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V.I. Supreme Court Upholds 2019 Ruling Granting Property Access to Bernard Cuffy

The Supreme Court affirmed a lower court ruling that allowed Bernard Cuffy to clear a long-blocked right of way to his Estate Clairmont property. His neighbors appealed the decision, citing multiple legal claims, but the court found none had merit.

Community Center / **Published On March 07, 2025 05:10 PM /**

Janeke Simon **March 07, 2025**

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Bernard Cuffy stands at the entrance of the road leading to his Estate Clairmont property in 2019. By. ERNICE GILBERT, V.I. CONSORTIUM

The Virgin Islands Supreme Court has affirmed the 2019 decision of the territory's lower court in a dispute over a communal right of way.

Bernard Cuffy bought property in Estate Clairmont, St. Croix, in 2017. Official maps of the parcel in the Windsor Forest Estates subdivision showed a 30-foot road running through and between several other plots before ending at Mr. Cuffy's land. However, when he visited the property after purchase, he noticed the road had been overgrown with vegetation, and the right of way encroached by utility poles, lines, and other infrastructure.

Mr. Cuffy's attempt to clear a pathway to access his property, encroachments notwithstanding, set off a legal battle with his neighbors, who opposed his efforts and sought a court order to stop him. Following a trial, which began in June 2019, the Superior Court [denied the request for an injunction](#) against Mr. Cuffy, as the neighbors had “failed to meet the evidentiary burden that would entitle them to injunctive relief.” A further claim of trespass was also dismissed. Supporters of Mr. Cuffy [marched onto his property](#) following the decision, commemorating the territory's 171st emancipation anniversary with a celebration of the land owner's newfound freedom to access his property.

However, Mr. Cuffy's neighbors – Patricia Babij, Cindy Devlin, and Brian Devlin – immediately appealed, arguing that the Superior Court made four key errors in its conduct of the case. First, the appellants claimed that the lower court did not allow them to exhaust all their administrative remedies before making a ruling. The Superior Court also violated their 7th Amendment rights by not having separate hearings for the issuance of the preliminary and permanent injunctions, the appellants argued. Third, Mr. Cuffy's neighbors argued that the court's failure to analyze deeds rather than relying on testimony from the Territorial Surveyor was a violation of the Statute of Frauds. Last, the court allegedly did not properly apply the relevant legal standards when analyzing the case before it.

The Supreme Court opinion, authored by Associate Justice Maria Cabret, found merit in none of the arguments presented by the appellants. “Through the course of this litigation, Babij was free to file an appeal with the BLUA,” wrote Justice Cabret, referring to the failure of the neighbors to seek recourse via the Bureau of Land Appeals when the Department of Planning and Natural Resources first issued a permit to Mr. Cuffy. “The record is devoid of any instance where Babij objected to the Superior Court's decision to proceed to a trial on the merits,” Justice Cabret noted, dispensing with the appellants' claim that the Superior Court squelched their ability to pursue administrative remedies.

Instead, “Babij attempt[ed] to rewrite history after they received an unfavorable result before the Superior Court,” the Supreme Court found.

The claim of 7th Amendment violation received similarly short shrift. “They waived their right by not asserting their demand for a jury trial before the Superior Court,” Justice Cabret said in her opinion. Despite the words “Jury Trial Demanded” appearing within the caption of their complaint, counsel for the neighbors did not definitively answer in the affirmative when questioned by presiding Judge Jomo Meade on the first day of trial. “The Superior Court asked Babij about their request for a jury trial, only to be met with equivocation and ambiguity,” the Supreme Court found.

The appellants two other claims were also found wanting by the Supreme Court, which declared that the Superior Court made no error in dismissing the trespass claim against Mr. Cuffy. Additionally, the Supreme Court ruled that the neighbor's complaint about the application of legal standards was misplaced.

As such, the entire appeal fails, and the Superior Court's decision of August 2019 allowing Mr. Cuffy use of the access road to his property has been upheld.

Widely covered by the Consortium, the events — including protests, interviews with Cuffy, and court cases — captured the attention of the USVI community.

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