

July 13, 2023

Ida Smith  
510 Main Street #468  
New York, New York 10044  
[idasmithalexander@outlook.com](mailto:idasmithalexander@outlook.com)  
646-626-0959



To,  
The Honorable Chairman Novelle E. Francis, Jr.  
35<sup>th</sup> Legislature of the Virgin Islands  
3022 Estate Golden Rock  
St. Croix, Virgin Islands 00820

Re: Affidavit of Ida Smith, sixth generation Native Virgin Islander testimony concerning Whistling Cay and a parcel of Estate Catherineberg, St. John Virgin Islands Bill to "swap" lands between the GVI and National Park Service

I, Ida Smith, swear this testimony is the whole truth and nothing but the truth, so help me God, under the pains and penalty of perjury:

1. As requested, and the transcript of Senator Francis' words at the July 11, 2023, herein enclosed is the official original government survey, Register No. T3772 for the Central Part of St. John, sent to your office. EXHIBIT 1. The enclosed original government survey created the boundary lines to Estate Hammer's Farm now being referred to as Estate Catherineberg and shows the location and boundaries of Whistling Cay Island. At the time the Government of the Virgin Islands and the National Park Service entered into the agreement to swap lands, the official original government survey Register No. T3772 was in existence.
2. In fact, the official original government survey (OGS) of the Central Part of St. John, Register No. T3772, by the United States Coast and Geodetic Survey department, January 1919, was mailed to the entire 35<sup>th</sup> Legislature of the Virgin Islands to have for the record and evidence to withdraw from the proposed bill submitted for ratification. The OGS has been mailed using the USPS return receipt and emailed to the entire 35<sup>th</sup> Legislature and the legal counsel on July 17, 2023.

## STATUTE OF FRAUDS VIOLATIONS

3. The proposed bill by Governor Bryan and other incorporated writings fail to sufficiently describe Whistling Cay Island<sup>1</sup> and Estate Catherineberg<sup>2</sup>, St. John, hence, the conveyance violates the statute of frauds (UCC § 2A-201) and cannot be lawfully ratified. Pursuant to the Statute of Frauds, the writing must furnish within itself or by reference to other identifies writings then in existence, the means, or data by which the particular land to be conveyed may be identified with specific certainty. An agreement does not have to list metes and bounds, but it must furnish data that identifies the property with reasonable certainty. The description must furnish enough information to locate the general area by tract survey and county and it must contain information regarding the size, shape, and boundaries of the property. Due to an inadequate property description the Legislature cannot lawfully ratify the bill to swap Whistling Cay Island for a parcel of Estate Catherineberg.

4. What are the boundaries is a question of law, and where the boundaries are is a question of fact." *DD&L, Inc. v. Burgess*, 753 P.2d 561, 564 (Wash.App.1988). In the bill before this legislature, the title documents do not match what is found on the ground, herein lies one of the dilemmas. Or as Harold Hubler, former Superintendent of the Virgin Islands National Park states in his letter to the Director, "We venture the thought that it could become embarrassing for our Department to submit a correction deed for those who donated the land.....in addition at some future date it may become necessary to establish the perimeter boundaries of the Park."<sup>3</sup>

5. In a letter from Frank Leonard Stick<sup>4</sup> to Conrad L. Wirth<sup>5</sup> dated March 12, 1957, " I am fully aware that transfer of several tracts of land was made to the Interior Department, in which considerable vagueness exists as to title and land rights of certain squatters and actual owners of small parcels. For this situation I accept full and complete responsibility. George Dudley, our

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<sup>1</sup> The proposed bill to swap Whistling Cay for a portion of Estate Catherineberg is stated as, "Whistling Island a/k/a Whistling Cay, Cruz Bay Quarter, St. John, identified as OLG Property I.D. 3-01701-0101-00;" . Whistling Cay is not in Cruz Bay Quarter of St. John as written in the Bill before this Senate.

<sup>2</sup> Estate Hammer's Farm aka Herman's farm is described by the Geographic Dictionary of the Virgin Islands of the United States, special publication 103 as being , Hammer Farm; Estate, in Cruz Bay Quarter, St. John; ½ mile east of Adrian, ¼ mile south of Peter Peak, 5/8 mile by air line from Cinnamon Bay, with which it is connected by a tortuous mountain road. Called by Reichel, "Herman Farm." At or near old Estate, called from hill just north, Catherineberg. Guava trees grow in valley head, at Jochumdal.

<sup>3</sup> In Reply L-1425 U.S. Attorney General noticed issues of lack of title from Jackson Hole Preserve Inc to the United States.

<sup>4</sup> Frank Leonard Stick, born in South Dakota, a town known for KKK activity, alleged to acquire properties on the Virgin Islands with Jackson Hole Preserve Inc.

<sup>5</sup> Director of National Park Service.

legal representative in St. Thomas, and a capable land attorney as you will find anywhere, was on several occasions rather insistent that we make a complete survey and isolate each and every adverse possession. ....I am very hopeful and feel sure, that full consideration will be given to the legal and moral rights of the natives, where they show a desire to cooperate, as most of them will. Many vague titles will be discovered, and instances where the only title is that of squatter's rights, or possible represented by documentary evidence which has been improperly prepared or executed.....I wish it were possible for you and Hal and myself to spend a day or two in person inspection of the entire area of St. John. I feel quite sure that I could point out many things and factors which might very well influence your final decisions as to park boundaries and the relationship of certain tracts of land, notably the Krueger, Mahoe and Marys Point estates to the needs and future requirements of the National Park Service."

6. The statute of frauds requires a signed writing, the knowledge and intent of the parties has no effect on the validity of the contract. The bill before this 35<sup>th</sup> Legislature is not signed by all parties.
7. A contract that fails to meet the requirements of the statute of frauds is not void but is merely voidable.
8. The visit to Whistling Cay and Estate Catherineberg by the members of the Senate does not cure the insufficient description because knowledge and intent of the parties will not give validity to an agreement. See, *Morrow*, e.g. *Morrow*, 477 S. W. 2d at 540.

### SUPREME COURT OF THE UNITED STATES HOLDINGS

9. In support of the aforementioned, the Supreme Court of the United States in *Cragin v. Powell*, 128 U.S. 691 (1888) holding ( government survey controls over subsequent private surveys, which must be consistent with the government survey); *see gen'ly*, *Brown's*, § 10.11, pp. 272-273, and 9 *Powell On Real Property* § 68.13, p. 68-62.

### ACTS OF CONGRESS

10. The Land Act of February 11, 1805, 2 Stat. 313, codified under Title 43 U.S.C. § 751 mandates that all official original government surveys of every state, territory, and commonwealth be always on record as it is the starting point for all subsequent surveys. The duty of the mandate is charged to the U.S. Secretary of the Interior who just so happened to be the receiver of the

deed of gift to form the Virgin Islands National Park<sup>6</sup>, the federal executive of the Virgin Islands<sup>7</sup>, and the head of the Department of the Interior. Patent holders were compelled to rely upon Congress, on which power was conferred by the Constitution to dispose of and make all needful rules and regulations respecting the territory and property of the men and woman of the Virgin Islands,

11. The National Park Service manages land and interests in lands in a manner consistent with international law or at least is supposed to. Treaty Series No. 629 ratified by Congress under 39 Stat. 1706 protects private property rights in the Territory, Virgin Islands of the United States. The lands and interests were made complete by the official original government surveys of the Virgin Islands,<sup>8</sup> Title 43 U.S.C. § 751. Congress took the steps of confirming traditional title being secured to the Native men and women of the lands (private third parties) by the aforementioned acts.
12. Subject to valid existing rights<sup>9</sup>, the Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States, including this Territory of the Virgin Islands.
13. My family and I, as patent holders to lands in Estate 14 John's Folly, parcels 14a and 14-I, Coral Bay Area of St. John Virgin Islands, and other estates are willing to provide the land needed for the school on St. John.
14. The U.S. Congress has spoken as to the law of boundaries. The U.S. Supreme Court has spoken as to the law of boundaries. The people of the Virgin Islands have spoken as to wanting a school but not wanting a swap. The people of the Virgin Islands put this 35<sup>th</sup> Legislature into office to uphold the law and it is asked that you do so by not ratifying a bill to swap Whistling Cay Island for a portion of Estate Catherineberg to build a school when there exists Statute of Fraud Violations, lack of title, incomplete title, and better offers on the table to build a much needed school.

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<sup>6</sup> Title 16 U.S.C. 398a, pertinent part, To revise the boundaries of the Virgin Islands National Park, Saint John, Virgin Islands, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That, in furtherance of the purposes of the Act of August 2, 1956 (70 Stat. 940), as amended, providing for the establishment of the Virgin Islands National Park, and in order to preserve for the benefit of the public significant coral gardens, marine life, and seascapes in the vicinity thereof, the boundaries of such park, **subject to valid existing rights**, are hereby revised to include the adjoining lands, submerged lands, and waters described

<sup>7</sup> Title 48 U.S.C. 1514

<sup>8</sup> Stoneroad v. Stoneroad, SUPREME COURT OF THE UNITED STATES 158 U.S. 240; 15 S. Ct. 822; 39 L. Ed. 966; 1895

<sup>9</sup> Federal Register Volume 66 No. 14.

15. I thank you again for the opportunity to testify before you. It is a distinct privilege to speak with you about such an important topic. I look forward to answering any questions you may have.

Further affiant sayeth naught.

  
By: Ida-Smith UCC 1-308

Subscribed and sworn this 17<sup>th</sup> day of July 2023 at New York City, New York.

**TAMI A. CAMPBELL**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01CA5070665  
Qualified in New York County  
My Commission Expires: 7/27/27