

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

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	)	Civil No.: ST-2021-CV-00459
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,	)	Action for Accounting
	)	Turnover of Records
	)	Breach of Fiduciary Duty
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.	)	
	)	

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND A  
PRELIMINARY INJUNCTION TO RESTRAIN DEFENDANTS FROM CONTINUING  
TO PAY THEIR PERSONAL DEFENSE COSTS FROM ASSOCIATION FUNDS IN  
DIRECT VIOLATION OF THE EFBOA ARTICLES**

Plaintiffs<sup>1</sup>, all current members of the Estate Fish Bay Owners Association, Ltd., (“EFBOA” or the “Association”) a non-profit corporation homeowners' association of property owners in Estate Fish Bay, proceeding derivatively on behalf of the EFBOA, move this Court for

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<sup>1</sup> The Plaintiffs are 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.

immediate entry of a temporary restraining order (“TRO”) pursuant to 13 V.I.C. § 341(6) and Virgin Islands Rule of Civil Procedure 65, and for entry of a preliminary injunction. Plaintiffs seek to restrain Defendants John Roll, Tina Pettito, James Swan, Elizabeth Lowe, Mary Moroney, Lanny Roberts, Alexandra Anns and Michael Barry, all of whom are currently members of the Board of Directors, from continuing to use the Association's funds to pay their personal legal fees and costs, and to pay the personal legal fees and costs of former Board member-Defendants Tammy Donnelly, Tammy Cummings and Gerald Bechstein. The Defendants' use of Association funds to pay their legal fees and costs for defense of this derivative action is a direct violation of the EFBOA Articles of Incorporation and of 13 V.I.C. §67a. Despite demand, Defendants have refused to cease alienating the Association's property. Plaintiffs seek a hearing at the earliest opportunity within the fourteen (14) day period following issuance of the TRO, and any extension thereof.

This Motion is supported by the First Amended Complaint, specifically Count III, the Memorandum of Law filed herewith, the EFBOA governance documents, the admissions made by the Defendants in their discovery responses in this case, and the Affidavit of Plaintiff A. Michael Milne, Trustee of the A. Michael Milne Revocable Trust. A proposed TRO is attached for the Court's consideration.





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to use the Association's funds to pay their personal legal fees and costs, and to pay the personal legal fees and costs of former Board member-Defendants Tammy Donnelly, Tammy Cummings and Gerald Bechstein for the defense of this derivative action. Plaintiffs' contend that the Defendants' use of Association funds to pay their legal fees and costs for defense of a derivative action alleging wrongdoing by directors is a direct violation of the EFBOA Articles of Incorporation, and of 13 V.I.C. §67a, and that despite demand, the Defendants have refused to cease alienating the Association's property.

Section 341 of Title 13 of the Virgin Islands Code empowers this Court to-

(2) order, decree and compel payment by [directors] to the corporation which they represent, and to its creditors of all sums of money and all the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted by any violation of their duties or abuse of their powers, by such directors, managers, trustees or other officers of such corporation;

(3) enjoin any director, trustee, manager or other officer from exercising his office whensoever it shall appear that he has abused his trust;

(6) restrain and prevent any alienation of property of the corporation by said directors, trustees or other officers in cases where it may be threatened, or there is good reason to apprehend that it is intended to be made in fraud of the rights and interests of such corporation.

The Court has the authority to issue a temporary restraining order (“TRO”) and a preliminary injunction pursuant to Virgin Islands Rule of Civil Procedure 65(b). *Hart v. Potter*, Case No. ST-18-cv-220, 2018 WL 2324386, at \*2 (V.I. Super. 2018); *Appleyard v. Juan F. Luis Hosp. & Med. Ctr.*, 2014 WL 3767210, \*2, (V.I. Super. Ct. July 28, 2014). “The grant or denial of a request for a temporary restraining order is within a trial court’s discretion.” *Hart*, 2018 WL 2324386, at \*1. This Court considers the same factors for a TRO as when evaluating whether to

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issue a preliminary injunction. *Id.* at \*2. The Supreme Court of the Virgin Islands has established the following four-factor test for deciding a motion for a preliminary injunction:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the preliminary relief will be in the public interest.

3RC, 63 V.I. at 550.

Plaintiffs have shown a likelihood of success on the merits. They have provided Board Meeting minutes that confirm that the Defendants voted to pay their defense costs for this action out of EFBOA funds, and Plaintiffs have provided the EFBOA Articles of Incorporation, which clearly prohibit directors from voting to indemnify themselves for defense costs when they are accused by members of wrongdoing. Section (b) of the EFBOA Article Seventh., clearly states that a "pending ... action or suit by or in the right of the Association to procure a judgment in its favor against [an officer or director] by reason of that person serving in such capacity";:

(b)Unless ordered by a court, the determination of indemnification pursuant to the foregoing criteria, shall be made (i) by a majority vote of a quorum of directors, of the Association who were not and are not parties to or threatened with such action, suit, or proceeding, or (ii) if such a quorum is not obtainable, or if a majority of a quorum of uninterested directors, so direct, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney who has been retained by or who has performed services for the Association or any person to be indemnified within the past five (5) years, or (iii) by the parcel owners, or (iv) by the court in which such action, suit or proceeding was brought.

Defendants have not asked this Court to determine if they are fairly and reasonably entitled to advance and ongoing indemnification from the Association for their defense costs in this case. There was no majority vote of a quorum of disinterested directors. There was no request by a quorum of uninterested directors for a written opinion by independent legal counsel, who has not

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"been retained by or who has performed services for the Association or any person to be indemnified within the past five (5) years". The Defendants did not call a special meeting and obtain approval from the parcel owners. Plaintiffs have presented evidence that supports a finding that Defendants violated the express terms and restrictions of the EFBOA Articles, and that Defendants are also acting in violation of the indemnity provisions in 13 V.I.C. § Section 67a.

Irreparable harm is established by 13 V.I.C. §341, which authorizes preliminary injunctive relief to remedy a violation upon a showing of probable cause to believe that the statute is being violated. See, *Government of Virgin Islands, Dept. of Conservation Cultural Affairs*, 714 F.2d 283, 286 (3d Cir. 1983), citing *United States Postal Service v. Beamish*, 466 F.2d 804 (3d Cir.1972); see also, *Gov't of the V.I. v. Virgin Islands Paving, Inc.*, 714 F.2d 283, 286 (3d Cir.1983) (holding that irreparable harm is shown just by violation of a statute).

The balance of harm favors Plaintiffs. The Plaintiffs and all members of the EFBOA are harmed if Defendants are allowed to continue abusing their trust by financing their defense from Association funds. Defendants will suffer no harm, because if they prevail in the end, they can seek indemnity in compliance with the EFBOA Articles and the Corporations Act. The public interest favors enforcement of the Association governance documents and the law.

Having considered the matter, it is hereby

**ORDERED** that the Motion for a Temporary Restraining Order is **GRANTED**; and it is further

**ORDERED** that effective immediately, Defendants shall cease funding their defense of this action from the funds of the Estate Fish Bay Owners Association, Ltd; and it is further

**ORDERED**, that this matter shall come on for a hearing on \_\_\_\_\_, 2024 at \_\_\_\_ am/pm at which time the Court shall consider whether to enter a Preliminary Injunction, which may

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include an order requiring the Defendants to account for and reimburse the Association for all

funds disbursed for their legal fees and costs in responding to the Plaintiffs' September 15, 2021

Demand letter and in responding to this derivative action;

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Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
**Hon. Kathleen MacKay**  
Judge of the Superior Court of the Virgin Islands

**ATTEST:**

TAMARA CHARLES

Clerk of the Court

By: \_\_\_\_\_

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# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 01-10-2024 04:05 PM  
**E-File Confirmation #** 14871704917106091

## Filings Submitted:

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2021-CV-00459	Motion - Motion For Temporary Restraining Order	1	\$ 0.00
		Notice - Proposed Order	1	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>