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

1 Arthur Petersen, 2 Lynda Rey *a/k/a* Nikki Brooks, 3 Genevieve Whitaker, 4 Whitney Frederick, 5 Khyra Thomas, 6 Sabrina Serrano, 7 Thomas Barnes, 8 Wayne Parris, 9 Julian Veira, 10 Leroy Johnson, 11 Demaris Carroll, 12 Jahna Joseph, 13 Ramond Menders, 14 David Clarke, 15 Orville Morris, 16 Simone James, 17 Nappen Jarvis, 18 Winsbert Victor, *Plaintiffs,* v. 3 Prosperity, *in rem*, 3-B Prosperity, *in rem,* 3-C Prosperity, *in rem,* Paul E. Lippman, Catherine Lippman, Matthew Lippman, *and* John Does, *Defendants.*	**SX-2024-CV-222** **ACTION FOR DAMAGES** **Jury Trial Demanded**

AMENDED COMPLAINT

1. Plaintiffs are a diverse cross-section of Virgin Islanders who bring this lawsuit for an unlawful and discriminatory blocking and interfering of public access to a Frederiksted beach.

2. Plaintiffs range from young to old. They reside from Frederiksted to Christiansted. All Plaintiffs have previously easily accessed and enjoyed the beach at 3, 3-B and 3-C Prosperity. Some Plaintiffs, like Arthur Petersen, have accessed and used this beach frequently for over 60 years, and have knowledge that his family and extended relatives have used this beach for over 100 years. Other Plaintiffs used this beach for decades, having been brought to the beach by their parents, which now, they bring their own children, or grand-children, to this beach for family recreation and relaxation.

3. The Plaintiffs are members of the public and "individually and collectively, have, and shall continue to have, the right to use and enjoy the shorelines of the United States Virgin Islands." See, 12 V.I.C. § 402; See also, *Envtl. Ass'n of St. Thomas and St. John v. Dept. of Plan. and Nat. Resources,* 44 V.I. 218, 229 (Terr. 2002).

4. Plaintiffs also have other common law rights that protect their access to beaches and shorelines of the Virgin Islands.

PARTIES, JURISDICTION, AND VENUE

5. Defendant, 3, 3-B and 3-C Prosperity, is the land at issue, sued *in rem*, up to the value of the property/properties.

6. Defendants Paul and Catherine Lippman purchased 3, 3-B and 3-C Prosperity approximately four (4) years ago.

7. Defendants Paul E. Lippman and Catherine Lippman are the property owners, with an address of P.O. Box 302, Lincolnville, ME 04849 and 32 Salt Pond Lane, Lincolnville, ME 04849 and 3 Hams Bay, Frederiksted, St. Croix, Virgin Islands, and under information and belief are potential residents of Maine and/or the U.S. Virgin Islands.

8. Matthew Lippman, is a son of the property owner Paul & Catherine Lippman and acted in concert with the property owners and possibly others to restrict and interfere with public beach access. Under information and belief, Matthew Lippman is a resident of Maine or the Virgin Islands.

9. Defendant John Does represent a placeholder for other possible members/owners in 3, 3-B and 3-C Prosperity or other persons or legal entities which substantially contributed to the wrongful actions and wrongful conduct described below.

10. This Court has subject matter jurisdiction as a trial court of general jurisdiction.

11. Venue is this District is proper pursuant to 4 V.I.C. § 78 because the conduct complained of in this Complaint was carried out in substantial part within this judicial division.

12. All Defendants are to be jointly and severally liable for the counts below.

HISTORICAL BACKGROUND:

13. The majority of Virgin Islanders are of African descent. Their ancestors were enslaved in the Virgin Islands and greater Caribbean. Specifically on St. Croix, as a Danish Plantation economy, the enslaved were tethered to the plantation and were prohibited from leaving the plantation without permission. Violations would result in being chained in irons, flogged on the back, buttocks and legs, burned with a brand into the skin, being "pinched" with red hot irons, and amputations of the ears, feet or legs, or other tortures or death.[1]

14. In 1848, the enslaved revolted and achieved "technical" emancipation. However, slavery by another name ensued, contract bondage, which forced the formerly enslaved to enter into oppressive one year labor contracts with Plantation Owners. These laborers, now ironically called "Freedmen," had to accept a statutory low daily wage rate. These wages were depleted back to the Property Owners as contracted labor had to pay for their own food, clothing and housing. Laborers

[1] Traditionally the Property Owner was an absentee landlord, so the Chief Overseer of the Plantation had the authority to punish slaves. As the enslaved were property, Danish law allowed Masters to use whatever punishments Masters deemed necessary in their sole discretion. Punishments were finally codified and standardized by the Danes in 1733 and 1755. Professor William Boyer describes the Danish Slave Code as such: "Governor Philip Gardelin on September 5, 1733, promulgated a new mandate that may remain unparalleled in world history as one of the most barbarous and oppressive measures ever imposed on a people. 'A runaway slave shall be pinched three times with red-hot iron, then hung. A runaway slave shall lose one leg, or if the owner pardons him, shall lose one ear, and receive one hundred and fifty stipes. Any slave, being aware of an intention of others to run away, and not given information, shall be burned in the forehead, and receive one hundred stripes.'"

were typically left indebted to the Plantation Owner by the end of the year. Further, the one year contracts bound the laborer again to the Plantation. They were not able to change work places. They were not able to ask for higher wages. At the end of the one year contract, laborers could only move to different Plantations if both Plantation Owners agreed to the change.

15. In 1878, after 30 years of contractual enslavement, Virgin Islanders of African descent revolted again for freedom during Fireburn. After Fireburn, Virgin Islanders had more freedom to travel – and more time and ability to engage in leisure and social activities as 'free' persons.

16. Since 1878, Virgin Islanders have gone to the beach and shorelines to enjoy family and community socialization and to commune with nature.

17. Denmark's statutory and common law made beaches communal and public property. See, *Malloy v. Reyes*, 61 V.I. 163, 179 (2014)("the shoreline was public property under Danish law; it remains public.")

18. Further, when the United States bought the Virgin Islands in 1917, the Treaty Sale Agreement mandated that the residents of the Virgin Islands shall have no lesser rights than under Denmark's rule. Thus, public access to the beaches is a Treaty benefit.

19. Public Access to beaches continued from 1917 for decades with generally no problems. Virgin Islanders were permitted unimpeded access to and from Virgin Islands beaches for their personal enjoyment.

20. Access to public beaches became a problem only in the 1950s due to two primary reasons. (a) Faster travel with the advent of jet propulsion commercial airplanes. (b) Tourists and visitors who visited the Virgin Islands saw its natural beauty, particularly its beaches, and envisioned how those beaches could be commercialized into residential or commercial developments for other tourists or short-term visitors.

21. In the 1960s the first problems arose where non-Virgin Islanders, who were developing beach front properties, wanted to exclude Virgin Islanders from accessing the beaches around the

properties they had bought. The reasons for increasing the difficulty to access public beaches was multi-faceted, but followed common business tactics of creating exclusivity by limiting access to undesirable and/or poorer people.

22. Moreover, the 1960s were infused with racial discrimination as the Southern States enforced Jim Crow laws, including Southern States like Alabama, Florida, Georgia, North Carolina, South Carolina and Texas which enforced segregated beaches to purposefully deny and limit access of Blacks and Colored people to public beaches.

23. Dr. Martin Luther King, Jr., discovered many Northern Cities had policies of *de facto* segregation through "red-lining" and separating white and black neighborhoods segregated. Chicago's lake shore beaches were "unofficially" segregated with Jackson Park Beach being the White-Only beach and 31st Street Beach being the Colored Beach.

24. In 1971, after years of community outrage throughout the 1950s and 1960s, the V.I. Legislature passed the Open Shorelines Act, essentially codifying what had been an ancient and common law custom and practice in the Virgin Islands (that the public has a right of access to the beaches of the Virgin Islands). The passing of this Act was under the early tenure of the Virgin Islands first elected Governor, Melvin H. Evans.[2]

25. To have access to beaches and shorelines, beachfront properties must not block or interfere with traditional access, and, further, not make access more difficult or onerous.[3]

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[2] Professor William Boyer noted in 1983 in this book, *America's Virgin Islands: A History of Rights and Wrongs* at p.318: "The issue of public access to and use of the beaches of the Virgin Islands has been one of the most contentious conflict in modern Virgin Islands history and fraught with racial overtones. Throughout Danis rule and American rule as well, into the 1950s, the people of the Virgin Islands enjoyed unobstructed use of the beaches. The Virgin Islands Legislature expressed its intent 'to preserve what has been a [common law] tradition and to protect what has become a [common law] right of the public." [….T]o the Virgin Islander the beaches were his birthright. On every other island throughout the Caribbean, the beaches belonged to the public who had free access to them."

[3] See, *Dadgostar v. St. Croix Fin. Ctr., Inc.,* 2011 WL 4383424, at *10 (D.V.I. Sept. 20, 2011) ("The Open Shores Act guarantees the public the right to access all beaches and shorelines in the Virgin Islands and prohibits any person or entity from restraining or interfering with the right of the public individually and collectively, to use and enjoy any shoreline.")(citing 12 V.I.C. § 403.)

26. Blocking, interfering or restricting access to a beach, due to the long historical past of enslavement, discrimination and disenfranchisement, opens up deep psychological wounds in Virgin Islanders. This historical background is included for Defendants to understand and comprehend the Plaintiffs' mental anguish and emotional distress.

27. Further, even if beach access is only incrementally made more difficult, say just 1% per year, in 100 years there would be no easy beach access for Virgin Islanders who may be the great-grandchildren of the Plaintiffs in 2124. Future Virgin Islanders would be robbed of their cultural heritage, as well as being gentrified out of their own beaches on their own islands by others who have the vast resources to buy and monopolize beach and shoreline properties.

28. This has happened to other native an indigenous tribes and peoples, where colonizers and non-natives forcibly relocated indigenous people to less desirable lands. These indigenous people then adapted to living in those new areas, usually in harmony with the land. (Just as East Africans were forcibly relocated to the Caribbean and Americans.) Yet, in recent decades, non-natives, living in faraway cities, have decided that the indigenous people are not protecting a certain species of bird, mammal, lizard, flower or tree – and in the name of "conservation" or "environmental protection" as their altruistic motivation and reason – seek to restrict and interfere with indigenous peoples' use and enjoyment of their own lands.

29. Virgin Islanders are intimately familiar with the guise of "conservation" and "environmental protection." A New Yorker from Manhattan, Laurance Rockefeller, secretly, and then publicly, bought half of St. John in the 1950s. These land purchases were in the guise of conservation and environmental protection to save St. John from, ostensibly, native St. Johnians.[4]

30. Currently, beachfront property commands the highest prices in the real estate market. Warm water beach front properties in California, Florida and North Carolina cost multi-million dollars

[4] P. 251-254. Boyer, William., *America's Virgin Islands: A History of Rights and Wrongs*. Carolina Academic Press, North Carolina (2010); See also O'Neill, *Rape of the Virgin Islands*, p.140

per acre. With over 330 million Americans, and nearly 8 billion people globally, all who can travel easily on commercial jets, or the richest via their private jets, all beachfront properties will inevitably be in the hands of the richest 1%.[5]

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[5] A new beach house was built on 0.31 acres of beach front property in Santa Rosa, Florida, and is valued at $25 million dollars, making a full acre of beach front property nearly $100 million dollars. See, https://www.mansionglobal.com/articles/a-25-million-beachfront-new-build-lists-as-the-most-expensive-house-in-north-florida-e1c531e3

Beach-front properties are a global market, and are the purview of the uber-rich.

	CITY	STATE	MEDIAN PRICE
1.	NEWPORT BEACH	CA	$3,825,000
2.	NANTUCKET	MA	$3,505,000
3.	MANHATTAN BEACH	CA	$3,492,500
4.	CARMEL-BY-THE-SEA	CA	$3,000,000
5.	ENCINITAS	CA	$2,725,000
6.	CORONADO	CA	$2,717,500
7.	PALM BEACH	FL	$2,712,500
8.	DANA POINT	CA	$2,700,000
9.	SANTA CRUZ	CA	$2,500,000
10.	HERMOSA BEACH	CA	$2,500,000
11.	PUAKO	HI	$2,400,000
12.	HALEIWA	HI	$2,383,750
13.	KOLOA	HI	$2,300,000
14.	SOLANA BEACH	CA	$2,110,000
15.	SAN CLEMENTE	CA	$2,100,000
16.	HUNTINGTON BEACH	CA	$2,067,250
17.	CARLSBAD	CA	$2,000,000
18.	NAPLES	FL	$1,950,000
19.	KAILUA	HI	$1,895,000
20.	TEQUESTA	FL	$1,732,500
21.	APTOS	CA	$1,712,500
22.	KIHEI	HI	$1,703,750
23.	INDIAN RIVER SHORES	FL	$1,700,500
24.	CHATHAM	MA	$1,700,000
25.	BAL HARBOUR	FL	$1,700,000
26.	REHOBOTH BEACH	DE	$1,641,250
27.	REDONDO BEACH	CA	$1,600,000
28.	KEY BISCAYNE	FL	$1,575,000
29.	HALF MOON BAY	CA	$1,532,000
30.	LAHAINA	HI	$1,450,000
31.	SAN DIEGO	CA	$1,425,000
32.	SEAL BEACH	CA	$1,425,000
33.	PACIFIC GROVE	CA	$1,417,000
34.	WATSONVILLE	CA	$1,400,000
35.	PRINCEVILLE	HI	$1,327,500
36.	TORRANCE	CA	$1,314,000
37.	PACIFICA	CA	$1,303,000
38.	EL SEGUNDO	CA	$1,300,000
39.	OXNARD	CA	$1,287,444
40.	LOS ANGELES	CA	$1,250,000
41.	SANIBEL	FL	$1,230,000

31. Moreover, with real estate a safe and efficient way to hold, invest, save, and grow money (particularly with very low property taxes of the Virgin Islands and under the protection of the United States flag) beach front properties are an option for the rich to simply own the property as an investment tool.

CURRENT FACTUAL ALLEGATIONS:

32. Generationally, the people of Frederiksted would walk to the beaches near Frederiksted for socializing, relaxing, physical activity and communing with nature. (Historically, most Virgin Islands families did not own a car until the economic boom of the early 1970s on St. Croix.)

33. The beach at issue at 2-BC Prosperity is a convenient and walkable distance from Frederiksted.

34. All of the Plaintiffs have, at many times in their life, used the beach at 2-BC Prosperity and accessed it from the nearby roadway.

35. On or about June 1, 2024, the Defendants paid a heavy equipment operator to place large boulders 1-2 feet off the roadway, and also large boulders placed lining a new "path" down an uneven ghut to the beach.

36. Defendants interfered with public access by blocking parking and changing public beach access and by increasing the difficulty of access the beach to discourage public access.

42.	VENTURA	CA	$1,200,000
43.	ISLE OF PALMS	SC	$1,200,000
44.	KEY WEST	FL	$1,197,500
45.	KIAWAH ISLAND	SC	$1,172,000
46.	DALY CITY	CA	$1,155,500
47.	SANTA ROSA BEACH	FL	$1,150,000
48.	PISMO BEACH	CA	$1,150,000
49.	BETHANY BEACH	DE	$1,120,000
50.	BONITA SPRINGS	FL	$1,107,000
51.	OCEANSIDE	CA	$1,060,000
52.	KANEOHE	HI	$1,025,000
53.	SUNNY ISLES BEACH	FL	$1,000,000

Source, Zillow at https://casago.com/blog/places-with-highest-premium-for-beach-view-properties/

37. The Defendants made statements on social media that cars were driving on the beach and cars were destroying sea turtle nests. Both statements are untrue.

38. Cars only park on shoulder off the roadway, which is a sandy and rocky hard pack. No turtles nest on this hard pack. No turtle would be able to dig in this hard pack.

39. Cars do not drive onto the soft beach sand. All cars, even four-wheel drive vehicles, would get stuck in soft dry sand. None of the Plaintiffs have ever seen a car drive down on the soft beach sand.

40. Defendants statement were false and were made to create the false guise of altruistic eco-conservation, to conceal their true motive of discouraging public use of the beach, so that the beach would be more 'private.'

41. Further, the flattest and smoothest access to the beach was the traditional access to the beach. People are not dumb, from old senior citizens to young children, they accessed the beach via the smoothest and flattest terrain, which gently goes from the roadway, to the hard pack, to flat sand and rock, to softer sand, to deep soft beach sand to the water.

42. The Defendants, by placing boulders and obstacles and signs in the way, have obstructed the easiest and traditional way to access the beach.

43. Defendants created a new "path" adjacent to a ghut. A person now has to navigate the ghut, with uneven terrain under low hanging Seagrape branches and gnarled roots, along with a three foot soft and unstable sandy berm drop-off. This "path" is impossible for any senior citizen and any young child to navigate.

44. Placement of the boulders was an unreasonable act which creates unnecessary danger. All Virgin Islands roads have public easements of not less than 8 feet, sometimes up to 10 feet. All of the land near the road is hard pack and the boulders should have been placed at least 8 feet from the roadway.

COUNT 1 – OPEN SHORELINES ACT

45. The Defendants have violated the Open Shorelines Act, as 12 V.I.C. § 401, et seq., of 1971.

46. The Virgin Islands Open Shorelines Act prohibits restrictions to public access to beaches and parks. See V.I. Code 12 § 401*, et. seq*.

47. The Open Shorelines Act provides its legislative background and purpose as: "The shorelines of the United States Virgin Islands have in the past been used freely by all residents and visitors alike. The seashore has been a place of recreation, of meditation, of physical therapy and of rest to Virgin Islanders past and present[….] The second half of the twentieth century has brought adverse changes to the United States Virgin Islands shorelines. There has been uncontrolled and uncoordinated development of this area, together with attempts, sometimes successful, to curtail the use of these areas by the public. The Legislature recognizes that the public has made frequent, uninterrupted and unobstructed use of the shorelines of the United States Virgin Islands throughout Danish rule and under American rule as recently as the nineteen fifties. It is the intent of the Legislature to preserve what has been a tradition and to protect what has become a right of the public."

48. The Open Shorelines Act is remedial and is to be liberally and broadly construed to in accordance with its "primary goal protecting the public interest by providing access to Virgin Islands beaches."[6]

[6] See also, *Rivera v. U.S.,* 33 V.I. 234, 241 (D.V.I. 1996)("In enacting the Open Shorelines Act, the Virgin Islands legislature had as its primary goal protecting the public interest by providing access to Virgin Islands beaches. Tit. 12 § 401 (1982) (declaring the legislative intent to preserve the public's right to make traditional uses of the beaches as the public has done since the islands were ruled by Denmark).

Even President Kennedy in establishing the National Park at Buck Island recognized the Virgin Islands tradition of public beach use and access. "President Kennedy recognized the importance of Buck Island to the people of the Virgin Islands and ensured that the privileges enjoyed by them would be safeguarded for the enjoyment of future generations. He mandated that the federal policy applicable to Buck Island would be one of non-interference with the enjoyment of the beach." *Id.*

49. The traditionally used access to the beach, which is the flattest and smoothest way of ingress to the shoreline, is within 50 feet of low tide of the beach. This means that whole area is designated total public use. See, 12 V.I.C. § 402. Yet, the Defendants placed boulders in this area of exclusive public use. This is a violation of the Open Shorelines Act, which forbids obstructions in that area.

50. Second, the spirit and purpose of the Open Shorelines Act is to allow Virgin Islanders to access their own islands' beaches. In the 21st Century, Virgin Islanders drive. If there is no safe area where cars can park just off the roadway, then there is no safe, effective and convenient access to a beach.

51. The Defendants placement of boulders just 1 to 2 feet off the roadway prevents any cars from parking parallel with the roadway. Thus, cars would be forced to park on the roadway. Parking on the roadway creates a hazard. First, emergency vehicles could be blocked from traversing. Second, cars parked in the roadway obscures and narrows the roadway, and people are more likely to be hit by passing cars, particularly children. We want children to be engaging in outdoor activities at the beach with family, instead of inside playing video games on their phone on social media. But, children should be placed in more danger due to landowners forcing more dangers parking to access public beaches. Third, psychologically, the use of boulders to deny "space" is designed to send a message to Virgin Islanders not to try to use this beach; and that Virgin Islanders are not welcome. All of the above is against the spirt and purpose of the Virgin Islands Open Shorelines Act.

52. All Plaintiffs will testify that the boulders and other obstructions affected their access, use and enjoyment of the beach and caused them mental anguish.

53. All Defendants, whether persons or legal entities, fall under the scope of the Open Shorelines Act. See, § 403: "No person, firm, corporation, association or other legal entity shall create, erect, maintain, or construct any obstruction, barrier, or restraint of any nature whatsoever upon, across or within the shorelines of the United States Virgin Islands as defined in this section, which would

interfere with the right of the public individually and collectively, to use and enjoy any shoreline."

54. Virgin Islanders are not against ecological conservation. But true conservations should be part of a public discussion and public involvement, when it regards public lands like beaches and shorelines – and the traditional access points to those beaches and shorelines. In fact, many of the Plaintiffs are active members of various environmental and conservation organizations.

COUNT 2 – NEGLIGENCE PER SE

55. Defendants actions in violating the Open Shoreline Act is Negligence *Per Se*.

56. This negligence has caused damages to the Plaintiffs in the form of mental anguish and loss of enjoyment of life to be proved in an amount at trial via jury.

COUNT 3 – NUISANCE

57. Defendants actions constitute nuisance.

58. Plaintiffs all have a common law and Open Shoreline Act interest in the beach and adjacent land.

59. The Defendants have performed acts, by placing boulders, signs and other obstructions, which have interfered with the Plaintiffs use and enjoyment of beach and adjacent land.

60. The Defendants placement of the boulders, signs and other obstructions was a substantial and unreasonable change.

61. This nuisance has caused damages to the Plaintiffs in the form of mental anguish and loss of enjoyment of life to be proved in an amount at trial via jury

COUNT 4 – TRESPASS

62. Defendants actions constitute trespass.

63. The Defendants do not own the land under the Open Shoreline Act.

64. Yet, Defendants intentionally placed boulders blocking access to Open Shorelines.

65. These wrongful actions constitute Trespass to the Plaintiffs, who are members of the public, that have a right of access and a public interest in the land.

66. Plaintiffs seek trespass damages in an amount at trial via jury.

COUNT 5 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

67. Defendants actions were intentional.

68. Defendants knew, or had reason to know, that denying access to the beach, interfering with access, and/or creating barriers and difficulties to access the beach, would create emotional distress for Virgin Islanders.

69. Damages to the Plaintiffs is in the form of mental anguish and loss of enjoyment of life to be proved in an amount at trial via jury.

NOTICE OF ALLEGATION OF PUNITIVE DAMAGES

70. Defendants actions were intentional and evince a gross disregard of the rights of others. An award of punitive damages is necessary and proper to punish and deter the Defendants, and also as a warning and deterrence to all others who may be inclined to similar wrongful conduct.

JURY TRIAL DEMANDED

71. Plaintiffs demand a trial by jury, pursuant to 5 V.I.C § 358 and Rule 38(b) of the Virgin Islands Rules of Civil Procedure of all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests:

a. As to Count 1, that Defendants be ordered to remove the boulders, or that the boulders be placed at a distance of no less than 8 feet off the roadway and shoulder roadway easement. That the Defendants revert access back to the traditional and ancient ingress and egress where the ground is smoother and flatter, instead of forcing the public to the ghut, which is covered with dense bush and roots and is uneven, steep and dangerous terrain.

b. After trial by jury, be awarded compensatory damages for mental anguish and loss of enjoyment of life for Courts 2, 3, 4 and 5.

c. After a trial by jury, Plaintiffs be awarded punitive damages.

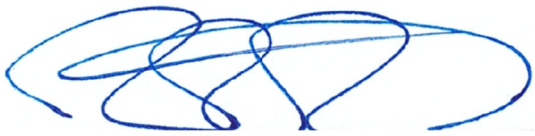
d. Plaintiffs be awarded pretrial interest from the date of the initial Complaint through final judgment;

e. Plaintiffs be awarded his costs, attorney's fees, and post-judgement interest; and

f. The Court grant such additional relief as may be deemed just and proper.

DATED: June 13, 2024

Respectfully submitted,



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