

5. Defendants violated the Settlement Agreement when they imposed a Two Hundred Ten Thousand Dollar (\$210,000) assessment against GSJ based on legally and factually deficient claims against GSJ purportedly for violations of the Coastal Zone Management Act (the "Act") on the large private single-family residence known as Great St. James. Such an assessment, of a magnitude never before imposed on a private single-family residence of any size, is unprecedented in CZM's and DPNR's enforcement history and well in excess of Defendants' contractual and legal authority.
6. Defendants refused to provide adequate notice of such legally and factually deficient claims or a reasonable opportunity to cure the same, as required under the Settlement Agreement. In fact, Defendants unilaterally and arbitrarily imposed only a ten (10) day cure period, which included five (5) days of weekends and a legal federal and Virgin Islands holiday.
7. All of this appears to have been a deliberate effort to ensure that it would be impossible for GSJ to cure DPNR's list of inadequately described and improperly claimed violations within the unreasonably short cure period imposed by Defendants in violation of DPNR's obligations and GSJ's rights under the Settlement Agreement.
8. GSJ correctly challenged the unreasonably short cure period in violation of the Settlement Agreement as being an insufficient period of time within which to first obtain necessary clarity from DPNR as to precisely what was within the scope of Defendants' legal authority to require GSJ to cure, and then, once adequately clarified, to afford GSJ an opportunity to cure the same within even the minimum time period within which GSJ could reasonably be expected to effectuate those cures.
9. Defendants ignored GSJ's repeated requests to establish a reasonable cure period, providing only an insignificant and wholly inadequate extension of the unreasonably

- short cure period initially imposed. Further, Defendants eliminated even the marginal value of such extension by canceling a meeting between representatives of DPNR and GSJ to discuss the deficiencies in what DPNR was demanding of GSJ. The meeting, which was to take place prior to the expiration of the extended cure period, was essential to GSJ's resolution of DPNR's deficient demands because DPNR refused to engage in any discussion regarding its deficient demands outside of that meeting, and the meeting was therefore the only avenue available to GSJ to obtain the clarity needed by GSJ to timely implement any appropriate cures.
10. As more fully explained below, Defendants' legally and factually deficient claims, arbitrary imposition of an unreasonably short cure period, and refusal to clarify or even discuss the deficiencies of their claims prior to the expiration of that unreasonably short cure period, including by canceling the one and only opportunity for the parties to meet before the cure period expired, violated DPNR's obligations and GSJ's rights under the Settlement Agreement.
 11. Moreover, Defendants reliance on the remedy provisions of the very Settlement Agreement they have violated in order to justify the imposition of the unprecedented Two Hundred Ten Thousand Dollar assessment on GSJ is an unlawful act far outside the scope of Defendants' authority.
 12. This is a civil action arising out of such unlawful and unauthorized conduct by Defendants for breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory judgment, and equitable relief over which this Court has jurisdiction pursuant to 4 V.I.C. § 76.

13. Venue is proper in this Court pursuant to 4 V.I.C. § 78, as the District of St. Thomas & St. John is the judicial division where the cause of action arose and where Defendants may be served.

FACTS

The Settlement Agreement

14. GSI is the owner of a private, single-family residence located within the U.S. Virgin Islands and known as the island of Great St. James, which is the site of activity in issue.
15. In April of 2016, DPNR issued Notice of Violation identified as NOVA-04-16-STT (“Notice of Violation”) to GSI seeking an assessment of Two Hundred Eighty Thousand Dollars (\$280,000.00) for what DPNR alleged were violations of the Act (“CZM Violations”) on Great St. James. **[EXHIBIT A]**
16. GSI contested the alleged CZM Violations as unjustified and the assessment as an unprecedented penalty on a private single-family residence, both well outside the scope of DPNR’s authority, and negotiations between the parties ensued.
17. On August 4, 2016, in an attempt to resolve the Notice of Violation, so that GSI could proceed with its plans for Great St. James, GSI entered into a Settlement Agreement with DPNR regarding the challenged violations and assessment asserted in the Notice of Violation (the “Settlement Agreement”). **[EXHIBIT B]**
18. As part of the Settlement Agreement, GSI agreed, in sum, to refrain from further violations of the Act, to pay DPNR a fee in mitigation for the disputed CZM Violations claimed by DPNR and to pay DPNR the balance of the initial Two Hundred Eighty Thousand Dollar (\$280,000.00) assessment, after deduction of the mitigation fee, in the event of future violations of the Act which GSI fails to cure after DPNR provides notice of the same.

19. In order to address the prospect of additional legally and factually deficient determinations by DPNR and further excesses in the exercise of DPNR's assessment authority, GSI insisted that the Settlement Agreement include notice and opportunity to cure provisions with respect to all violations of the Act that might be asserted by DPNR in the future.
20. Accordingly, the Settlement Agreement provides that in the event DPNR were to seek to claim any such violations of the Act in the future as a violation of the Settlement Agreement, GSI could not be assessed for such violations with the balance of the original assessment unless GSI was first given prior notice and an opportunity to cure any and all such claimed violations. *See EXHIBIT B at Item 3(d).*
21. In exchange for these necessary protections from future overreaching by DPNR, GSI agreed in the Settlement Agreement to pay and did pay a mitigation fee of Seventy Thousand Dollars (\$70,000.00), a fee much higher than that which previously ever was ever paid for similarly alleged violations of the Act on any private, single-family residence of any size.
22. The notice and the opportunity to cure provisions, therefore, were and are a material component of the Settlement Agreement expressly bargained and paid for by GSI.
23. As is explained below, GSI's concerns regarding the need for protection from DPNR overreaching were well founded.

The Unlawful Entry and Search

24. On October 28, 2016, three (3) DPNR representatives, including an armed enforcement officer, Officer Mercer, Jean-Pierre Oriol, Director of CZM, and Attorney Michele Baker, DPNR Legal Counsel, entered upon Great St. James without prior notice to or

permission from GSJ, any statutory right, or any other legal groundsground to do so, and in effect conducted an unlawful entry and search of Great St. James.

25. DPNR previously issued a minor CZM permit to GSJ in connection with development relating to a certain cistern project (the “Cistern Project”) situated at a discrete location on Great St. James. The express conditions of that permit (the “Cistern Permit”) limit the times during which DPNR may request access to Great St. James, as well as the scope and location of such access. Section V, paragraph 8 of the Cistern Permit provides, in relevant part:

The Commissioner or his authorized agents or representatives shall have the power to enter **at reasonable time during projects work hours** upon any lands or waters for which a Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and ascertaining compliance with the terms and conditions of said Coastal Zone Management permit.

See EXHIBIT C at Section V, paragraph 8 on page 2.

26. Thus, by the express terms of the Cistern Permit, DPNR was authorized to seek access only at a reasonable time and only during the working hours of the Cistern Project. Moreover, DPNR could request access only for the limited purpose of inspecting the specific site of the Cistern Project and only in order to ascertain compliance at that site with the terms of the Cistern Permit. By the express terms of the Cistern Permit, GSJ is only required to permit such access during those limited times, at that limited site and for that limited purpose. DPNR’s recourse in the event access is denied is to issue a cease and desist order or to commence proceedings to revoke the Cistern Permit in the event it can show that the Permittee violated the conditions of the Cistern Permit (which had not occurred in this case). DPNR is not authorized to disregard the terms of the Cistern Permit or the directives of GSJ’s representatives and trespass on private property and is statutorily limited by the provisions of Title 12, section 913.

27. DPNR sought access to Great St. James on October 28, 2016 at a time when there was no work taking place at the Cistern Project and which was therefore outside of the project's working hours. Furthermore, the time of the access was unreasonable in that it was sought without prior notice when neither the owner nor anyone with knowledge of the Cistern Permit was then available to accompany DPNR to the site of the Cistern Project, it disrupted the schedules of GSJ personnel, and it interfered with the conduct of their assigned duties.
28. DPNR's representatives were met at the only dock on Great St. James, which effectively serves as the owner's front door, by GSJ personnel, who, having been forced to disrupt their schedules and disregard their assigned duties to receive the DPNR representatives, specifically advised the DPNR representatives that the owner was not on the island and that the GSJ personnel present had no authority to grant access to the island, and directed DPNR to GSJ's office in Red Hook.
29. Nevertheless, over the protests of GSJ personnel, and lacking any legal groundsground or right whatsoever, DPNR illegally entered onto the premises of Great St. James. Moreover, despite that fact that the express terms of the Cistern Permit limited the location and scope of any permissible access on Great St James exclusively to the site of the Cistern Project for the narrow purpose of ascertaining compliance with the Cistern Permit at that specific site, DPNR traversed the entire island without restrictionwith self declared impunity, claiming to be authorized to conduct an "inspection" of the entirety of Great St. James, but in fact conducting an unlawful search on Great St. James.
30. This unlawful entry and search was particularly egregious in this case because it was conducted with the approval and participation of DPNR's legal counsel. DPNR's

Counsel is ethically prohibited from communicating with another party or its representatives without the prior permission of that party's attorney when, as here, DPNR's Counsel knows that party to be represented by legal counsel. Counsel for DPNR made no attempt whatsoever to contact the undersigned legal counsel for prior approval or to notify GSJ before the unauthorized entry on Great St. James, ~~the~~, Counsel for DPNR engaged in communication with GSJ personnel without permission, in violation of ethical obligations, and in furtherance of the unlawful search.

31. By refusing to comply with the conditions of the permit and conducting an unauthorized search throughout the entirety of Great St. James without prior notice to GSJ or its legal counsel at an unreasonable time when neither the owner nor knowledgeable GSJ representatives could be present, DPNR eliminated any opportunity for clarification or discussion at the site giving rise to a series factual and legal errors (more fully described below) by DPNR underlying the instant action.
32. During its unlawful entry and search on October 28, 2016, DPNR verbally instructed workers to cease and desist from further activity anywhere on Great St. James. That verbal instruction was confirmed by a written cease and desist order, [REDACTED]-02-16-STT, dated October 28, 2016, that was to be served on counsel for GSJ via email and was delivered to GSJ's Red Hook office on October 31, 2016 (the "Cease and Desist Order"). [EXHIBIT D]

Erroneous Notice to Cure & the Arbitrary and Unreasonable Cure Period

33. On Friday, November 4, 2016, based on inaccurate observations, unfounded assumptions, and erroneous conclusions of fact and law made during DPNR's unlawful

entry and search of Great St. James on October 28, 2016, Defendants issued a Notice to Cure Breach of Settlement Agreement (the "Notice to Cure") [EXHIBIT E].

34. The Notice to Cure was and is deficient because, among other deficiencies, it improperly attributed violations to Plaintiff where none had occurred and as to matters for which it was readily apparent that GSJ bore absolutely no responsibility, failed to adequately specify the basis and nature of the violations claimed or to provide any reasonable description of allowable cures that DPNR required, and provided an arbitrary and unreasonably short cure period, all in clear violation of DPNR's obligations and GSJ's rights under the Settlement Agreement.
35. Emblematic, though not an exhaustive list, of alleged violations DPNR improperly asserted against GSJ in the Notice to Cure were the following:
- a. An alleged violation against GSJ with respect to four (4) moorings in waters off the shores of Great St. James which for decades or more prior to GSJ's acquisition have served as a popular public recreation spot for boaters. These moorings were affixed to submerged land which is not part of Great St. James, and were neither installed nor maintained by GSJ, and as such, GSJ could in no way be held responsible for them. This indisputable fact was acknowledged by DPNR at a November 22, 2016 meeting, but only after GSJ was forced to expend resources and remove the moorings prior to the expiration of DPNR's unreasonable cure deadline.
 - b. An alleged violation with respect to what DPNR claimed was the excavation of approximately three thousand five hundred (3500) square feet to four thousand (4000) square feet of land, which DPNR inaccurately asserted was being prepared for future development. In fact, that site had not been excavated. As

is well known by DPNR representatives who had visited Great St. James previously, the area in question was an existing garbage dump site created by the prior owner. As subsequently acknowledged by DPNR's representatives at the November 22, 2016 meeting, this site presented no violations to be cured by GSI. However, DPNR refused to provide any such acknowledgement prior to the expiration of DPNR's unreasonable cure deadline. Without guidance from DPNR as to what violation was presented by this site and what cure DPNR expected with respect to the same, GSI was forced to expend substantial resources on equipment, transportation and personnel in an attempt to respond to DPNR's ambiguous demands for a "cure."

- c. An alleged violation against GSI with respect to a non-permanent, movable covered picnic table of which DPNR representatives specifically had been made aware during a prior visit to Great St. James, and had correctly not found it to constitute any violation. Under the circumstances, GSI was unable to determine what violation this non-permanent, readily moveable structure could possibly present or what cure DPNR expected of GSI with respect to it.

36. The Notice to Cure unreasonably and arbitrarily demanded that Plaintiff cure the mix of non-existent, inadequately described, and improperly assessed violations alleged in the Notice to Cure within ten (10) calendar days of its receipt, which included five (5) days of weekends and holidays that fell during that ten (10) day cure period, and unilaterally imposed a cure deadline of November 14, 2016 with which it was impossible for GSI to comply.

37. On Monday, November 7, 2016, Plaintiff notified Defendants in writing of the deficiencies in the Notice to Cure, including the arbitrary and unreasonably short ten

- (10) day cure period, which writing was followed by an email communication on November 11, 2016 **[EXHIBITS F & G]**.
38. Despite the extremely short cure period imposed by DPNR, no response to GSJ's communications was received from DPNR until Friday, November 11, 2016, a federal and Virgin Islands holiday on which businesses in the Virgin Islands were closed for the weekend.
39. By email on that date, DPNR, acting outside of the scope of its obligations under the Settlement Agreement, unreasonably refused to grant any extension of time, leaving GSJ without an opportunity to review with DPNR the erroneous claims and determine jointly with DPNR a proper course and reasonable timeline in which to proceed. **[EXHIBIT H]**
40. Although it was a local and federal holiday, counsel for GSJ responded on that same date with additional valid reasons to support an extension. **[EXHIBIT I]**
41. Only after the holiday weekend had passed and the cure deadline was upon them, DPNR finally responded to GSJ and advised GSJ that, solely to account for DPNR's delay in responding, DPNR would extend its cure period by a mere four (4) days to November 18, 2016.
42. As a result of DPNR's insignificant and wholly inadequate extension, the cure deadline would fall only two (2) days after the previously scheduled date of an informal meeting between GSJ and DPNR that was supposed to occur on November 16, 2016. DPNR Counsel proposed the informal meeting on that date in response to GSJ's request for an opportunity to review and discuss the numerous deficiencies in the Notice to Cure. **[EXHIBIT J]**

43. The meeting was essential to GSI's proper resolution of the legally and factually deficient demands in DPNR's Notice to Cure because DPNR refused to engage in any discussion regarding its deficient demands outside of that meeting. It was therefore the only avenue available to GSI prior to the expiration of DPNR's unreasonably short cure period to obtain the clarity GSI reasonably required to timely implement any appropriate cures.
44. The scheduling of the meeting on November 16, 2016, which was to take place only after the initial ten (10) day cure period would have expired, was one of many factors making DPNR's initial ten (10) day cure period patently unreasonable. Even with the slight extension, the cure period spanned only fourteen (14) days, from November 5, 2016 to November 18, 2016, leaving only nine (9) working days for GSI to work through the mix of non-existent, inadequately described, and improperly assessed violations in the Notice to Cure and timely cure any that may be appropriate.
45. Once DPNR grudgingly agreed to this minimal extension of the cure deadline, GSI would have had ~~the ability~~the ability during its informal meeting with DPNR on November 16, 2016 to obtain the clarification that GSI reasonably required in order to implement any appropriate cures in the two (2) days of the extended cure period remaining after that meeting.
46. However, Defendants deprived GSI of any clarity before the expiration of the cure period by summarily canceling the informal meeting on November 15, 2016, the day before it was supposed to occur. By canceling that meeting and refusing to reschedule it until November 22 or 23, 2016, a date well after the extended cure deadline, Defendants made it impossible for GSI to timely implement the cure of any legitimate items during even that unreasonably short two (2) day cure window.

47. Upon information and belief, Defendants' conduct in issuing a legally and factually deficient Notice to Cure, arbitrarily imposing an unreasonably short cure period, and refusing to clarify or even discuss the deficiencies in the Notice to Cure prior to the expiration of that unreasonably short cure period, including by canceling the one and only opportunity for the parties to meet before the cure period expired, was calculated to ensure that GSJ would be unable to comply with the Notice to Cure, which Defendants believed would justify the imposition on GSJ of a Two Hundred Ten Thousand Dollar (\$210,000) assessment pursuant to the terms of the Settlement Agreement.

GSJ's Cures and Efforts to Mollify DPNR's Unreasonable Demands

48. Prior to the November 18, 2016 cure deadline, in correspondence dated November 17, 2016, counsel for GSJ advised DPNR of the steps that had been taken to timely cure those of the claimed violations that were less confusingly described in the Notice to Cure, albeit without any clarification from DPNR. [EXHIBIT K]
49. GSJ further advised DPNR that the other claimed violations could not and should not be addressed without clarification or input from DPNR, which up to this point DPNR had been unwilling to provide.
50. During the November 22, 2016 meeting, so as to avoid further discord with DPNR, and to cause DPNR to lift its cease and desist order and continue to review GSJ's permits and the requests of GSJ for additional work on Great St. James, which DPNR refused to do while the Notice to Cure remained outstanding, GSJ:
- a. Advised DPNR of the significant remedial steps taken by GSJ prior to the meeting with regard to claimed violations, even though disputed;

- b. Resolved with DPNR inaccurately asserted violations and DPNR's improperly demanded cures; and
 - c. Developed a plan and a reasonable timeframe within which to timely address areas of continuing concern to DPNR, whether or not GSI agreed that such matters were within the scope of DPNR's authority.
51. During that meeting, as part of the plan of action jointly developed by GSI and DPNR, the parties also specifically agreed on a deadline by which GSI was to address the only two remaining items of concern to DPNR: (1) the transport of a non-permanent, movable covered picnic table away from its then current location on Great St. James to a remote staging area on Great St. James; and (2) the removal of a stretch of hand-laid stone from a pre-existing driveway on Great St. James.
52. Both the moveable covered picnic table and the hand-laid stone were removed by the agreed upon deadline of December 1, 2016, which date was less than thirty (30) days after GSI's receipt of the original Notice to Cure. GSI's cure by that date undoubtedly was accomplished within a reasonable cure period.
53. Despite GSI's cures on such short notice and its substantial and successful efforts to satisfy DPNR's vague, unjustified, and unreasonable demands, on December 15, 2016, DPNR caused a Notice of Failure to Cure Breach of Settlement Agreement & Enforcement (the "Notice of Failure to Cure") to be served on GSI. **[EXHIBIT L]**
54. None of the items asserted in the original Notice to Cure were included in the Notice of Failure to Cure with the exception of the non-permanent, moveable covered picnic table and the hand-laid stone in the pre-existing driveway, both of which were fully addressed or "cured" before the Notice of Failure to Cure was issued.

55. These two (2) items, which were timely cured, in the manner and within the timeframe jointly established by GSJ and DPNR at their November 22, 2016 meeting, provided the sole basis for DPNR's Notice of Failure to Cure.
56. Defendants violated DPNR's obligations and GSJ's rights under the Settlement Agreement by providing a factually and legally deficient Notice to Cure, unilaterally and arbitrarily imposing unreasonable cure deadlines, refusing to meet with GSJ or to even discuss the deficiencies in the Notice to Cure with GSJ prior to the expiration of the unreasonable cure deadlines, and, in the end asserting as failures to cure items which in fact had been timely cured.
57. Defendants then improperly invoked the remedy provisions of the very Settlement Agreement they violated in order to justify the unprecedented assessment of Two Hundred Ten Thousand Dollars (\$210,000.00) provided in the Notice of Failure to Cure, which itself is a violation of the Settlement Agreement.¹

COUNT I: BREACH OF CONTRACT

58. Plaintiff repeats and re-alleges the foregoing paragraphs of the Complaint as if fully set forth herein.
59. The parties negotiated and entered into the Settlement Agreement, a binding and valid contract, wherein Defendants agreed to provide written notice and a cure period in the event Defendants believed Plaintiff was not complying with the terms of the Settlement Agreement.
60. As the Settlement Agreement does not specify the content of the contractually required notice or a duration for the contractually required cure period, the Settlement

¹ On January 17, 2017, GSJ appealed the Notice of Failure to the Board of Land Use Appeals. ~~This action~~The present Complaint, however, raises entirely separate causes of action derived from the breach of the contractually agreed to Settlement Agreement provisions~~Agreement~~.

- Agreement must be ~~reasonably~~-interpreted to require a cure period of a reasonable duration after proper and adequate notice of any alleged violation to be cured.
61. The mix of non-existent, inadequately described, and improperly assessed violations asserted by Defendants in the Notice to Cure is legally and factually deficient and does not provide adequate notice of any of the violations asserted therein.
 62. The ten (10) day cure period, including five (5) days of weekend days and one federal and U.S. Virgin Islands holiday, unilaterally and arbitrarily imposed by Defendants in the Notice to Cure was impossible to comply with and patently unreasonable under the circumstances.
 63. Defendants' four (4) day extension of the cure period was of negligible benefit in that it did not confer upon GSJ a reasonable period of time within which to implement any cures of the inadequately noticed violations, particularly in light of Defendants' deliberate refusal prior to the expiration of the extended cure period to discuss with GSJ the legal and factual deficiencies in the Notice to Cure and Defendants' cancellation of the one and only meeting prior to the expiration of the cure period during which any necessary clarification with respect to the inadequately noticed violations might have been provided.
 64. Defendants breached the Settlement Agreement by failing to provide both proper and adequate notice of alleged violations and appropriate cures and a reasonable cure period, as required by the Settlement Agreement.
 65. Defendant further breached the Settlement Agreement by imposing on GSJ the Two Hundred Ten Thousand Dollar (\$210,000) assessment without providing such adequate and proper notice and a reasonable cure period.

66. The two violations asserted by Defendants in the Notice of Failure to Cure were in fact timely cured by GSI by the December 1, 2016 date mutually agreed upon by GSI and Defendants during their November 22, 2016 meeting, and Defendants' imposition of said assessment in the Notice of Failure to Cure based solely on those two asserted violations constitutes a further breach of the Settlement Agreement.
67. Plaintiff has been harmed by Defendants' breaches of contract in that as a result of said breaches, Plaintiff has been improperly and wrongfully assessed by Defendants in the amount of Two Hundred Ten Thousand Dollars (\$210,000.00), and has suffered other harmful consequences, including DPNR's refusal to process or even consider any applications for permits submitted by GSI, in a total amount to be proven at trial. The failure to process applications based the improper actions of Defendants has caused Plaintiff the loss of use of the island which damages are significant and accruing on a daily basis.² Furthermore, Plaintiff was damaged by having to remove moorings which it had no obligation to remove and undertake other acts which should not have been required of it. Defendants acts also caused Plaintiff to incur significant professional fees to assist with the resolution of Defendants improper claims. The significant and continuing damages to Plaintiff will be proven at trial.

COUNT II: VIOLATION OF GOOD FAITH AND FAIR DEALING COVENANT

68. Plaintiff repeats and re-alleges the foregoing paragraphs of the Complaint as if fully set forth herein.

² As a point of reference, nearby Guana island in the British Virgin Islands rents for \$20,000 per day. Although Plaintiff does not intend to rent Great St. James, Plaintiff has suffered a comparable loss per day given that the island cannot be put to the use for which it is intended until the issues with the DPNR re resolved.

69. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.

70. Defendants breached DPNR's duty of good faith and fair dealing by providing a legally and factually deficient Notice to Cure, unilaterally imposing an arbitrary and unreasonably short cure period on GSJ within which Defendants knew or reasonably should have known it would have been impossible for GSJ to cure the inadequately noticed violations asserted in the Notice to Cure, refusing to review, discuss and clarify with GSJ the deficiencies in the Notice to Cure before the expiration of that improper cure period, including by cancelling a meeting with GSJ scheduled to take place prior to the expiration of that cure period, imposing an unjustified and unprecedented Two Hundred Ten Thousand Dollar (\$210,000.00) penalty on GSJ in the Notice of Failure to Cure for alleged violations set forth therein that Defendants knew GSJ already had cured timely, and refusing to process or even consider applications for permits submitted by GSJ.

~~71. Plaintiff has been harmed by Defendants' breach of DPNR's duty of good faith and fair dealing in an amount to be shown at trial.~~

71. Plaintiff has been harmed by Defendants' breach of DPNR's duty of good faith and fair dealing in that as a result of said breach, Plaintiff has been improperly and wrongfully assessed by Defendants in the amount of Two Hundred Ten Thousand Dollars (\$210,000.00), and has suffered other harmful consequences, including DPNR's refusal to process or even consider any applications for permits submitted by GSJ. The failure to process applications based the improper actions of Defendants has caused Plaintiff the loss of use of the island which damages are significant and accruing on a daily basis. Furthermore, Plaintiff was damaged by having to remove moorings which

it had no obligation to remove and undertake other acts which should not have been required of it. Defendants acts also caused Plaintiff to incur significant professional fees to assist with the resolution of Defendants improper claims. The significant and continuing damages to Plaintiff will be proven at trial.

COUNT III: ACTION FOR DECLARATORY JUDGMENT

72. Plaintiff repeats and re-alleges the foregoing paragraphs of the Complaint as if fully set forth herein.
73. The parties negotiated and entered into the Settlement Agreement, a binding and valid contract, wherein Defendants agreed to provide written notice and a cure period in the event Defendants believed Plaintiff was not complying with the terms of the Settlement Agreement.
74. As the Settlement Agreement does not specify the content of the contractually required notice or a duration for the contractually required cure period, the Settlement Agreement must be interpreted to require a cure period of a reasonable duration after proper and adequate notice of any alleged violation to be cured.
75. The mix of non-existent, inadequately described, and improperly assessed violations asserted by Defendants in the Notice to Cure is legally and factually deficient and does not provide adequate notice of any of the violations asserted therein.
76. The ten (10) day cure period, including five (5) days of weekend days and one federal and U.S. Virgin Islands holiday, unilaterally and arbitrarily imposed by Defendants in the Notice to Cure was impossible to comply with and patently unreasonable under the circumstances.

77. Defendants' four (4) day extension of the cure period was of negligible benefit in that it did not confer upon GSI a reasonable period of time within which to implement any cures of the inadequately noticed violations, particularly in light of Defendants' deliberate refusal prior to the expiration of the extended cure period to discuss with GSI the legal and factual deficiencies in the Notice to Cure and Defendants' cancellation of the one and only meeting prior to the expiration of the cure period during which any necessary clarification with respect to the inadequately noticed violations might have been provided.
78. Defendants breached the Settlement Agreement by failing to provide both proper and adequate notice of alleged violations and appropriate cures and a reasonable cure period, as required by the Settlement Agreement.
79. Defendant further breached the Settlement Agreement by imposing on GSI the Two Hundred Ten Thousand Dollar (\$210,000) assessment without providing such adequate and proper notice and a reasonable cure period.
80. The two violations asserted by Defendants in the Notice of Failure to Cure were in fact timely cured by GSI by the December 1, 2016 date mutually agreed upon by GSI and Defendants during their November 22, 2016 meeting, and Defendants' imposition of said assessment based solely on those two asserted violations constitutes a further breach of the Settlement Agreement.
81. Plaintiff has been harmed by Defendants' breaches of contract in that as a result of said breaches, Plaintiff has been improperly and wrongfully assessed by Defendants in the amount of Two Hundred Ten Thousand Dollars (\$210,000.00).

82. Furthermore, DPNR's refusal to process or even consider any applications for permits submitted by GSJ is causing GSJ further damages by indefinitely delaying the progress of construction and improvements on Great St. James.
83. Accordingly, pursuant to V.I. CODE ANN. tit. 5, §§ 1261-1272, Plaintiff seeks a judgment declaring that Plaintiff is entitled under the Settlement Agreement to adequate notice of any violations asserted by DPNR and a reasonable period of time within which to cure the same after receiving such notice, that Defendants provided neither adequate notice of asserted violations under the Settlement Agreement nor a reasonable period of time within which to cure the asserted violations, and that, as a result of the same, Defendants violated the Settlement Agreement.
84. Additionally, Plaintiff further seeks a judgment declaring that the Notice of Failure to Cure, being based upon and itself constituting a breach of the Settlement Agreement by Defendants, is outside the scope of and an unlawful exercise of Defendants' authority, as is the demand thereunder for GSJ to make payment of the Two Hundred Ten Thousand Dollar (\$210,000.00) penalty improperly imposed therein.
85. Additionally, Plaintiff further seeks a judgment declaring that DPNR's refusal to process or even consider any applications for permits submitted by GSJ, asserted by Defendants as being justified based on the unresolved Notice of Failure to Cure and non-payment of the Two Hundred Ten Thousand Dollar (\$210,000.00) assessment imposed therein, is also outside the scope of and an unlawful exercise of Defendants' authority, and directing DPNR to consider and process GSJ's applications for permits.
86. Lastly, Plaintiff seeks declaratory judgment finding that DPNR unlawfully trespassed on to Plaintiff's property and clarifying to rights and scope of powers of the DPNR to

enter Plaintiff's property in the future, including when entry may be made, for what purpose, and under what conditions (including reasonable notice provisions).

WHEREFORE, Plaintiff seeks all damages to which it is entitled, including contractual, compensatory, punitive and equitable damages, and declaratory relief, as well as an award of its costs and reasonable attorneys' fees, and any pre and post judgment interest to which it is entitled.

Respectfully,

Dated: March ~~14~~22, 2017—

ERIKA A. KELLERHALS, ESQ.
CHRISTOPHER ALLEN KROBLIN, ESQ.
MARJORIE WHALEN, ESQ.
V.I. Bar Nos. 849, 966 & R2019
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
9053 Estate Thomas, Suite 101
St. Thomas, V.I. 00802
Telephone: (340) 779-2564
Facsimile: (888) 316-9269
Email: [REDACTED]
[REDACTED]
[REDACTED]