

NOT FOR PUBLICATION

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

JAMES KEAN, EARNEST KEAN, ALVA)
MARSH, WARREN MARSH, JEWEL)
MOOLENAAR-MARSH, and PATRICIA)
LOONEY,)

Plaintiffs,)

v.)

LELIA ADLER, IRMA CALIJOHNI,)
CAROLYN ORTIZ, individually and as)
Executor of the ESTATE OF HALLIE)
ORTIZ, OUIDA NELSON, NELINDA)
NELSON, VALENTINO NELSON, JOSEPH)
ADLER, THE UNITED STATES OF)
AMERICA, THE NATIONAL PARK SERVICE,)
and URIS DALMIDA,)

Defendants.)

Civ. No. 98-176

APPEARANCES :

Richard Knoepfel, Esq.

St. Thomas, U.S.V.I.

*For plaintiffs James Kean, Earnest Kean, Alva
Marsh, Warren Marsh, Jewel Moolenaar Marsh, and
Patricia Looney,*

Carol Ann Rich, Esq.

St. Thomas, U.S.V.I.

For defendant Carolyn Ortiz,

Alan Smith, Esq.

St. Thomas, U.S.V.I.

*For defendants Ouida Nelson, Nelinda Nelson, and
Valentino Nelson,*

Joycelyn Hewlett

Assistant U.S. Attorney

St. Thomas, U.S.V.I.

For defendant United States.

**MEMORANDUM CLARIFYING MEMORANDUM AND ORDER OF AUGUST 12, 2002
AND
DENYING RECONSIDERATION**

The United States claims that the Court illegally imposed judgment by default against it on August 12, 2002, by entering the Consent Decree ["Consent Decree"], the order voluntarily dismissing the cross claim of Carolyn Ortiz ["Ortiz Order"], and the order denying the United States leave to file an answer to the amended complaint and a cross claim against Carolyn Ortiz more than two years late ["United States Order"]. Nothing could be further from the truth.

First, let me clarify and correct a statement in the United States Order. The first sentence of the first paragraph on page 4 of the slip opinion should read: "The United States was named as a defendant in the Territorial Court action because it holds a three-elevenths (3/11) interest in the remainder of the estate which was the subject of conveyed in the 1961 deed." It is undisputed that Harvey Monroe Marsh's ["Marsh"] March 27, 1961 deed reserved fee title to himself and only conveyed out life estates in Estate Maho Bay on St. John to various relatives. It is also undisputed that Marsh had already conveyed the three-acre Parcel No. 3A-3 Estate Maho Bay by separate deed dated September 30, 1965, to Carolyn Ortiz' predecessor in interest, Hallie Ortiz, in fee simple absolute, some five years before the United

States received its 3/11th interest in the property in 1970. This three-acre parcel was not a subject of the initial lawsuit filed in the Territorial Court and removed by the United States to this Court.

In all other respects, the United States Order is absolutely clear that the United States has asserted no legal claim in this Court to a 3/11th interest in the three acre parcel. On the contrary, it made a binding judicial admission that it had no claim to any interest in Parcel No. 3A-3 in its answer to the original complaint. The plaintiffs acknowledged in their initial complaint that Hallie Ortiz claimed a fee simple ownership in these three acres and the government admitted in its answer filed in the Territorial Court on November 13, 1998, that "Hallie Ortiz . . . holds a life estate in a tract at Estate Maho Bay, and that she separately owns, in fee, a three-acre tract at Estate Maho Bay that is separate from the land, which is the subject of this litigation." Even when the plaintiffs amended their complaint to include a claim to Hallie Ortiz' separate three-acre Parcel No. 3A-3 Estate Maho Bay, the government did not revise its earlier judicial admission that Hallie Ortiz was the fee owner of these separate three acres. Indeed, the government did not even bother to answer the amended complaint. Finally, when Carolyn Ortiz filed her cross-claims, the United States answered

by specifically denying Ortiz' allegation that the United States intended to file a claim challenging the validity of the 1965 Deed to the separate three-acre tract.

Consistent with its judicial admission of no claim to the three-acre piece, the United States took itself out of the mediation regarding Carolyn Ortiz' claim of title to three acres of the Maho Bay property by advising the parties in a letter dated January 26, 2001, that the United States would

not participate in the mediation proceedings so long as the only issue that will be discussed is title to the three-acre parcel. The United States will allow the other parties (all family members) to resolve the issue of the three-acre parcel among themselves.

Mediation began on March 27, 2001, and successfully concluded nearly one year later, with the plaintiffs and Carolyn Ortiz reaching a settlement of the title disputes over the 1965 Deed and the 1961 Deed, leaving only the issue of partition of the property conveyed under the March 27, 1961 Deed to the eleven remainder interests for resolution. The Consent Judgment which I approved embodies this settlement.

Accordingly, I found and reiterate here that the United States has never asserted in this Court any claim to an interest in the separate three-acre parcel inherited by Carolyn Ortiz. And I therefore did not allow the United States to renege on its earlier consistent position and judicial admission and denied it

leave to file a cross claim against Carolyn Ortiz two years out of time. The United States obviously knew that it took its interest subject to the duly recorded 1965 Deed of Gift. It is again undisputed that the United States suspected the validity of the 1965 Deed and knew of its potential claim for nearly thirty years. In 1969, a United States Department of Interior employee twice questioned the legitimacy of the three-acre conveyance to Hallie Ortiz. I found the behavior of the United States was intentional, inexcusable, and egregious. By voluntarily refusing to participate in the mediation, I found that the United States consented to the settlement of title to the three-acre parcel as embodied in the Consent Decree. I found that the United States deliberately permitted the families to mediate the 1965 Deed's validity and Carolyn Ortiz' interests to the land, and then attempted to sandbag them by seeking to challenge the 1965 Deed at this late date. Obviously, it would not be in the interests of justice as required under Rule 13(f) to permit the United States to file and pursue its cross claim.

Accordingly, I have reexamined my approval of the Consent Decree, my order voluntarily dismissing the cross-claim of Carolyn Ortiz, and my order denying the United States leave to file an answer to the amended complaint and a cross-claim against Carolyn Ortiz more than two years and find that there is no

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reason to vacate or modify them, other than as may have been clarified herein. An appropriate order is attached.

ENTERED this 18th day of November, 2002.

FOR THE COURT:

_____/s/_____

**Thomas K. Moore
District Judge**

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Alan Smith, Esq.

St. Thomas, U.S.V.I.

*For defendants Ouida Nelson, Nelinda Nelson, and
Valentino Nelson,*

**Joycelyn Hewlett,
Assistant U.S. Attorney**

St. Thomas, U.S.V.I.

For defendant United States.

ORDER

For the reasons set forth in the accompanying memorandum, it is **ORDERED** that the motion of the United States to reconsider the Consent Decree, the order voluntarily dismissing the cross claim of Carolyn Ortiz, and the order denying the United States leave to file an answer to the amended complaint and a cross claim against Carolyn Ortiz entered on August 12, 2002, is **DENIED**.

ENTERED this 18th day of November, 2002.

FOR THE COURT:

_____/s/_____

**Thomas K. Moore
District Judge**

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

**By: _____
Deputy Clerk**

Copies to:
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Carol Ann Rich, Esq.
Alan Smith, Esq.
Joycelyn Hewlett, Asst. U.S. Atty.
Mrs. Jackson
Chris Ann Keehner, Esq.
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