

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

<b>William T. Lloyd,</b>	)	
	)	
Plaintiff,	)	Civ. No. 2001-173
	)	
v.	)	
	)	
<b>Rudolph Szabados and Joan Szabados,</b>	)	
	)	
Defendants.	)	
	)	

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**ATTORNEYS:**

**Samuel H. Hall, Jr., Esq.**  
**Marie E. Thomas, Esq.**  
 St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Steven Hogroian, Esq.**  
 St. John, U.S.V.I.  
*For the defendants.*

**MEMORANDUM**

Moore, J.

Plaintiff William Lloyd ("plaintiff" or "Lloyd") moves for a preliminary injunction to enjoin defendants Rudolph and Joan Szabados (collectively "defendants" or "Szabados") from conveying or transferring any title to or interest in real property located at Parcel Nos. 6-3-35 and 6-3-36 Estate Carolina, No. 1 Coral Bay Quarter, St. John, United States Virgin Islands. Plaintiff also seeks to require defendants to execute and deliver to him a deed to this property. Defendants oppose plaintiff's motion. For the reasons set forth below, this Court will deny plaintiff's motion.

## I. FACTS

This matter involves a contract of sale between the parties for property known as "Beau Soleil." The parties entered into this contract on July 5, 2001, whereby Lloyd agreed to purchase the property for \$790,000. Under the terms of the contract, Lloyd was permitted to inspect the property and to notify the Szabados within four days of any previously undisclosed defects on the property. Paragraph 8 of the contract specifically stated that upon notice of these defects the "Sellers [the Szabados], shall at their option, correct [the defects] or Sellers have the right to cancel this Contract with neither party having any further claim against the other, except that the deposit paid hereunder shall be refunded to the Buyer [Lloyd] forthwith and in full." (Ex. 2, Pl.'s Application for Prelim. Inj.) Pursuant to this agreement, Lloyd inspected the property and discovered several defects.<sup>1</sup> Subsequently, he e-mailed his real estate broker, St. John Properties, Inc., regarding his inspection who in turn passed Lloyd's e-mail to the Szabados' broker who in turn passed it to the Szabados.<sup>2</sup> A portion of Lloyd's e-mail stated:

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<sup>1</sup> Lloyd had hired BGM Engineers and Surveyors to inspect the property. He personally inspected the property at the same time as BGM Engineers and communicated his personal observations to the Szabados. (Pl.'s Mem. of Law in Support of Application for a Prelim. Inj. at 10.)

<sup>2</sup> Lloyd had not yet received the completed inspection report from BGM Engineers at the time he communicated his observations to the Szabados. (*Id.* at 10.)

As we discussed there is a lot of work that needs to [sic] done to the house to bring up to par, but given that I don't want the Brego's doing it and that I don't want to be petty with Szabados, Pam and I will take care of doing most of the work. But the sellers should be responsible for delivering a house that is in good and operable condition. Therefore they should be responsible for the following:

1. Professionally replacing the missing and broken shingles on the roof and repairing the roof if necessary. More tiles are missing now than when [sic] noticed it in February and therefore I suspect there is a problem.
2. Repair the damage that was done to the lower bedroom by the non-professional painters. This includes removing the paint from the floors (without damaging the tiles) and getting the paint off the wood work. The paint should also be removed from the concrete outside the bedroom and the furniture that is in the bedroom.
3. Remove the garbage (including old wood, TV set, lamps, and refrigerator) from the storage closets on the lower level. You may want to be there with the clean up crew so that they get it right.
4. Fix/replace septic system for the lower bathroom. David Cooper is preparing the estimate and we can provide this to the sellers.

There are two ways we can deal with the repairs:

- a. They have the work completed and we inspect it and it is subject to our approval; and
- b. They reduce the purchase price by the amount of the work that needs to be done (all but for item 3, which I want done before we close).

In situation (b) we will need to close earlier in order to get the work done before renters arrive and I will want to have firm price quotes from the contractors schedule to do the work.

(Ex. 5, Pl.'s Application for Prelim. Inj.) When Lloyd's broker forwarded this e-mail to the Szabados' broker, he asked "how would you like to proceed?" (Ex. B, Defs.' Countercl.) The Szabados responded by electing to rescind the contract, which has

brought this matter before the Court. Lloyd has sued the Szabados for specific performance and breach of contract. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

## II. PRELIMINARY INJUNCTION

The viability of a motion for a preliminary injunction is determined by a four-part test. These factors are: (1) irreparable harm to movants if the motion is denied; (2) reasonable probability of success on the merits; (3) possibility of harm to third parties; and (4) public interest. See *McBean v. Guardian Insur. Agency*, 40 V.I. 205, 52 F. Supp. 2d 518 (D.V.I. App. Div. 1999); *Joseph v. Henry*, 36 V.I. 115, 958 F. Supp. 238 (D.V.I. App. Div. 1997); *West Indian Co. v. Government of the Virgin Islands*, 22 V.I. 358, 643 F. Supp. 867 (D.V.I. 1986), *aff'd*, 812 F.2d 134 (3d Cir. 1987). A review of plaintiff's motion reveals that he has failed to satisfy the requirements of success on the merits and irreparable harm.<sup>3</sup> A motion for a preliminary injunction may be denied without a hearing "when the written evidence shows the lack of a right to relief so clearly that receiving further evidence would be manifestly pointless." *Dennie v. Abramson*, 124 F. Supp. 2d 928, 931 (D.V.I. App. Div.

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<sup>3</sup> As Lloyd has failed to establish that he will succeed on the merits or suffer irreparable harm, I need not address the public's interest or the potential harm to third parties.

2000) (quoting C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE:  
Civil § 2949 at 478-79 (1973)).

**A. Success on the Merits**

Lloyd argues that he is likely to succeed on the merits because his e-mail was merely his informal observations and "was not the formal communication required by Paragraph 8 of the Contract. Nor did St. John Properties [his broker] understand [that this e-mail was] anything but [an] informal communicat[ion]." (Pl.'s Mem. of Law in Support of Application for a Prelim. Inj. at 10.) Defendants counter that the e-mail constituted a "writing" per paragraph 8 and that they acted within their right to cancel the contract. (Defs.' Mem. of Law in Opp. to Pl.'s Application for Prelim. Inj. at 8-11.) I find defendants' argument much more convincing. Rule 1001 of the Federal Rules of Evidence defines writings and recordings as "letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation." FED. R. EVID. 1001. Clearly, plaintiff's e-mail meets this definition of a "writing."

Lloyd argues that his e-mail was merely an informal communication not intended to be a writing within paragraph 8 and certainly not intended to elicit the response it did from the

Szabados. (Pl.'s Mem. of Law in Support of Application for a Prelim. Inj. at 10.) The content of the e-mail itself, however, belies Lloyd's claims. First, the e-mail is well-thought out, giving one the impression that Lloyd spent some time on it. Second, the e-mail gives the Szabados two options - make the repairs or lower the price. Surely, plaintiff's e-mail was generated with the intent to elicit some response from the Szabados. Unfortunately for Lloyd, it just was not the response he wanted. Therefore, as the e-mail was intended to be seen by and draw a response from the Szabados, it meets the "writing" notification requirement of Paragraph 8 of the contract. Accordingly, it would appear at this stage that the Szabados acted within their rights to cancel the contract upon receipt of Lloyd's notification of the additional defects.

#### **B. Irreparable Harm**

Lloyd contends that the failure to enjoin the Szabados from selling Beau Soleil will irreparably harm him because real property is unique and he will be unable to find a comparable property. (*Id.* at 15-18.) On the other hand, the Szabados convincing argue that they have already been effectively enjoined from selling their property due to the actions of Lloyd. Lloyd has recorded a Notice of Contract of Sale and a Notice of Lis Pendens. (Defs.' Mem. of Law in Opp. to Pl.'s Application for

Prelim. Inj. at 12-13.) These notices have created a cloud over legal title and have thus effected the marketability of the property. See *Chrysler Corp. v. Fedders Corp.*, 670 F.2d 1316, 1322 (3d Cir. 1981) (noting that a lis pendens impairs the marketability and enjoyment of property). As the Szabados have been precluded from selling Beau Soleil to anyone else on account of Lloyd's own actions, he will not be irreparably harmed by a denial of his motion for a preliminary injunction.

### III. CONCLUSION

Plaintiff has failed to establish that he will succeed on the merits of his complaint or suffer irreparable harm. Accordingly, this Court will deny his motion for a preliminary injunction.

ENTERED this 7th day of November, 2001.

For the Court

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
District Judge

ATTEST:  
WILFREDO MORALES  
Clerk of the Court

By: \_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk

NOT FOR PUBLICATION

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*For the plaintiff,*

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St. John, U.S.V.I.  
*For the defendants.*

ORDER

For the reasons set forth in the foregoing Memorandum of  
even date, it is hereby

**ORDERED** that plaintiff's motion for preliminary injunction  
(Docket No. 6) is **DENIED**.

ENTERED this 7th day of November, 2001.

For the Court

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
District Judge

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**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk

cc: Hon. R.L. Finch  
Hon. G.W. Barnard  
Hon. R.L. Resnick  
Mrs. Jackson  
Samuel H. Hall, Jr., Esq.  
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Michael Hughes