

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

JEFFREY EPSTEIN, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	NO. ST-10-CV-443
)	
FANCELLI PANELING, INC., and)	
J.P. MOLYNEUX STUDIO, LTD.,)	
)	
Defendants.)	(CARROLL, J.)

*ANSWER OF DEFENDANT FANCELLI PANELING, INC.,
TO PLAINTIFFS' SECOND AMENDED COMPLAINT, WITH
COUNTERCLAIM AND CROSS-CLAIM*

COMES NOW Defendant, FANCELLI PANELING, INC., by and through its undersigned counsel, to state the following facts and circumstances in *Answer* to the *Second Amended Complaint* filed herein:

Jurisdiction and Venue

- * Defendant denies the jurisdiction of this Honorable Court as to subject matter and over this party. Jurisdiction as to venue is otherwise admitted.

Parties

1. Defendant is currently without sufficient information to admit, or deny the allegations contained in ¶ 1.
2. Defendant is currently without sufficient information to admit, or deny the allegations contained in ¶ 2, including, without limitation, whether this Plaintiff was in existence at the time of the acts deemed actionable, whether it was part of any contracts at issue in this action, whether it was, or could have been an intended, or third party beneficiary at relevant times and whether it currently holds any interest in the subject property, or currently exists.
- 3.. Admitted, except that the reference to the website must refer to same for the terms thereof.
4. Defendant is currently without sufficient information to admit, or deny the allegations contained in ¶ 4, except on the Court's determination on whether J.P. Molyneux is a necessary party.

(Alleged) Factual Allegations

5. Defendant is currently without information sufficient to admit or deny the allegations contained in ¶ 5.

- 6 Defendant is currently without information sufficient to admit, or deny the allegations contained in ¶ 6.
7. Defendant is currently without sufficient information to admit, or deny the allegations contained in ¶ 7, including, but not limited to "Molyneux's recommendations." "Molyneux's insistence" and what "Epstein agreed with Molyneux," but denies the allegation for whose benefit Defendant fabricated and installed the library cabinetry and refers to the website for the representations therein.
8. Defendant only admits so much of ¶ 8 as references the purchase order(s) issued by "Molyneux" to Fancelli and refers to the Purchase Orders for the terms thereof, denies duties beyond satisfaction of these specifics and any benefit to Epstein thereunder.
9. Defendant admits the allegations contained in ¶ 9, but denies the allegations that the shipment was to Little St. James Island and that the shipment was "in, or about May, 2009."
10. Defendant denies each and every allegation contained in ¶ 10, except Defendant is currently without sufficient information to admit, or deny the allegations relating to the "Proposal," Plaintiffs' Exhibit 3, and the undefined "Molyneux design." It is further apparent that the defects alleged have been rectified and/or completed, in satisfaction of Molyneux's purchase orders with Defendant.

- 10.A Defendant denies the allegations contained in ¶10.A, but is currently without information sufficient to admit, or deny the allegations relating to the "Proposal" and the "Molyneux's design," and refers to Molyneux Replacement Purchase Order 7106 and to the "Work Approval" dated March 23, 2010, from Plaintiffs by Gary Kearney to Molyneux Studio, and March 25, 2010 "Fancelli Punch List by Geary Kearney, and J.P. Molyneux Studio "Punch List Report March 22, 2010," as to the truth of the matter asserted herein. See Defendant's Exhibits 2-5.
- 10.B Defendant denies the allegations contained in ¶10.B, but is currently without information sufficient to admit, or deny the allegations relating to the undated "photographs" without attribution, and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as to the truth of the allegations therein.
- 10.C Defendant denies the allegations contained in ¶10.C, but is currently without information sufficient to admit, or deny the allegations relating to the undated "photographs" without attribution, and to the "Proposal," and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" and to Molyneux e-mail dated May 1, 2009 to Plaintiff, as to the truth of the allegations therein. See

also Molyneux's letter to Defendant dated July 12, 2010 with the May 1, 2009 email of Molyneux to Plaintiff(s), Defendant's Exhibit 6.

- 10.D Defendant denies the allegations contained in ¶10.D, but is currently without information sufficient to admit, or deny the allegations relating to whether the "distressed finish" had been "agreed to by Epstein," denies the allegation of a "violation" of the Purchase Orders, admits the allegations with respect to the "treatment" and refers to Atelier Meriguet-Carrere, hired by Molyneux to create the stain color and finish for the cabinetry, and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" and to Molyneux e-mail dated May 1, 2009 to Plaintiff, as to the truth of the allegations therein; as to the truth of the allegations therein.
- 10.E Defendant denies the allegations contained in ¶10.E and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" and to Molyneux e-mail dated May 1, 2009 to Plaintiff, as to the truth of the allegations therein.
- 10.F Defendant denies the allegations contained in ¶10.F but is currently without information sufficient to admit, or deny the allegations relating to the undated "photograph" without attribution, and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010

- “FANCELLI PUNCH LIST” by Gary Kearney, and J.P. MOLYNEUX STUDIO
“Punch List Report March 22, 2010” as to the truth of the allegations therein.
- 10.G Defendant denies the allegations contained in ¶10.G including, but not limited to, the allegation that the cabinetry was “not properly sealed,” is currently without information sufficient to admit, or deny the allegations relating to the undated “photographs” without attribution, and refers to the “Work Approval” dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 “FANCELLI PUNCH LIST” by Gary Kearney, and J.P. MOLYNEUX STUDIO “Punch List Report March 22, 2010” as to the truth of the allegations.
- 10.H Defendant denies the allegations contained in ¶10.H, including, but not limited to, the allegation that the Library Cabinetry as installed was contrary to the Purchase Orders with Molyneux, and refers to the “Work Approval” dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 “FANCELLI PUNCH LIST” by Gary Kearney, and J.P. MOLYNEUX STUDIO “Punch List Report March 22, 2010” as to the truth of the allegations therein.
- 10.I Defendant denies the allegations contained in ¶10.I, and refers to the “Work Approval” dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 “FANCELLI PUNCH LIST” by Gary Kearney, and J.P. MOLYNEUX STUDIO “Punch List Report March 22, 2010” as confirms that the issue was addressed by Defendant and approved by Plaintiff and Molyneux;
- 10.J Defendant denies the allegations contained in ¶10.J and refers to the “Work Approval” dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux

- Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms that the issue was addressed by Defendant and approved by Plaintiff and Molyneux.
- 10.K Defendant denies the allegations contained in ¶10.K, and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms that the allegation was not an issue in March, 2010.
- 10.L Defendant denies the allegations contained in ¶10.L and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as to the truth of the allegations therein.
- 10.M Defendant denies the allegations contained in ¶10.M and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms that the issue was addressed by Defendant and approved by Plaintiff and Molyneux.
- 10.N Defendant denies the allegations contained in ¶10.N and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P.

- MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms that the issue was addressed by Defendant and approved by Plaintiff and Molyneux
- 10.O Defendant denies the allegations contained in ¶10.O and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms that the issue was addressed by Defendant and approved by Plaintiff and Molyneux.
- 10.P Defendant denies the allegations contained in ¶10.P and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms that the allegation was not an issue in March, 2010.
- 10.Q Defendant admits the allegations contained in ¶10.Q, is currently without information sufficient to admit, or deny the allegations relating to the undated "photographs" without attribution, but denies that the alleged defect was within the scope of the Purchase Orders and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms the same.
- 10.R Defendant admits the allegations contained in ¶10.R, but is currently without information sufficient to admit, or deny the allegations relating to the undated "photographs" without attribution, but denies that the alleged defect was within the

- scope of the Purchase Orders and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as confirms the same.
- 10.S Defendant denies the allegations contained in ¶10.S and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as to the truth of the allegations therein.
- 10.T Defendant admits the allegations contained in ¶10.T and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs by Gary Kearney to Molyneux Studio, March 25, 2010 "FANCELLI PUNCH LIST" by Gary Kearney, and J.P. MOLYNEUX STUDIO "Punch List Report March 22, 2010" as to the truth of the allegations therein.
11. Defendant denies the allegations contained in ¶ 11, and refers to the "Work Approval" dated March 23, 2010 from Plaintiffs, by their agent, Gary Kearney, to Molyneux Studio and the March 25, 2010 "Fancelli Punch List" by Gary Kearney, and the J.P. Molyneux Studio "Punch List Report of March 22, 2010, to be juxtaposed as to the allegations therein, annexed as Defendant's Exhibits 1, 2 & 3, herein.

Count I (Breach of Contract)

12. Defendant incorporates by reference its responses to the preceding paragraphs 1-11 as if fully set forth herein.
13. Defendant denies the allegations of ¶ 13
14. Defendant denies the allegations of ¶ 14, but Defendant is currently without sufficient information to admit, or deny the allegations relating to the "Proposal" and the undefined "Molyneux's design," and refers to the "Work Approval" dated March 23, 2010, from Plaintiffs by Gary Kearney to Molyneux Studio, and March 25, 2010 "Fancelli Punch List by Geary Kearney, and J.P. Molyneux Studio "Punch List Report March 22, 2010," as to the truth of the matter asserted herein.
15. Defendant denies the allegations of ¶ 15.
16. Defendant denies the allegations contained in ¶ 16, but Defendant is currently without information sufficient to admit, or deny the allegations relating to the "Proposal, the undefined "Molyneux design," and references to "Work Approval" dated March 23, 2010 from Plaintiffs, by Gary Kearney, to Molyneux Studio, the March 25, 2010 "Fancelli Punch List" by Kearney, and the J.P. Molyneux Studio "Punch List Report March 22, 2010," as to the truth of the matter asserted herein.

17. Defendant denies any contractual breach by and between Defendant and Molyneux, or any contractual breach whatsoever.

Count II (Negligence)

18. Defendant incorporates by reference its responses to the preceding paragraphs 1-17 as if fully set forth herein.
19. Defendant denies the allegations of ¶ 19 and specifically denies any duty to Plaintiffs herein.
20. Defendant denies the allegations of ¶ 20 and specifically denies any alleged "acts and omissions," any duty to Plaintiffs and/or any applicable breach of any applicable standard of care.
21. Defendant denies any and all negligent acts and omissions.

DEFENDANT FURTHER DENIES EACH AND EVERY ALLEGATION CONTAINED WITHIN THE COMPLAINT THAT WAS NOT SPECIFICALLY ADMITTED HEREIN.

First Affirmative Defense

As and for its first affirmative defense, Defendant asserts that the *Second Amended Complaint* (hereinafter "*Complaint*") fails to state a claim upon which relief can be granted.

Second Affirmative Defense

As and for its second affirmative defense, Defendant asserts that this Court lacks jurisdiction over the subject matter (as to contract, specifically, but generally otherwise) and over the person of Defendant.

Third Affirmative Defense

As and for its third affirmative defense, Defendant asserts that Plaintiffs' claims are barred in whole or in part by the assumption of all risks present at or about the time of the occurrences alleged in the *Complaint*. Plaintiffs, in assuming some risk and/or by exercising control at any time over cabinetry and related materials, failed to exercise the ordinary caution and care required of a reasonably prudent person under the circumstances.

Fourth Affirmative Defense

As and for its fourth affirmative defense, Defendant asserts that Plaintiffs' claims are barred in whole or in part by their contributory and/or comparative negligence which exceeded any negligence of this Defendant (which negligence is expressly denied).

Fifth Affirmative Defense

As and for its fifth affirmative defense, Defendant assert that Plaintiffs' claims are barred in whole or in part due to Plaintiffs' failure to mitigate damages.

Sixth Affirmative Defense

As and for its sixth affirmative defense, Defendant asserts that Plaintiffs' injury alleged in its claims were not proximately caused by Defendant and are therefore barred, in whole or in

part, by such preceding, intervening or superseding causes over which Defendant had no control.

Seventh Affirmative Defense

As and for its seventh affirmative defense, Defendant asserts that the damages of which the Plaintiffs complain are due to the acts and/or omissions of the Plaintiffs and/or others over which Defendant had no control.

Eighth Affirmative Defense

As and for its eighth affirmative defense, Defendant asserts that Plaintiffs' claims are barred in whole or in part due to the maxims of equity, including but not limited to the doctrine of unclean hands, waiver and/or estoppel.

Ninth Affirmative Defense

As and for its ninth affirmative defense, Defendant asserts the Plaintiffs' claims are barred in whole or in part due to the "no duty" rule, as to intentional acts of others deemed willful and reckless.

Tenth Affirmative Defense

As and for his tenth affirmative defense, Defendant asserts the collateral source doctrine as an offset against any damages contemplated herein.

Eleventh Affirmative Defense

As and for its eleventh affirmative defense, Defendant asserts that Plaintiffs' claims are barred in whole or in part by the failure of consideration as to each of them in their individual capacities.

Twelfth Affirmative Defense

As and for its twelfth affirmative defense, Defendant asserts that Plaintiffs claims are barred in whole or in part by lack of contract and/or privity of contract.

Thirteenth Affirmative Defense

As and for its thirteenth affirmative defense, Defendant asserts that Plaintiffs' claims, as to either or both of them, are barred, in whole or in part, by the applicable statute of limitations and/or by laches.

Fourteenth Affirmative Defense

As and for its fourteenth affirmative defense, Defendant asserts that the damages of which Plaintiffs complain are due to the acts and/or omissions of Plaintiffs in its course of conduct with their contractors, or on the part of their contractors.

Fifteenth Affirmative Defense

As and for its fifteenth affirmative defense, Defendants assert that Plaintiffs' claims are barred in whole or in part by the doctrines of payment and release.

Sixteenth Affirmative Defense

As and for its sixteenth affirmative defense, Defendant asserts that Plaintiffs' claims are barred, in whole or in part, through Defendant's complete or substantial performance under any contract, which contract with Plaintiffs is specifically denied.

Seventeenth Affirmative Defense

As and for its seventeenth affirmative defense, Defendant assert that Plaintiffs' claims are barred, in whole or in part, by the statute of frauds.

Eighteenth Affirmative Defense

As and for its eighteenth affirmative defense, Defendant asserts accord and satisfaction as a bar to Plaintiffs' claims, in whole or in part.

Nineteenth Affirmative Defense

As and for its nineteenth affirmative defense, Defendant asserts that Plaintiffs claims are barred, in whole or in part by release.

Defendants specifically reserves the right to amend and raise additional (affirmative) defenses in this litigation which are subsequently disclosed and supported by information gleaned through investigation, discovery and/or evidence.

WHEREFORE, having responded to each and every factual allegation contained within the *Second Amended Complaint*, and raising its affirmative defenses thereto, Defendant respectfully requests this Honorable Court to grant the following relief:

- A. To dismiss this action with prejudice as against this Defendant;

- B. To award Defendant its costs, including reasonable attorney's fees incurred in the defense of this action; and
- C. To award such other and further relief as the Court deems just and proper.

DEFENDANT'S COUNTERCLAIM AGAINST PLAINTIFFS

COUNT 1 (DECLARATORY JUDGMENT)

COMES NOW DEFENDANT, by and through its undersigned Counsel to state the following facts and circumstances in support of its Counterclaim against Plaintiffs herein:

- 22. Defendant incorporates by reference its responses to the preceding paragraphs 1-21 as if fully set forth herein.
- 23. Whatever agreements, oral or otherwise and including Plaintiffs' Exhibit 3 and design drawings by Molyneux, that were existing between Molyneux and Epstein (Plaintiffs) were done without the participation, involvement and/or consent of Defendant. Upon information and belief, these agreements are far in excess of the limited "purchase order(s)" prepared by Molyneux for work to be done by Defendant.
- 24. Molyneux issued purchase orders to Defendant for the fabrication of work to the specifications as outlined therein. Defendant performed the work, fully expecting payment upon its completion. The operative purchase order issued to Defendant

- by Molyneux defining the limited scope of the work and that the wood to be "light oak" and is attached as Defendant's Exhibit 1.
25. In conjunction with the work outlined by Molyneux in its purchase order(s), Defendant performed the work to the satisfaction of Molyneux.
26. In that regard, Defendant received from Molyneux acknowledgment that Defendant performed the work to the satisfaction of Molyneux (and to the satisfaction of Plaintiffs by Plaintiff's representative). See Defendant's Exhibit 4.
27. Defendant was specifically instructed by Plaintiff(s) that its communication with Plaintiff(s) on this project was limited to three individuals, including its/their representative, Gary Kearney ("Kearney"). See Defendant's Exhibit 2.
28. Plaintiffs' representative, Kearney, specifically accepted Defendant's work, signed off its satisfaction of a punch list, but with the exception of three (3) minor issues that are *de minimus* for purposes of this action.¹ See Defendant's Exhibit 3.
29. A review of the distinction in verb tense between the *First Amended Complaint* and the *Second Amended Complaint* clarifies that the defects as alleged in the *First* no longer existed by the filing of the *Second*.

¹ The Plaintiffs needed (1) light bulbs, (2) bamboo grills, 4 large and 4 small and (3) a blackboard.

30. Upon information and belief, Plaintiffs' prime contractor, Molyneux, effected and completed all outstanding contractual obligations by and between Molyneux and Plaintiffs.
 31. Upon Molyneux's specific written acknowledgment, Defendant had previously completed any and all of its obligations under the purchase orders by and between Molyneux and Defendant.
 32. Defendant Molyneux, the actual party in privity of contract with Defendant, accepted Defendant's work by fully acknowledging same in a writing.
 33. Plaintiffs, by and through their designated agent, accepted Defendant's work, but for exceedingly minor additions, by acknowledging same in a writing.
 34. The writings reference above constitute releases, as a matter of law.
 35. The writings referenced above constitute accord and satisfaction as against any claims against Defendant's work.
 36. With the exception of approximately Twenty Two Thousand Euro, Molyneux has paid for the work on account without protest, within the meaning of the "accounts stated" defense in acceptance and acknowledgment of the work.
 37. As a result of the foregoing justiciable controversies as alleged by Plaintiffs, Defendant seeks a declaratory judgment from this Honorable Court that: (1) Defendant satisfied its written contractual obligations, if any, to Molyneux,
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terminating any claim of further benefit to Plaintiffs as a matter of law and fact; (2) that Defendant has been released by Defendant Molyneux and Plaintiffs, as a matter of law and fact; (3) that Molyneux and Plaintiffs have accepted the work of Defendant without protest as a matter of law and fact; and (4) that Defendant is entitled to a dismissal of this action upon release and/or accord and satisfaction and or the doctrine of "accounts stated" without protest. Defendant is further entitled to damages, attorneys fees and costs, in an amount to be determined at trial.

Upon information and belief, Plaintiffs are obliged to dismiss their action in the nature of contract, with no pending breach identified. Plaintiffs are further obliged to dismiss their action in tort, having received adequate compensation from their primary contractor. The goal of litigation is to make one whole, not rich.

WHEREFORE, Defendant respectfully requests this Honorable Court to grant the following relief as against Plaintiffs herein:

- A. To adjudge and declare that Defendant performed and substantially performed any obligations to Plaintiffs independently and/or through its contractual obligations through Molyneux, including any allegations of negligence from or independently from the purchase orders, and to award Defendant damages against Plaintiffs in an amount to be determined;
- B. To award Defendant its attorney's fees and costs, incurred in the defense of this action; and

C. To award such other and further relief as the Court deems just and proper.

**DEFENDANT'S CROSS-CLAIMS AGAINST DEFENDANT MOLYNEUX
COUNT 1 (DECLARATORY JUDGMENT)**

38. Defendant incorporates by reference its responses to the preceding paragraphs 1-21 and the new matter contained in 22-37 as if fully set forth herein.

As a result of the foregoing, Defendant seeks a declaratory judgment from this Honorable Court that: (1) Defendant satisfied its written contractual obligations, if any, to Molyneux, terminating any claim of further benefit to Plaintiffs and Molyneux as a matter of law and fact; (2) that Defendant has been released by Defendant Molyneux and Plaintiffs as a matter of law and fact; (3) that Molyneux and Plaintiffs have accepted the work of Defendant without protest as a matter of law and fact; and (4) that Defendant is entitled to a dismissal of this action upon release and/or accord and satisfaction and or the doctrine of "accounts stated" without protest. Defendant is further entitled to damages, attorneys fees and costs, in an amount to be determined at trial.

COUNT 2 (INDEMNIFICATION AND CONTRIBUTION)

39. Defendant incorporates by reference its responses to the preceding paragraphs 1-21, together with the new matter contained in 22-38 as if fully set forth herein.

- A. To adjudge and declare that Defendant fully performed or substantially performed its duties as limited by the purchase orders(s) between it and Molyneux and to award Defendant damages against Molyneux in an amount equal to any amount realized by Plaintiffs against Defendant Fancelli;
- B. To award Defendant its attorney's fees and costs, incurred in the defense of this action; and
- C. To award such other and further relief as the Court deems just and proper.

Dated this 4th day of April, 2012.

Respectfully submitted,



Treston E. Moore, Esquire
 V.I. Bar No. 10
 MOORE DODSON & RUSSELL, P.C.
 Attorneys for Defendant Fancelli
 P.O. Box 310, E.G.S. (14A Norre Gade)
 St. Thomas, VI 00804-0310
 PHONE: [REDACTED]
 FAX: [REDACTED]
 EMAIL: [REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on this 4 th day of April, 2012, a copy of the foregoing was served by facsimile transmission and first class mail, postage prepaid, upon Denise Francois, Esquire, Hodge & Francois, #1340 Taarneberg, St. Thomas, V.I. 00802.

I further certify that on this 4 day of April, 2012, a copy of the foregoing was mailed, postage prepaid, to A. Jeffery Weiss, Esquire, 6934 Vessup Lane, St. Thomas, V.I. 00802 and, pending his appearance, to Molyneux Studios, Ltd., 29 East 69th Street, New York, New York 10021.²



² Plaintiffs' Counsel is asked to notify Defendant's when Defendant J.P. Molyneux Studio, Ltd., is served. The parties will have to expedite a meeting of Counsel pursuant to *Fed. R. Civ. P. 26(f)* in advance of the court ordered mediation dates.