

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

EHI ACQUISITIONS, LLC,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL NO. 2022-0044

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
RECONSIDERATION AND TO ALTER OR AMEND THE COURT’S
SUMMARY JUDGMENT ORDERS (ECF NOS. 161 and 163)**

I. Introduction.

Plaintiff EHI respectfully requests that the Court reconsider, and alter or amend, the Court’s summary judgment orders entered on April 18, 2024 (ECF Nos. 161 and 163).

EHI requests that the Court delete the following sentence from page 20 of its

Memorandum Opinion and Order (ECF No.161):

“The RUE having expired on September 30, 2023 without a valid offer from EHIA, title to the resort’s land remains with the United States, and title to the improvements thereon shall be conveyed and transferred to the Department of the Interior forthwith.”¹

and replace it with, “Title to the resort’s land remains with the United States.” EHI

further requests that the Court’s Order at ECF 163 be altered or amended so that it is

consistent with the foregoing amendment to ECF 161. EHI intends to appeal the Court’s

¹ ECF No. 162 at 20.

ruling that EHI does not have title to the land, and this motion is without prejudice to EHI's rights of appeal.

A district court may reconsider a decision “to correct manifest errors of law or fact.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985); *FirstBank P.R. v. Nagleberg*, 2008 U.S. Dist. LEXIS 103833, at *2 (D.V.I. Dec. 24, 2008); Fed R. Civ P 59(e). A manifest error of law or fact occurs if “the Court overlooked some dispositive factual or legal matter that was presented to it.” *Cabrita Point Dev., Inc. v. Evans*, 52 V.I. 968, 975 (D.V.I. 2009); *Liburd v. MDC Guaynabo*, 2014 U.S. Dist. LEXIS 73591, at *4 (D.V.I. May 30, 2014); see *Harthman Leasing III, LLLP v. FirstBank Puerto Rico*, 2024 WL 195936, at *2 (D.V.I. Jan. 18, 2024) (“In the context of a motion to reconsider, manifest injustice generally means that the Court overlooked some dispositive factual or legal matter that was presented to it.” (cleaned up, internal quotes omitted)). “Manifest injustice has also been defined as an error in the trial court that is direct, obvious, and observable.” *Id.* (internal quotes omitted).

At the end of the Court's Memorandum Opinion and Order granting the United States' motion for summary judgment and denying EHI's motion, the Court stated that the RUE expired on September 2023, and ordered that EHI convey and transfer title to the Improvements to the United States “forthwith.” ECF 161 at 20. EHI respectfully requests that the Court reconsider, and alter or amend, this portion of its summary judgment orders because the Court overlooked an undisputed, dispositive fact: the RUE did not expire on September 30, 2023, and the RUE cannot end so long as a mortgage is in effect on the property.

In addition, this portion of the Court’s orders deprived EHI of due process of law under the Fourteenth Amendment because EHI was not afforded notice and an opportunity to be heard on this issue. *In re in re United States of Am. for Order Authorizing Installation of Pen Register etc.*, 610 F.2d 1148, 1156 (3d Cir. 1979) (“The most important requirement of due process is the opportunity to be heard at a meaningful time.”).

II. The Court should reconsider, and alter or amend, the portion of its Orders regarding expiration of the Retained Use Estate and transfer of the Improvements.

A. The Retained Use Estate did not end on September 30, 2023.

The Court stated that “[t]he RUE . . . expired on September 30, 2023 without a valid offer from EHIA.” ECF No. 161 at 20. In fact, however, the RUE did not end on September 30, 2023.

The 1983 Indenture provides that the owner of the Retained Use Estate has the right to “grant to any person (whether an individual, a corporation, or any other form of business entity) a mortgage or mortgages upon the Retained Use Estate.” ECF 88-2 at ¶ 6(ii). And the 1983 Indenture mandates: “So long as a mortgage of the Retained Use Estate is in effect, unless the mortgagee consents thereto, no provision herein relating to the Retained Use Estate shall be amended, *the Retained Use Estate shall not be terminated, and fee title to the land and title to the Retained Use Estate shall not merge.*” *Id.* (emphasis added).

It is undisputed that a mortgage on the Retained Use Estate was and is in effect. In connection with its motion for summary judgment, the United States asserted the following facts that EHI agreed were undisputed:

31	On May 4th, 2004, First Caribbean International Bank (Cayman) assumed EHI's and CBI's \$14,000,000 mortgage for their interest in the Property. Defendant's Exhibit 17 (Assumption, Amendment, and Restatement of EHI/CBI Mortgage, dated May 10, 2004). This mortgage was originally a 1989 mortgage for \$47,600,000 in which Bankers Trust Company was the lender.	This fact is undisputed, with the exception of the date that is identified in Fact 31. The document was signed on May 5, 2004, and not May 4, 2004. The effective date of the agreement is May 10, 2004.
32	On June 15, 2015, EHI, CBI, and Cruz Bay Multi-Family, LLC entered into an \$11,000,000 mortgage on their interests in the Property and other properties with FirstBank Puerto Rico. The mortgage states that the mortgagors (including EHI and CBI) may not terminate the RUE without the prior written consent of the Lender.	Undisputed.
33	EHI and CBI's Mortgage, dated June 15, 2015, was reassigned from FirstBank Puerto Rico to USVI Lender, LLC on May 1, 2018, for \$6,547,050.53.	Undisputed.

ECF 56, Facts 31-33.

And the United States also submitted evidence of the mortgages on the Retained Use Estate. ECF 38-16; 38-17; 38-18; 38-19.

In its opposition to EHI's motion for summary judgment, the Government asserted that EHI "cannot terminate the RUE '[s]o long as a mortgage of the Retained Use Estate is in effect.'" ECF 103 at 17 (quoting ¶ 6(ii) of the 1983 Indenture). The Government further acknowledged: "Plaintiff admits that since 2004, when it acquired the RUE and Improvements, there have been mortgage liens on both the RUE and Improvements." ECF 103 at 16. And in support, the Government submitted EHI's response to the

Government's Request For Admissions in which EHI admitted that the RUE is currently subject to a mortgage, including the following:

REQUEST FOR ADMISSION NO. 32:

Admit that the RUE is currently subject to a mortgage or other encumbrance.

RESPONSE TO REQUEST NO. 32:

Admit.

ECF 77-1.

The Court's statement in its Opinion regarding the expiration of the RUE—"[t]he RUE having expired on September 30, 2023"—overlooks the foregoing facts. The Indenture mandates, and both parties agreed, that the RUE cannot end, and fee title to the land and title to the RUE cannot merge, so long as a mortgage is in effect on the RUE. And both parties agreed (and the undisputed evidence established) that a mortgage of the RUE is in effect. Accordingly, the RUE did not end on September 30, 2023, and remains in effect today.

EHI respectfully requests that the Court reconsider this portion of its Orders and alter or amend them by modifying the sentence as requested.

B. Because the RUE did not terminate, the Improvements should not transfer.

In the 1986 Indenture, JHPI conveyed title to the Improvements to Rockresorts Inc. "subject to the obligation of [Rockresorts] to convey and transfer fee title to and in the Improvements on the Premises on or about the date of expiration of the Retained Use Estate set forth in Paragraph 1" of the 1983 Indenture. ECF 88-7.

As demonstrated in the preceding section, because mortgages on the RUE remained in effect, the RUE did not end on the expiration date. Therefore, the obligation to transfer the Improvements did not arise. Accordingly, EHI respectfully requests that the Court reconsider this portion of its summary judgment Orders, and alter or amend them, by deleting the portion mandating “title to the improvement thereon shall be conveyed and transferred to the Department of the Interior forthwith.”

C. Because the issues of continuing ownership of the RUE and the Improvements were never before the Court, the Court’s resolution of those issues deprived EHI of due process of law.

To deprive EHI of its property—the Retained Use Estate and the Improvements— “[t]he Fourteenth Amendment requires that there be ‘due process of law.’” *Modeste v. Benjamin*, 1981 U.S. Dist. LEXIS 9353, at *7 (D.V.I. Nov. 3, 1981). Under the Fourteenth Amendment, the “two essential requirements of due process are notice and an opportunity to respond.” *Gniotek v. Philadelphia*, 808 F.2d 241, 244 (3d Cir. 1986) (internal quotes omitted). And “[t]he most important requirement . . . is the opportunity to be heard at a meaningful time.” *In re in re United States of Am. for Order Authorizing Installation of Pen Register etc.*, 610 F.2d 1148, 1156 (3d Cir. 1979).

Due process required, at minimum, that EHI be put on notice that the Government (or the Court) was asserting that the Retained Use Estate would end on September 23, 2023, triggering transfer of the Improvements, even though the RUE was encumbered by mortgages. If this issue had been raised, EHI would have had an opportunity to present all the relevant facts in context, and to make all of its arguments regarding these issues.

Due process required that EHI be given notice of the issue and afforded an adequate opportunity to address it. But EHI was not given notice or an opportunity to be heard.

The issues of EHI's continuing ownership of the RUE and the Improvements were never before the Court. EHI's complaint raised solely the issue of title to the land. ECF No. 1. EHI did not seek to adjudicate ownership of the Retained Used Estate or ownership of the Improvements. The United States never answered or asserted any counterclaims, leaving EHI's claim to quiet title to the land as the sole issue before the Court.

Likewise, the parties have never asked the Court to adjudicate the issues of ownership of the RUE as of September 23, 2023, or title to the Improvements. Neither EHI nor the United States sought summary judgment on these issues (nor could the United States without filing some responsive pleading requesting that relief).

And most important, no party asserted that the mortgages on the RUE had no effect on whether the RUE would end on September 23, 2023, or that the RUE did not have mortgages on it. The undisputed evidence submitted in this case—and the position argued by the United States—was exactly the opposite. As explained above, the United States consistently stated that “so long as a mortgage of the Retained Use Estate is in effect,” the RUE could not be terminated. And the United States consistently agreed, and presented evidence that, there are mortgages currently on the Retained Use Estate.

Based on the allegations raised in the complaint, Defendant's response to those allegations, and the parties' positions on summary judgment, EHI had no notice that the Court would address these issues and rule that the RUE ended on September 23, 2023,

and that EHI had lost title to the Improvements. EHI had no opportunity to be heard on these issues. To deprive EHI of the Retained Use Estate and the Improvements under these circumstances violates EHI's right to due process of law. *Modeste v. Benjamin*, 1981 U.S. Dist. LEXIS 9353, at *7 (D.V.I. Nov. 3, 1981) ("The Fourteenth Amendment requires that there be 'due process of law' before a person is deprived of property.").

III. Conclusion.

For the foregoing reasons, Plaintiff EHI respectfully requests that the Court reconsider, and alter or amend, the Court's summary judgment orders entered on April 18, 2024 (ECF Nos. 161 and 163). EHI respectfully requests that the Court delete the following sentence from page 20 of its Memorandum Opinion and Order (ECF No.161):

"The RUE having expired on September 30, 2023 without a valid offer from EHIA, title to the resort's land remains with the United States, and title to the improvements thereon shall be conveyed and transferred to the Department of the Interior forthwith."

and replace it and replace it with, "Title to the resort's land remains with the United States." EHI further requests that the Court's Order at ECF 163 be altered or amended so that it is consistent with the foregoing amendment to ECF 161. EHI is submitting a proposed Order for the Court's consideration.

Dated: May 3, 2024

Respectfully submitted,

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