Great Pond properties of all vegetation and destroyed the enclosures on the Property to the extent that the horses he maintained on the Property were endangered. Ridgway asserts, however, that he has continued to exercise control and dominion over the Property to the present date.

III. Standard

A moving party will prevail on a motion for summary judgment where the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "A material fact is one that will affect the outcome of the action under the applicable law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 247, 248 (1986). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury would return a verdict for the nonmoving party." *Id.* "The movant has the initial burden of showing there is no genuine issue of material fact, but once this burden is met it shifts to the non-moving party to establish specific facts showing there is a genuine issue for trial." *Bank of New York v. U.S. Small Business Admin.*, 2009 WL 3245567, *2 (D.V.I. Sept. 30, 2009) (citing *Gans v. Mundy*, 762 F.2d 338, 342 (3d Cir. 1985)). "Any doubts are resolved in favor of the nonmoving party whose allegations are taken to be true." *Sasso v. Hackett*, 45 V.I. 375 (Terr. Ct. 2004) (citing *Porter v. Samuel*, 889 F.Supp. 213, 218 (D.V.I. 1995)). "The threshold inquiry is whether there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Netsky v. Sewer*, 205 F.Supp.2d 443, 452 (D.V.I. 2002) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 247, 250 (1986) (internal citations omitted).

In Golden Resorts' Motion for Summary Judgment, Golden Resorts asks the Court to render a judgment as to the rights and legal relations between the parties with respect to the ownership of the Property. Golden Resorts argues that it has proper legal title to the Property, obtained when it purchased the Property from Four J Funding LLC in August 2002. In opposition, Ridgway asserts that he has acquired legal title to the Property through adverse possession by openly occupying and exercising dominion over the land from 1986 until the

present date. Golden Resorts denies that Ridgway has satisfied the requirements of adverse possession and in its Motion for Summary Judgment claims that for long stretches of time during Ridgway's alleged possession of the Property, the legal title holders neither knew nor observed Ridgway's presence on the Property. Moreover, Golden Resorts took measures to assert its property rights when it did observe Ridgway on its premises. *See supra*, p. 4. Thus, there is a factual dispute as to whether Ridgway conducted the activities he claimed to have conducted on the Property from 1987 to 2002, and whether the legal owner had actual or constructive notice of such activities. The issue is whether resolution of this factual dispute in favor of Ridgway would suffice to establish Ridgway's claim of adverse possession given all of the facts regarding his relationship to the Property.

Under Virgin Islands law, in order to prevail on a claim of adverse possession, the claimant must show "[t]he uninterrupted, exclusive, actual, physical adverse, continuous, notorious possession of real property under claim or color of title for 15 years or more." V. I. CODE ANN., tit. 28, § 11. Additionally, "courts generally agree that possession, to be adverse so as to vest title in the possessor after the lapse of the statutory period, must be actual, open and notorious, exclusive, hostile, under a claim of right, and continuous and uninterrupted." 2 C.J.S. Adverse Possession § 29 (2003). Moreover, "[o]ne who claims title through adverse possession must prove each element of his or her claim by clear and convincing evidence." *Sasso*, 45 V.I. at 381 (citing *McNamara v. Christian*, 26 V.I. 109, 112 (Terr. Ct. 1991)). Golden Resorts argues that Ridgway's possession was neither continuous nor notorious, and also questions whether the actions undertaken by Ridgway with respect to the Property are sufficient to establish a claim of adverse possession.

"Actual possession is broadly referred to as "dominion over the land" and it is not commensurate with occupancy." *Sasso*, 45 V.I. at 381 (citation omitted). However, to establish

actual, physical possession a party must prove activities such as the "construction of buildings and markings of improvements." *Cabrita Point Development, Inc. v. Evans*, 2009 WL 3245202, *8 (D.V.I. Sept. 30, 2009) (citing *Netsky v. Sewer*, 2003 U.S. App. LEXIS 23046 at *8 (3d Cir. 2003)). Additionally, "[a] claimant's possession must be hostile as to the whole world, which can be demonstrated by performing acts on the land which only an owner customarily performs." *Hodge v. McGowan*, 2008 WL 4924628, *12 (V.I. Nov. 10, 2008); *see also Fleming v. Frett*, 33 V.I. 58, 61 (Terr. Ct. 1995) (citing *Cakebox Bakery, Inc. v. Maduro*, 15 V.I. 283 (Terr. Ct. 1978)). "Mere possession of the true owner's land will be presumed to be with the owner's permission and in subordination to his title and thus not hostile to it." *McNamara*, 26 V.I. at 112 (citing 39 Am. Jur. Proof of Facts, Adverse Possession, § 7, 285 (1984)).

In addition to physically and exclusively possessing land without interruption for the statutory period, the possession must also be open and notorious. "[A] party claiming adverse possession must show ownership that is evidenced by such conduct as is sufficient to put a man of ordinary means on notice of the fact that the land in question is held by the claimant as his own." *Cabrita Point*, 2009 WL 3245202 at *8 (citing *Netsky*, 205 F.Supp.2d at 460)). "Open and notorious possession is unconcealed and so conspicuous that it is generally known by the public or by the people of the neighborhood." *Sasso*, 45 V.I. at 383 (citing *Burnett v. Benjamin*, 44 V.I. 170, 176-177 (Terr. V.I. 2002) (internal quotations omitted)).

The Court will first address Golden Resorts' argument that a foreclosure in 2000 interrupted Ridgway's claim of adverse possession. It is true that in the Virgin Islands, a judicial decree against a land occupier interrupts the running of the adverse possession period and resets the statutory clock. *See Hodge*, 2008 WL 4924628 at *11; *DeCastro v. Stuart*, 45 V.I. 591, 593 (D.V.I. App. 2003). In *Hodge*, the Court held that an earlier judgment resolving a dispute over a boundary line against the appellee's predecessor-in-interest terminated appellee's adverse

possession of the property and stopped the running of the statutory period. In *DeCastro*, the plaintiff title holder of the land sued to eject DeCastro from the land and the Territorial Court (now Superior Court) ruled in the plaintiff's favor. *DeCastro*, 45 V.I. at 594. This was sufficient to interrupt the statutory period even thought the defendant continued to remain on the property. *Id.* at 598. These cases can be distinguished from the instant matter because, as Ridgway argues, the foreclosure action brought by Golden Resorts' predecessor-in-interest, Korrey Family Investment, Inc., did not name Ridgway as a defendant or name any "unidentified persons" claiming an interest in the subject property of that foreclosure action. Ridgway's argument is persuasive since the relevant cases in the Virgin Islands where adverse possession is interrupted by judicial decree involve judgments against the adverse possessor, and not another party. *See also,* 2 C.J.S. *Adverse Possession* § 189 ("where land in the possession of an adverse claimant is purchased by another at a foreclosure sale of the mortgagor's estate, the sale does not interrupt the continuity of the adverse possession of one not a party to the proceedings, and the purchaser succeeding only to the estate of the mortgagor must bring an action to recover the land within the period of the adverse possession."). The Court thus finds that the foreclosure action did not interrupt Ridgway's alleged adverse possession of the Property.

IV. Analysis

Although the pleading in both cases the Parties raise multiple issues, this Court concludes that the resolution of these various disputes can be reached by deciding the single issue of the adverse possession claim postulated by the Ridgway.

a. Ridgway's Declaration Moots His Claim Of Adverse Possession

A close examination of the Declaration of Richard J. Ridgway undermines, if not outright refutes, Ridgway's claim of adverse possession of the subject property. On page four of the

Declaration, which was submitted "under penalty of perjury," Ridgway states:

> 21. I lost the legal right to use Rem. Matr. No. 52, Estate Hartmanns on August 4, 1987 when the property was sold by the Estate of Howard Wall to the Great Pond Realty Trust.
> 22. Despite this sale, I continued to use Rem. Matr. No. 52, Estate Hartmanns after August 4, 1987, even though I no longer had the legal right to do so.
> 23. Because this property was sold in the first year that I began using it, I never paid the property tax that under paragraph 14 of the lease constituted the payment for the right to use this property.
> 24. I began to adversely possess Rem. Plot No. 52, Estate Hartmanns on August 4, 1987.
> 25. I continuously used all of the lands in dispute until April 10, 2008, when a brush fire cleared the Great Pond properties of all vegetation, destroyed many of the fences, and endangered the horses I maintained on the property.
> 26. My use of the property dropped off after April 7, 2003, because on that date I sold off the last of my dairy herd. Even after I sold the dairy herd, I continued to use the property for the two horses I owned, continued to maintain the fences, and continued to otherwise exercise dominion and control over the property.
>
> ...
>
> 108. There is an underground pipeline that runs from the Great Pond well to the dairy.
> 109. This pipeline has been in place since I commenced dairy operations on December 30, 2006. The pipeline essentially parallels the utility line that provides power to the Great Pond well.[1]
> 110. I continuously maintained this pipeline until my lease of the dairy expired in 2003.
>
> ...
>
> 135. I have never paid property taxes on any portion of the disputed property.
> 136. My lease with Castle Nugent Farms required me to pay property taxes as rent on the portions of the "additional property" that I had the right to use under the lease.
> 137. I paid property tax as rent through 2003 on another portion of the "additional property" (Remainder Lowry Hill) in accordance with this lease because I continued to use that "additional property" in accordance with the lease.

See Defendants' Joint Counter Statement of Material Facts that Preclude Summary Judgment, Exhibit R-1, ¶¶ 21-26; 108-110; and 135-137 (filed in SX-08-CV-109). Attached to the same

[1] The date December 30, 2006 is clearly wrong since Ridgway maintained that he started his dairy operations in 1986.

pleading containing the Declaration was an Agricultural Lease No. 1878/1987. This lease, dated April 21, 1987, was between Castle Nugent Farms, Inc. as Landlord (signed by Caroline and Mario Gasperi) and Richard Ridgway as Tenant. The lease was filed with the Recorder of Deeds Office on April 21, 1987. *See* Exhibit R-3, SX-08-CV-109.

While the Declaration at Paragraph 21 implies that Ridgway's lease – entered into on April 21, 1987 – ended when the property was "sold by the Estate of Howard Wall to the Great Pond Realty Trust in August 1987," on pages 14 and 18 of the same Declaration, Ridgway unequivocally states that a "lease" continued until 2003 (presumably, the 1987 lease). If the declarant was occupying the subject property under any lease or other permissive use by the title owner, Ridgway's claim of a right by adverse possession simply fails because it negates the adversity of his adverse possession claim. Moreover, as detailed in Corpus Juris Secundum under the heading "Possession in common with owner,"

> [t]o be effective as a means of acquiring title, the possession of an adverse claimant must be exclusive of the true owner. In other words, a claimant's exclusive possession must be such as to operate as an ouster or disseisin of the owner of the legal title, and the owner must be wholly excluded from possession by claimant. Any sort of joint or common possession by claimant and the owner or an agent or tenant of the owner prevents the possession of claimant from having the requisite quality of exclusiveness. In these circumstances, the law refers the possession to the person having legal title.

2 C.J.S. *Adverse Possession* § 59 (2003). This Court cannot reconcile the clear inconsistent statements in Ridgway's Declaration, particularly in paragraphs 135-137. Suffice it to say that this Court finds a factual basis for denying the claim of adverse possession based on the Declaration's sworn statements. As will be discussed in more detail, *infra*, Ridgway's evidence does not satisfy the requirements prescribed by Title 28, section 11 or the judicial precedents of this jurisdiction for a claim of adverse possession.

b. Ridgway's Possession Was Not Actual, Continuous, And Exclusive.

In order to show actual, physical possession a party must make improvements on the land, such as the construction of buildings. *Cabrita Point,* 2009 WL 3245202, at *8 (citing *Netsky*, 2003 U.S. App. LEXIS 23046, at *8). A review of the case law shows that the building and improvements must be substantial. Putting up fence postings, clearing brush and posting for sale signs have been found inadequate to establish a claim of adverse possession. *Id.* Erecting a fence and grazing animals on the land was also deemed insufficient to show actual, physical possession. *Hodge*, 2008 WL 4924628 at *37-38. *But see Tutein v. Daniels*, 10 V.I. 255, 261, 1973 U.S. Dist. LEXIS 5214 (D.V.I. 1973) (noting that the acts required to accomplish adverse possession depend upon the nature of the property such that a barren tract of land might be reduced to possession by merely erecting a fence)). Likewise, constructing simple, temporary structures, such as wooden platforms, installing water tanks, shower and toilet, and charging others for the use of the land so improved failed to support a claim of adverse possession. *Netsky*, 205 F.Supp.2d at 459-460. Neither could a claimant prevail by building a tool shed and dog house, clearing the land regularly, and posting no trespassing signs. *McNamara*, 26 V.I. at 113. However, an adverse possession claim was successful where the proponent cleared the land, built a four-room structure with a concrete foundation, installed electricity and plumbing fixtures, erected a fence around the property and cultivated the land. *DeCastro*, 45 V.I. at 591. Another claimant succeeded on an adverse possession claim where he had planted provisions on the land, grazed his animals on the land and in connection with the farming activities, had built terraces on the land to facilitate the provisions he was planting, and bull-dozed a road through the property. *Emmanuel v. Francis*, 21 V.I. 92, 1984 U.S. Dist. LEXIS 10677 (D.V.I. 1984).

Ridgway has submitted extensive evidence that from 1987 to 2003 he had cattle on the Property and that he did a substantial amount of work on the Property to sustain his dairy

business. This included fencing the Property, building wells, and clearing brush. Ridgway has proffered affidavits and exhibits tending to establish the following facts: (1) that he kept cows on the Property from 1987 to 2003; (2) that he constructed fences, cut roads, and built wells and a pond; (3) paid the WAPA bill for electricity used with a well from 1987 to April 2003; (4) gave permission for fishermen to travel across the Property and for individuals to keep horses on the Property; (5) received U.S. government grants to improve the Property prior to Hurricane Hugo; (6) received U.S. government grants to repair fencing after Hurricane Hugo; (7) participated in a U.S. government program to engage in shrub control on a 125 acre parcel of the Property; (8) built a hayfield on the Property and installed locked gates on the Property to prevent theft of the hay; (9) posted no trespassing signs; and (10) maintained an underground pipeline from the well to the dairy. *See* Defendants' Opposition at 23 citing exhibits therein.

Although there is evidence that tends to show Ridgway was physically present on the Property and engaging in many activities in support of his dairy business, which is initially impressive, Ridgway has not demonstrated that he was building the kind of permanent structures or making the kind of improvements that amount to physical possession of the land. The construction of the fences, building of wells, clearing of brush and grazing of cattle do not constitute an "improvement" that suffices to show possession of the land under Virgin Islands law. *See Cabrita Point*, 2009 WL 3245202 at *8; *Hodge*, 2008 WL 4924628 at *37-38. In order to show possession, there must be significant improvements or substantial permanent structures must be erected. *Netsky*, 205 F.Supp.2d at 460.

The exclusive use of the land, including use that is hostile to the true owner as well as others is also necessary to establish a claim of right pursuant to adverse possession. *Hodge*, 2008 WL 4924628 at *12. Acts which are consistent with ownership demonstrate hostile use. *Id.* An example of an act of ownership is the rental of property. *Tutein*, 10 V.I. at 262 (finding that the

"[r]ental of property is a kind of act which is most effective to adverse a previous owner under the concepts of our law."). On the other hand, the grazing of animals on the land of another is not indicative of use that is exclusive of, or hostile to, the landowner. *Hodge*, 2008 WL 4924628 at *12. While Ridgway has alleged that he gave permission to individuals to use the Property, this too is insufficient to constitute an act of ownership. *See Netsky*, 205 F.Supp.2d at 459-460 (finding that claimant's charging of fees to use property as a campground was insufficient to show possession that was hostile and adverse). The fact that Ridgway posted no trespassing signs is also unavailing to show exclusivity or hostile use. *See McNamara*, 26 V.I. 109.

c. Ridgway's Possession Was Not Open And Notorious.

Ridgway claims that many members of the community, including the U.S. government and the police, were aware of his presence on the Property and interacted with him as if he were the owner of record. However, the facts presented in his brief do not support that assertion. Instead, the evidence presented by Ridgway tend to establish that his neighbors, insurers, and the U.S. government knew that he kept cows and horses on the Property, which is not necessarily consistent with claiming ownership of property. *See Hodge*, 2008 WL 4924628 at *37. Further, Ridgway conceded that he did not pay property taxes on the Property, which is a significant factor in favor of an adverse possession claim because "it unequivocally notifies any true owners that another is claiming title to the land." *Sasso*, 45 V.I. at 383 (citations omitted); *see also Tutein v. Daniels,* 10 V.I. 255, 262 (D.V.I. 1973). The same cannot be said for Ridgway's payment of the WAPA bills for electrical services which powered the pumps on the Property because such conduct does not provide the unequivocal notice of adverse possession to the owner(s) of a specific property. Indeed, in this instance, it is merely a reflection of his payments to WAPA for electrical services for which he had applied and was legally obligated to pay. *See* Defendants' Joint Counter Statement of Material Facts That Preclude Summary Judgment,

Exhibits R-17a-17b and R-18. Additionally, based on evidence and statements by Ridgway, his initial occupancy of the Property was as a result of a lease agreement with Castle Nugent Farms[2] during which period he operated the Mountain Mint Dairy Farm aka Petronella Farm. While his inclusion of horses on his dairy farm may not have necessarily been in conformity with his rights or privileges as a tenant, neither does it demonstrate a use hostile to the right of the titleholder at the time, which initially was his landlord.

There is a nexus between the kinds of conduct that establish physical possession and action that demonstrate open and notorious use of land because substantial and permanent improvements not only tend to show possession but do so in a conspicuous manner such that the title owner is put on notice that another individual is staking a claim of right to his land. For example, in *Fleming v. Frett*, the court found that the defendant had adequately established open and adverse possession where the defendant had fenced off the property, constructed a house, raised farm animals and cultivated the land. 33 V.I. 58, 61 (Terr. Ct. 1995). While the actions taken by Ridgway establish his presence on the Property, his actions do not meet the criteria explicitly set forth in V. I. Code Ann., tit. 28, § 11 and the case law thus far developed in this jurisdiction on the issue of adverse possession, which realistically has particular importance to our Territory of limited land mass. The record of this case falls well short of establishing Ridgway's claim of adverse possession of the Property, both as to his type and duration of occupancy.

V. Conclusion

For the reasons stated above, Ridgway has failed to allege any material fact that could allow a reasonable trier of fact to find that he has established a claim of right to the Property through adverse possession. Therefore, Golden Resorts is entitled to judgment as a matter of law

[2] *See* Defendants' Joint Counter Statement of Material Facts That Preclude Summary Judgment, Exhibits R-3.

and accordingly, its Motion for Summary Judgment will be granted. The premises considered and the Court being otherwise fully informed, it is hereby

ORDERED that the Plaintiff's Motion for Summary Judgment is GRANTED. It is also

ORDERED that a copy of this Order be served on Attorney Lee J. Rohn, 1101 King Street, Christiansted, VI 00820; Attorney Andrew C. Simpson, 5025 Anchor Way, Suite 1, Christiansted, VI 00820-4671; and Mr. Richard J. Ridgway, P. O. Box 24505, Christiansted, VI 00824.

Dated: April 9, 2010

Julio A. Brady
Judge

ATTEST:
VENETIA H. VELÁZQUEZ
Clerk of the Court
By: ~~Chief~~ Deputy Clerk Supv. Court 4/12/10

CERTIFIED TO BE A TRUE COPY
This 13th day of April 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By Court Clerk II