

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

DEMARIS BALLANTINE SEALES )  
Appellant/Plaintiff ) S. Ct.Civ. No. 2007-040  
 ) Re: Super. Ct. Civ. No. 111-2004  
 )  
v. )  
 )  
CHRISTOPHER M. DEVINE, )  
Appellee/Defendant. )  
\_\_\_\_\_ )

NOTICE OF ENTRY OF MEMORANDUM OPINION AND JUDGMENT ORDER  
OF THE COURT

**TO:** Justices of the Supreme Court Judges of the Superior Court  
Renee Dowling, Esquire Eric S. Chancellor, Esquire  
Glenda L. Lake, Esquire Venetia H. Velazquez, Esquire  
Acting Clerk of the Clerk of the Superior Court  
the Supreme Court  
Supreme Court Law Clerks Kevin A. Williams, Sr.  
Ms. Janiese Kelly Mrs. Jacqueline Reovan  
Ms. Arlene Sutton

Please take notice that on March 3, 2008, a(n) **MEMORANDUM OPINION** and **JUDGMENT ORDER OF THE COURT** dated March 3, 2008, were entered by the Clerk in the above-entitled matter.

Dated: March 3, 2008

**GLENDALAKE, ESQ.**  
Acting Clerk of the Court

By:   
TACEY A. THOMAS  
Deputy Clerk II

Not For Publication

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CHRISTOPHER M. DEVINE,	)	
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Appellee/Defendant.	)	
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2008 MAR -3 PM 12: 56  
SUPREME COURT

On Appeal from the Superior Court of the Virgin Islands  
Considered: September 24, 2007  
Filed: March 3, 2008

**BEFORE:** RHYS S. HODGE, Chief Justice; MARIA M. CABRET, Associate Justice; and  
IVE ARLINGTON SWAN, Associate Justice.

**APPEARANCES:**

**Renee D. Dowling, Esq.**  
St. Croix, U.S.V.I.  
*Attorney for Appellants*

**Eric S. Chancellor, Esq.**  
St. Croix, U.S.V.I.  
*Attorney for Appellees*

**MEMORANDUM OPINION**

**PER CURIAM.**

Appellant Demaris Ballantine Seales (“appellant” or “Seales”) challenges the Superior Court’s grant of summary judgment to Christopher M. Devine for breach of contract, malicious prosecution and damages. For the reasons stated below, the grant of summary judgment will be affirmed.

## **I. BACKGROUND**

In June, 1992, Appellant and Arnold Matthews Frederiks, Jr. (“Frederiks”), an unmarried couple, purchased real property in Estate Cane, St. Croix, United States Virgin Islands, from Appellee Christopher M. Devine (“appellee” or “Devine”) under an installment contract. Seales and Frederiks later became estranged. Frederiks made the monthly payments until his death in 1994. Frederiks’ mother assumed the monthly payments until her death in 1995. Seales subsequently assumed the monthly payments.

On February 12, 2001, Devine demanded the remaining balance of \$7,882.75, as payments were in arrears. On May 3, 2001, Seales attempted to pay the balance in cash, but was told to return the next day with a money order or certified bank check and that the deed would be issued to Seales and Frederiks’ Estate. Seales did not return.

On October 24, 2003, Devine filed a debt and foreclosure action (“debt action”) against Seales and Frederiks’ estate because payment had not been retendered. In the debt action Seales asserted the attempted May 31, 2001, tendering as an affirmative defense. On March 10, 2004, Seales filed the underlying action for breach of contract and malicious prosecution against Devine. The trial court in the debt action denied consolidation of the two actions on Devine’s assertion that the parties were different and that the claims were unrelated. Subsequently, the trial court in the debt action found Seales liable to Devine, but delayed foreclosure to afford Seales an opportunity to retender payment. Seales retendered payment and accepted a warranty deed with her and Frederiks’ estate as tenants in common.

On February 26, 2007, the trial court in the breach of contract and malicious prosecution action granted Devine’s motion for summary judgment upon concluding that the breach of contract had been cured by the payment and deed transfer and that a malicious prosecution claim can only

arise from criminal charges. This appeal was filed on March 20, 2007.

## II. DISCUSSION

This Court has jurisdiction over timely appeals from final Superior Court orders. V.I. CODE ANN. tit. 4 § 32(a) (2004).

The standard of review in an appeal from a grant of summary judgment is *de novo*. *Peter Bay Homeowners Ass'n, Inc. v. Stillman*, 294 F.3d 524, 532 (3d Cir. 2002). When reviewing an order granting summary judgment, this Court is required to view the facts in the light most favorable to the opposing party, and in effect, perform the same test the Superior Court would have performed. *See Saldana v. Kmart Corp.*, 260 F.3d 228, 231-32 (3d Cir. 2001). The moving party can only prevail if it shows that there is no genuine issue regarding any material fact and that it is entitled to judgment as a matter of law. *Id.*

### a. Malicious Prosecution

The trial court granted summary judgment on the malicious prosecution claim because no criminal prosecution was initiated.<sup>1</sup>

However, appellant asserts that the “malicious prosecution” label was a misnomer for “wrongful use of civil proceedings” and that the trial court erred in failing to consider the substance of the malicious prosecution claim. Appellee argues that although appellant is correct in this regard, the entry of summary judgment was nonetheless appropriate because appellant failed to establish a necessary element of her claim for wrongful use of civil proceedings under section 674 of the

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<sup>1</sup> Section 653 of the Restatement (Second) of Torts, provides:

A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if

(a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and

(b) the proceedings have terminated in favor of the accused.

Restatement (Second) of Torts. We agree. Section 674 of the Restatement (Second) of Torts provides:

One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if

- (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and
- (b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought.

In the instant case, Seales attempted to make payment but was told to tender it in a bank check the following day. More than two years later the debt was still outstanding. Because the debt was long overdue, Devine had probable cause to initiate the debt and foreclosure action. Thus the first requirement of section 674 was not satisfied. As for the second requirement, the trial court was correct when it found that Devine, not Seales, was the prevailing party in the debt action. Accordingly, the second requirement of section 674(b) was also not satisfied.

Although the trial court did not rely on those grounds in granting summary judgment against Seales in her malicious prosecution claim, we nevertheless affirm that judgment under our plenary standard of review. *See Prusky v. Reliaster Life Ins. Co.*, 445 F.3d 695, 700 n. 10 (3d Cir. 2006).

#### **b. Breach of Contract**

We likewise affirm the trial court's grant of summary judgment against Seales on her breach of contract claim. In this regard, Seales asserts that the lower court did not articulate its findings, but simply concluded that the judgment in the debt action cured any material breach Seales alleged. We affirm for a different reason; Seales breach of contract claim is banned by the doctrine of *res judicata*. Rule 13(a) of the Federal Rules of Civil Procedure provides:

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot

acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

A breach of contract claim is a compulsory counterclaim to an action for debt or foreclosure arising from the same loan agreement. *See, e.g., Colortyme Fin. Servs., Inc. v. Kivalina Corp.*, 940 F.Supp. 269 (D.Haw. 1996); *Linn v. NationsBank*, 14 S.W.3d 500 (Ark. 2000); *Orix Capital Mkts, LLC v. Park Ave. Assocs., Ltd.*, 881 So.2d 646 (Fla. Dist. Ct. App. 2004); *Broadhurst v. Moenning*, 633 N.E.2d 326 (Ind. Ct. App. 1994). The court may dismiss a case on a finding that the claims raised were known compulsory counterclaims in another action. *See Pomfret Farms Ltd. P'ship v. Pomfret Assocs.*, 811 A.2d 655, 659 (Vt. 2002)(appeals court reversed a jury verdict on the grounds of *res judicata*, that the claims were compulsory in a previously filed action.)

Where multiple claims involve many of the same factual and legal issues or are offshoots of the same basic controversy between the parties, fairness and considerations of convenience and economy require that counterclaimant be permitted to maintain the cause of action, but the doctrine of *res judicata* compels the counterclaimant to assert his claim in the same suit for it would be barred if asserted separately. *Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F.2d 631, 634 (3d Cir.1961).

The breach of contract claim and the action for debt and foreclosure both stem from the installment land contract. The debt action was filed for failure to pay the amount due, and the alleged breach arose from the failure to accept cash payment. Indeed, the failure to accept cash payment was raised by Seales as an affirmative defense in the debt action. The installment land contract was the same transaction underlying both suits. The parties to the debt action included Devine as plaintiff and Seales as defendant, along with the Frederiks' Estate as a defendant. The

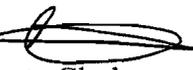
parties in this case were both part of the debt action. Accordingly, Seales was required to raise the breach of contract claim in the debt action.

The breach of contract claim was a compulsory counterclaim to the debt action; as noted, it was raised as an affirmative defense in that action. Although the trial court granted summary judgment when it should have dismissed the claim without reviewing for summary judgment because the claim was compulsory to the debt action, this does not affect the disposition reached below because we reach the same ultimate result. *See Prusky*, 445 F.3d at 700 n.10.

### III. CONCLUSION

The elements for a wrongful use of civil proceedings claim are not satisfied. The breach of contract claim filed as part of a separate action was barred because it should have been raised as a compulsory counterclaim in the debt action. For these reasons, summary judgment and dismissal are affirmed.

**ATTEST:**  
**GLENDAL. LAKE**  
Acting Clerk of the Court

By:   
Deputy Clerk

CERTIFIED A TRUE COPY

Date: March 3, 2008

Clerk of the Court

By:   
Deputy Clerk

Not For Publication

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*Attorney for Appellants*

**Eric S. Chancellor, Esq.**  
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*Attorney for Appellees*

**JUDGMENT ORDER OF THE COURT**

**PER CURIAM.**

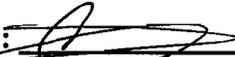
In accordance with the premises considered and the memorandum opinion of even date, it is  
hereby

**ORDERED** that the Grant of Summary Judgment and Dismissal is **AFFIRMED**; and it is  
further

**ORDERED** that copies of this order be directed to the parties.

SO ORDERED this 3<sup>rd</sup> day of March, 2008.

ATTEST:  
GLENDA L. LAKE, Esq.  
Acting Clerk of the Court

By:   
Deputy Clerk

CERTIFIED A TRUE COPY

Date: March 3, 2008

Clerk of the Court

By:   
Deputy Clerk

Copies (with accompanying memorandum) to:  
Justices of the Supreme Court  
Judges of the Superior Court  
Renee D. Dowling, Esq.  
Eric S. Chancellor, Esq.  
Glenda L. Lake, Esq., Acting Clerk of the Supreme Court  
Venetia Harvey Velazquez, Clerk of the Superior Court  
Supreme Court Law Clerks  
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