

FILED

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ST-2021-CV-00459

TAMARA CHARLES

CLERK OF THE COURT

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

Jonathan Doran, Adam Cook, Trustee of the Adam Cook)
Revocable Trust, dated November 30, 2016, Blossom)
Corporation, Inc., Elissa Runyon, Jerry Runyon,)
A. Michael Milne, Trustee of The A. Michael Milne)
Revocable Trust, Meredith Fletcher, Marc O'Neil, Anne)
O'Neil, and Allen D. Miller, Trustee of the Allen D. Miller)
Revocable Trust dated 4/9/2019, derivatively on behalf)
of Estate Fish Bay Owners Association, Ltd., a)
non-profit corporation,)

Plaintiffs,)

v.)

Tammy Donnelly, Tina Petitto, James Swan, John Roll)
Elizabeth Lowe, Mary Moroney, Lanny Roberts,)
Alexandra Anns, and Michael Barry, in their capacity as)
the current Members of the Board of Directors of Estate)
Fish Bay Owners Association, and Tammy Cummings and)
Gerald Bechstein, as former Board Members, individually)

Defendants,)

and)

Estate Fish Bay Owners Association, Ltd.,)

Nominal Defendant.)

Civil No.: ST-21-CV-459

Action for Accounting
Turnover of Records
Breach of Fiduciary Duty

FIRST AMENDED COMPLAINT

COME NOW the Plaintiffs, Jonathan Doran, Adam Cook, Trustee of the Adam Cook Revocable Trust, dated November 30, 2016, Blossom Corporation, Inc., Elissa Runyon, Jerry Runyon, A. Michael Milne, Trustee of The A. Michael Milne Revocable Trust, Meredith Fletcher, Marc O'Neil, Anne O'Neil, and Allen D. Miller, Trustee of the Allen Miller Revocable Trust dated

4/9/2019 (collectively “Plaintiffs”) all current members of the Estate Fish Bay Owners Association, Ltd., (“EFBOA” or the “Association”) a non-profit corporation formed by and for the owners of homes in Estate Fish Bay, proceeding derivatively on behalf of the EFBOA, through counsel, and for their claims against Defendants Tammy Donnelly,, John Roll, Tina Pettito, James Swan, , Elizabeth Lowe, Mary Moroney,, Lanny Roberts, Alexandra Anns and Michael Barry, being all of the current officers and members of the Board of Directors of the EFBOA, and Tammy Cummings and Gerald Bechstein as former Board Members and Officers of the EFBOA, and state and allege as follows:

Parties and Nature of the Action

1. This is a derivative action by certain concerned members of the EFBOA, pursuant to V.I.R. Civ. P. 23.1, against the current and former officers and members of the Board of Directors of the EFBOA, (collectively, “Defendants” or “the Board”) seeking to require the Board to comply with its obligation under the EFBOA By-Laws to provide the members with an accounting, and with access to the books and records of the EFBOA, and seeking damages on behalf of EFBOA from the former Board Members for breaches of fiduciary duty committed by them as Board Members.
2. EFBOA was established as a non-profit Virgin Islands corporation in accordance with the Declaration and By-Laws, to ensure the quality of the infrastructure and environment for over two hundred (200) owners of properties located within certain defined areas of Estate Fish Bay in St. John, Virgin Islands. The Association collects annual assessments from all members that are supposed to be used solely for the benefit of the properties, the common areas and the membership, in accordance with the Declaration and By-Laws.

The Plaintiff Members

3. Plaintiff Jonathan Doran is the owner of Parcel 39, Estate Fish Bay and is a member of the EFBOA.
4. Plaintiff Adam Cook, Trustee of the Adam Cook Revocable Trust, dated November 30, 2016, is the owner of Parcel 110, Estate Fish Bay and is a member of the EFBOA.
5. Plaintiff Blossom Corporation, Inc., is the owner of Parcel 123 Estate Fish Bay and is a member of the EFBOA.
6. Elissa Runyon and Jerry Runyon are the owners of Parcel 130 Estate Fish Bay and are members of the EFBOA.
7. A. Michael Milne, Trustee of The A. Michael Milne Revocable Trust is the owner of Parcel 131 Estate Fish Bay and is a member of the EFBOA.
8. Meredith Fletcher is the owner of Parcel 148 Estate Fish Bay and is a member of the EFBOA.
9. Marc O'Neil and Anne O'Neil are the owners of Parcel L Estate Fish Bay and are members of the EFBOA.
10. Allen D. Miller, Trustee of the Allen D. Miller Revocable Trust dated 4/9/2019 is the owner of Parcel 135 Estate Fish Bay and is a member of the EFBOA.
11. Each of the Plaintiffs is a member in good standing of the Association, and as such, each is a proper party under Rule 23.1(b) (1) to this derivative action.

The Current and Former Director/Officer Defendants

12. Defendant Tammy Donnelly is a current member of the Board and formerly served as President of the Association.

13. Defendant John Roll is a current member of the Board and also serves as Secretary of the Association.

14. Defendant Tina Pettito is a current member of the Board and also serves as Treasurer of the Association.

15. Defendant James Swan is a current member of the Board and also serves as Vice President of the Association.

16. Defendant Lanny Roberts is a current member of the Board and also serves as “Interim” President of the Association.

17. Defendant Tammy Cummings is a former member of the Board and formerly served as Secretary for the Association.

The Current and Former Director Defendants

18. Defendant Gerald Bechstein is a former member of the Board.

19. Defendant Elizabeth Lowe is a current member of the Board.

20. Defendant Mary Moroney is a current member of the Board.

21. Defendant Alexandra Anns is a current member of the Board.

22. Defendant Michael Barry is a current member of the Board.

23. Each of the Defendants, as former officers and directors acting during the events at issue in this action, and/or as current officers and/or as a current member of the Board of Directors of the EFBOA, is a proper defendant in this derivative action.

The Nominal Defendant

24. Estate Fish Bay Owners Association Ltd., and all of its members, is the beneficiary of this action and is named herein as a nominal defendant.

Compliance with Rule 23.1(b)

25. The Plaintiffs have complied with Rule 23.1(b) (2) (A) by first serving a written demand on the Board, through delivery to the President and Secretary, stating with particularity their concerns about certain expenditures made from Association funds, certain actions taken by the Board in the name of the Association, and their requests as members for an accounting and for access to inspect and review the EFBOA books and records.¹

26. To date, the Board has refused to provide the accounting and records, or to respond at all to the demand by the members or to address their concerns. There has been no change in the refusal, despite changes in the makeup of the Board since the commencement of this action.

27. The former Board Members and Officers committed multiple breaches of fiduciary duty and caused the EFBOA and all of its members to suffer harm through increased costs, misuse of EFBOA funds and exposure of EFBOA to future costs and liabilities, all in breach of their fiduciary duties

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¹ Plaintiffs do not want to take any action that could possibly be detrimental to the interests of the Association. The Demand Letter dated September 15, 2021 is not attached hereto as an exhibit because it contains statements of opinion and concerns about pending litigation.

while they were serving on the Board.

28. Plaintiffs have satisfied all of the requirements to proceed with this derivative action against the current and former members of the Board.

Factual Allegations

29. Pursuant to the EFBOA By-Laws, Article IV, Section 10, (1) the Board is required to keep a complete record of the acts and affairs of the Association and is required to present a statement thereof to the members at the annual meeting. A copy of the EFBOA By-Laws is attached hereto as **Exhibit A.**

30. Pursuant to the EFBOA By-Laws, Article VIII, Section 2, the books, records, and papers of the Association shall at all times be subject to inspection by any member.

31. The Board has an absolute obligation and responsibility to make the books, records, and papers of the Association available for inspection upon receipt of a reasonable request by any member.

32. The Association is required to hold an Annual Meeting of the members each year. Specifically, Article III SECTION 6 of the By-Laws states:

The order of business at the annual meeting of members shall be as follows:

- A. Roll call and registration of proxies;
- B. Appointment of inspectors of election, if requested;
- C. Proof of notice of meeting or waiver thereof;
- D. Reading of minutes of preceding meeting and acting thereon, unless dispensed with by motion made at meeting;
- E. Report of Board of Directors;

- F. Report of Officers, if any;
- G. Report of Committees, if any;
- H. Presentation of financial statements and budget;
- I. Election of Directors;
- J. Unfinished business, if any; and,
- K. New business, if any.

33. The Board held the EFBOA 2021 Annual Meeting by Zoom on May 8, 2021. The Annual Meeting Package provided to the members included a Notice, an Agenda, a Treasurer's Report and two (2) Committee Reports.

34. The financial statements presented by the Board to the members at the Annual Meeting consisted only of a summary Profit and Loss statement, ("P&L") with no detail, and a summary balance sheet. There was no budget. The financial report was superficial and uninformative and thus was not in compliance with the Board's obligations under Section 6 H the EFBOA By-Laws.

35. The summary P&L statement revealed that the Board spent THIRTY-TWO THOUSAND ONE HUNDRED AND EIGHTY-THREE AND 57/100 DOLLARS (\$32,183.57) on legal fees from May 2020 to April 2021. The Board did not provide any further detail or information regarding the purpose for the fees, or the anticipated and ongoing legal fees for the period May 2021 to April 2022.

36. There was no written Board Report and no written Officers' Report.

37. The Board did not disclose which lawyers or law firms were paid or for what type of legal services. Plaintiffs are informed and believe that the Board has retained at least four (4) law firms or lawyers, but the Board has failed and refused to provide any information to the members to explain

why the Association needed so many different lawyers.

38. Because the meeting was held via Zoom, members were unable to ask questions directly of the Board during the meeting or raise concerns or provide comments or suggestions. The Board did not respond to questions submitted by members through the Zoom “chat” feature.

39. After the Annual Meeting, Plaintiffs Runyon and Milne learned through public records, and not through any communication from the Board, that on June 8, 2021, exactly one month after the Annual meeting, a lawsuit was filed in the name of the Association against the Government of the Virgin Islands, the Governor of the Virgin Islands, the Lt. Governor of the Virgin Islands, and the Virgin Islands Tax Assessor, seeking to compel the Government Defendants to withdraw and cancel certain tax bills and assessments issued to Island Resources Foundation Inc. (“IRF”) against certain properties within Estate Fish Bay held in the name of IRF, which IRF contends should be tax exempt, and to issue tax clearance letters to IRF. The EFBOA lawsuit also alleges claims by EFBOA against the Government Defendants for illegal assessments, slander of title, detrimental reliance, unjust enrichment, civil rights violations under 42 U.S.C. § 1983, and seeks declaratory and injunctive relief and damages (the “EFBOA Lawsuit”).²

40. The September 15, 2021 Demand Letter asked the Board to explain why the decision to file the EFBOA Lawsuit was not disclosed to the membership at the Annual Meeting, along with an explanation of the anticipated costs, and the potential risks and benefits of pursuing such an action. To date, the Board has refused to respond.

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² *Estate Fish Bay Owners' Association, Ltd., v. Government of the Virgin Islands, et al.*, ST-2021-cv-00215.

41. Plaintiffs Runyon and Milne have both served on the Board in the past and Plaintiffs have been members of EFBOA for many years. To the best of Plaintiffs' collective knowledge and recollection, this is the first time the Association has ever filed a lawsuit. The Board's decision to retain counsel and commence a lawsuit on behalf of the entire membership against the Government, the Governor, the Lt. Governor and the Tax Assessor was a significant decision that should have been disclosed to the membership at the Annual Meeting in a Board Report, or an Officers' Report, or as "new business".

42. Because the membership was not made aware of the Board's intent to commence the EFBOA Lawsuit before or at the Annual Meeting, the membership was deprived of the opportunity to ask questions and provide input regarding their position on whether the Board's decision to commence this litigation was in the best interest of the Association and the members.

43. The public record also reveals that IRF has commenced its own lawsuit, in its capacity as the taxpayer, naming only the Lt. Governor and the Tax Assessor, and seeking only declaratory relief to cancel the very same assessments at issue in the EFBOA Lawsuit and issue the very same tax clearance letters.³

44. The Board has refused to explain to the members why the Board decided that the EFBOA should expend the members' dues in the pursuit of a lawsuit against the Government when the actual taxpayer is already pursuing a lawsuit to resolve the same issues, nor has the Board addressed Plaintiffs' concerns over the potential costs and risks of this EFBOA Lawsuit.

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³ *Island Resources Foundation Inc., v. Roach*, ST-2021-cv-00214.

45. In the September 15, 2021 Demand Letter, Plaintiffs exercised their rights as members to request access to review the books, records and accounts of the Association, so that they may understand how the Board has been spending the members' dues and be assured that all expenditures are appropriate, duly authorized and are in the best interest of the EFBOA membership.

41. Plaintiffs also requested inspection of the Board minutes at which votes were taken to approve the expenditures and actions listed in the 2020 Profit and Loss Statement, and information regarding all legal costs incurred from April 2021 to September 15, 2021.

42. In recognition of ongoing COVID-19 restrictions and concerns, Plaintiffs offered to allow the Board to provide access electronically, by emailing the records, or by uploading the records to on line data room and providing access information.

43. Specifically, Plaintiffs requested access to all documents, including board meeting minutes since November 2019, invoices, contracts, retainer letters or other documents of any kind relating to the Board's decision to retain and compensate all legal counsel, the purpose for which counsel was retained, the expected benefit to the EFBOA from the work to be performed, and the results (if any) from the legal services expended so far.

44. Plaintiffs also requested access to inspect all budgets, estimates or evaluations of the estimated costs and benefits of the Board's decision to commence the EFBOA Lawsuit.

45. As members of the Association, Plaintiffs have an absolute right to this information and the Board has an absolute obligation to provide reasonable access to this information.

46. The Board has refused to comply with any of Plaintiffs' demands, or to respond at all.

47. The Board held the EFBOA 2022 Annual Meeting by Zoom on May 7, 2022. The Annual

Meeting Package provided to the members included a Notice, an Agenda, a Treasurer's Report and two (2) Committee Reports.

48. The financial statements presented by the Board to the members at the Annual Meeting consisted only of a summary Profit and Loss statement, ("P&L") with no detail, and a summary balance sheet. There was no budget. The financial report was superficial and uninformative and thus was not in compliance with the Board's obligations under Section 6 H the EFBOA By-Laws.

49. The summary P&L statement revealed that the Board spent TWENTY THOUSAND SEVEN HUNDRED SEVENTY FOUR AND 31/100 DOLLARS (\$20,774.31) on legal fees from May 2021 to April 2022, of which \$4, 19250 was for "Complaint", \$15,352.15 was for "Wetlands" and \$3,117.16 was for "Other". The Board did not provide any further detail or information regarding the purpose for the fees, or the anticipated and ongoing legal fees for the period May 2022 to April 2023.

50. There was no written Board Report and no written Officers' Report.

51. The Board did not disclose which lawyers or law firms were paid or provide any detail about the reason for the legal services. When inquiries were made by members, Board Members denied that the EFBOA had sued the Government of the Virgin Islands, clearly a false representation.

52. Because the meeting was held via Zoom, members were unable to ask questions directly of the Board during the meeting or raise concerns or provide comments or suggestions. Once again, the Board did not respond to questions submitted by members through the Zoom "chat" feature.

53. The current Board has continued with its refusal to comply with any of Plaintiffs' demands or to respond at all.

Count 1 Demand for Accounting-Current Board Members

54. The allegations in paragraphs 1-53 are repeated and realleged.

55. The current Officers and Board Member Defendants have an obligation to keep and maintain the books and records of the Association, and an obligation to prepare financial statements and annual budgets for the benefit of the membership.

56. Article IV Section 10 of the EFBOA By-Laws requires the Board

(l) To cause to be kept a complete record of all of its acts and affairs and to present a statement thereof to the members at the annual or any special meeting of the members.

(m) To cause an annual audit of the Association's books to be prepared by an independent accountant or any other individual it should choose, if the Board, in its discretion, determines such an audit is necessary, or if a majority of the Association's members demand that such an audit be conducted.

57. Article V Section 8 of the EFBOA By-Laws states

d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association; disburse such funds as directed by resolution of the Board of Directors; sign checks and promissory notes of the Association; checks/promissory notes in excess of \$1,000 require the signature of both the Treasurer and the President; *keep proper books of account; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting; and deliver a copy of each such annual budget and financial statement to the members;* and issue certificates regarding the payment of assessments as set forth in Article IV, Section 10 above; and shall perform such other duties as required by the Board of Directors or the President. (Emphasis added.)

58. The Board, as a whole, and Defendant Petito, as Treasurer have failed to fulfill their obligations to keep the books and records, account to the membership, and provide a budget.

59. Despite demand, the Board and the Treasurer have failed and refused to provide the Plaintiffs with an accounting as required.

60. Plaintiffs are entitled to an order from the Court requiring the Board as a whole and the Treasurer to provide the members with a full and complete accounting of their expenditures from the dues they collect from the members and any other revenues received by the Association from any other source.

Count II Demand for Access To Books and Records-Current Board Members

61. The allegations in paragraphs 1-60 are repeated and realleged.

62. The Current Officer and Board Member Defendants, and Defendant Roll, as Secretary, have an obligation to keep and maintain the books and records of the Association.

63. Article V Section 8 of the EFBOA By-Laws states

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board of Directors or the President. (Emphasis added.)

64. Article IV Section 5 of the EFBOA By-Laws states

SECTION 5. Regular meetings of the Board of Directors shall be held at least quarterly, without notice, at such place and hour as may be fixed or modified from time to time by resolution of the Board of Directors. Should any meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day thereafter which is not a legal holiday.

65. Article VIII Section 2 of the EFBOA By-Laws states

SECTION 2. The books, records and papers of the Association shall at all times be subject to inspection of any member, during reasonable business hours and upon reasonable notice to the President or Secretary.

66. On September 15, 2021, the Plaintiffs, all members of the Association, made a request to the President and the former Secretary, Defendant Cummings, for access to inspect the books, records and papers of the Association.

67. The Board, and in particular the Defendant Roberts, as current “Interim” President, and Defendant Roll, as current Secretary, have continued to refuse to comply with their obligation to provide Plaintiffs with access to inspect the books, records and papers of the Association.

68. Plaintiffs are entitled to an order from this Court requiring the current Officer and Board Member Defendants to provide them with access and a means to conduct an inspection of the books, records and papers of the Association, including but not limited to all documents, including Board Meeting Minutes since November 2019, invoices, contracts, retainer letters or other documents of any kind relating to the Board’s decision to retain and compensate all legal counsel, the purpose for which counsel was retained, the expected benefit to the EFBOA from the work to be performed, and the results (if any) from the legal services expended so far.

Count III Breach of Fiduciary Duty-All Defendants

69. The allegations in paragraphs 1-68_ are repeated and realleged.

70. Each of the Defendants, as current and former members of the Board, and in particular, the current and former Officer Defendants, has of had, while on the Board, an absolute obligation and duty to all of the members, including the Plaintiffs, to comply with their obligations under the By-Laws.

71. Each of the Defendants, and in particular the current and former Officer Defendants, have breached their obligations under the EFBOA By-Laws by refusing to respond to Plaintiffs’ demand for information, an accounting and access, by failing to report to the members at the annual meeting, and by failing to ensure that all actions of the Board and its officers are in the best interest of the members and the Association as a whole.

72. As a result of Defendants' breaches of their duties as current and former Directors and Officers, Plaintiffs have incurred the cost of commencing this action to obtain that to which they are absolutely entitled as members.

73. In addition, as a result of Defendants' breaches of their duties as current and former Directors and Officers, the EFBOA and all of its members, through the payment their dues, have continued to bear the cost of these actions, including excessive legal fees for litigation, misuse of funds for purposes not authorized by the Declaration and By Laws, all in an amount to be determined once the Board complies with its obligation to provide an accounting.

74. All Defendants should be required to jointly and severally reimburse Plaintiffs for their costs and legal fees incurred in bringing this derivative action on behalf of the Association.

75. All Defendants should be required to jointly and severally reimburse the EFBOA for the improper use, misuse and/or waste of the membership dues which they were entrusted to manage and to expend for the good of the EFBOA, as a whole, and only as authorized by the Declaration and By Laws.

76. All Defendants should be prohibited from funding their defense of this action from funds belonging to the Association.

WHEREFORE, Plaintiffs seek the following relief from this Court:

- A. Judgment under Count I requiring the current Board Member and Officer Defendants to provide an accounting;

- B. Judgment under Count II requiring the current Board Member and Officer Defendants to provide Plaintiffs with reasonable access to review and inspect all of the books, records and papers of the Association;
- C. Judgment under Count III requiring all Defendants, jointly, severally and personally, to reimburse Plaintiffs for all of their costs and legal fees incurred in bringing this action, to reimburse the EFBOA for all funds wasted, misused or misspent and prohibiting all Defendants from expending any funds belonging to the Association for their response to this action; and
- D. Such other and further relief as the Court deems just and appropriate.

Dated: September 30, 2022

Respectfully submitted,

DUDLEY RICH LLP

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