

The Virgin Islands Consortium

At Court Hearing, Plaintiffs Attorney Struggles To Justify Why Bernard Cuffy Should Not Be Allowed To Use Road To His Plot

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ST. CROIX -- Attorney Mark Eckard during a court hearing in Judge Jomo Meade's courtroom on Monday tried to build a case as to why Bernard Cuffy should not be allowed to clear a path for access to his plot in Clairmont, located atop Scenic Drive in the Salt River area, arguing that the road leading to Mr. Cuffy's plot runs through the land of a number of neighbors.

But Mr. Eckard -- who is representing Brian and Cynthia Devlin, Patricia H. Babij, Austin McKenzie, Sr., Andrew and Karen Hooker, Charles Adams, and Lynn Cameron Pontius

against Mr. Cuffy, struggled to build his argument, as testifier after testifier -- including two from the Department of Planning and Natural Resources (D.P.N.R.), and the sole witness of the plaintiffs on Monday, Mr. McKenzie -- agreed and, in Mr. McKenzie's case, concurred, that a roadway, or easement, or right of way, remains part of the subdivision that leads to Mr. Cuffy's property.

The [story concerning Mr. Cuffy](#) has captured the attention of the entire Virgin Islands community and even those from other jurisdictions watching on The Consortium's Facebook platform. The [video interview](#) has been viewed over 120,000 times. Mr. Cuffy told The Consortium in the interview that the neighbors to his Clairmont plot were attempting to block him from using the pathway not because of security, as he said they claimed, but because he is not White. "It's going to be a security issue for them because I am not White. That's the problem," said Mr. Cuffy, who owns Carpet Masters, a firm offering rug and carpet cleaning as well as sales. "They want to control the mountain. You can't control the mountain, it's not yours. It's a subdivision. This is the Virgin Islands."

Mr. Cuffy had told The Consortium that the neighbors afflicting him were all White. It has since been revealed, however, that at least one of the neighbors who is part of the suit against him, Mr. McKenzie, is Black.

On Monday, Mr. McKenzie took to the witness stand to give testimony, during which he established a few things -- the most important one actually working on behalf of the defendant, Mr. Cuffy. Mr. McKenzie said while he purchased the property in the early 2000s, he started to reside there around 2010. His property is plot #12. He told Mr. Cuffy's attorney, Gertrude LeCointe, that after he purchased the land, a survey was performed, at which point he applied for and received an earth change permit from D.P.N.R. to start construction. Mr. McKenzie's property borders Mr. Cuffy's. When asked whether he knew that an easement (roadway) as part of the subdivision was available for use along the property that would give access, he said yes. Judge Meade asked the same question to Mr. McKenzie for clarity, and again Mr. McKenzie replied that he knew of the pathway, although he decided to use another road encouraged by the neighbors.

That pathway, Mr. McKenzie said, was possible because he and another property owner adjacent to his property had exchanged land, allowing him to build a driveway. Attorney LeCointe challenged Mr. McKenzie on whether he actually owned the property which he said became his during the exchange, and provided information revealing that the exchange was not done properly, and therefore could be challenged.

Mr. McKenzie also agreed that the driveway used for his home is steep, and that before it was paved, certain vehicles could not climb it. Asked when the driveway was paved, Mr. McKenzie hesitated, but later said roughly two months ago -- right after the matter with Mr. Cuffy grew problematic.

He was also asked about the boulders blocking the pathway leading to Mr. Cuffy's property, but said he did not know how they got there.

Two defendant witnesses from the Department of Planning and Natural Resources -- Leia LaPlace, territorial planner at D.P.N.R.'s Division of Comprehensive and Coastal Zone Planning, and Emmanuel Liburd, earth change and land clearing officer at D.P.N.R.

-- testified about the process and said that after performing their own due diligence, they found the pathway being disputed by the plaintiffs to be the legal pathway as per the subdivision for access to Mr. Cuffy's property.

Ms. LaPlace, who oversees zoning and subdivision administration, a role that includes defining access to a property, said she reviewed the maps established in 1963 and 1967, and found that both of those maps included the pathway. Ms. LaPlace explained that the roadway/easement is for walking or driving. She was also asked to explain whether the roadway was extinguished, to which she replied that if it were the case, a new map would have been recorded. Ms. LaPlace was citing U.S. Virgin Islands subdivision laws, which was established in 1961, two years before the Clairmont subdivision was established.

The roadway/easement is 30 feet wide, and the 15 feet of land on either side of the center of the 30 feet is held by the land owner, according to testimony provided by survey experts. Attorney Eckard argued continuously that if the land is indeed the private owners', then they should have a say in how it is used. He also asked who determines how the road should be constructed -- whether graded, paved, or otherwise. He then asked who would be responsible for liability. The subdivision was approved by the VI Planning Board in 1963, and Mr. Eckhard said it was not known what the board meant when it created that easement.

Attorney Eckhard's stance on the matter was refuted as incorrect by Mr. Liburd, whose role at D.P.N.R. includes approving application for land clearing and earth change.

"We don't grant permits over someone's property, he said. Mr. Liburd said once the map shows the easement, which is also called a right of way (ROW), "it gives [D.P.N.R.] the right to give him [Mr. Cuffy] the authority" to clear the roadway to his property. He added, "They have the right to use it, they don't have right to stop someone from using it."

Mr. Liburd has worked for 10 years in his capacity at D.P.N.R. He said he visited the plot of land belonging to Mr. Cuffy. "I was able to determine that the road exist," he said.

A surveyor and engineer hired by Mr. Cuffy with decades of experience, who has worked on St. Croix since 2010, and has been involved in the creation of multiple subdivisions on the island, also testified that the pathway exists. Even so, Attorney Eckhard continued to argue that the road belonged to private individuals and they should have a say in how it's utilized.

The Devlins

Athlene Cuffy, the wife of Bernard Cuffy, took to the witness stand on Monday. She attempted to paint a clear picture of what, in her view, led to the current standoff. She said her husband, after purchasing the lot in Clairmont, contacted the Devlins to make them aware, along with their intention to clear the road. Ms. Cuffy said she and her husband were then invited to the Devlins home for an event welcoming them to the neighborhood. At the event were a number of property owners in Clairmont, including the Adams and McKenzies. She said the homeowners all had a map, and the Devlins showed Athlene and Mr. Cuffy an alternative path they could use, and were given a document that if signed, would relinquish the Cuffys' rights to use the road created as part of the subdivision.

The Cuffys refused, telling their hosts that it has been their habit to review documents before signing. They also told their hosts that they intended to use the road created as part of the subdivision leading to their property, according to Mrs. Cuffy.

"They said we had a right to use the road, but they wanted us to agree in writing that we would agree to relinquish our rights to the road," Ms. Cuffy said. She later added, "When we got there [to the gathering at the Devlins], they were happy and welcoming, but when we said we wouldn't sign, it changed a little bit... they were not nice and welcoming anymore."

Attorney Eckhard objected to Ms. Cuffy's testimony on a number of occasions, deeming it as hearsay. At times, Judge Meade would sustain the objection, and at times he would overrule it.

Bernard Cuffy testifies

When Mr. Cuffy took to the stand, he revealed his purpose for buying the piece of property in Clairmont. Mr. Cuffy said his son, 28, is getting married in August, "and I would like to give him his plot." Mr. Cuffy purchased the land from the Government of the Virgin Islands in 2017. It was advertised as a repossessed property.

Just as his wife testified, Mr. Cuffy said he reached out to the Devlins after he had obtained the deed in October 2018. A number of texts between Cynthia Devlin and Mr. Cuffy were shared as part of Mr. Cuffy's testimony. His testimony was nearly selfsame with that of his wife, but Mr. Cuffy also revealed a few other details. He said he was told at the gathering that if he cleared the road it would displease Clairmont's homeowners association. However, Mr. Cuffy said he did some research and found out that no homeowners association existed. He sent an email to Mrs. Devlin asking her for articles of incorporation of the association, but did not get a response. Ms. LaPlace, the D.P.N.R. employee who oversees zoning and subdivision administration, also said that no homeowners association existed.

Mr. Cuffy then spoke of times when the Devlins called police to report that he was trespassing, and each time he had to show officers the deed, map and other confirming documents. He attempted to speak of an incident that resulted in some of his workmen, who were clearing the path, leaving the area as a result of curse words allegedly being hurled at them by Mrs. Devlin, but the judge sustained an objection from Attorney Eckhard that cited hearsay.

When asked about why he wanted to use the designated pathway to his property, Mr. Cuffy spoke of it being the better and more accessible path; preserving its value by not cutting into his plot to build a driveway, which he said he would have to if he had gone with what the neighbors were requesting; because it has a cul de sac; and because he wants to take advantage of the topography afforded by the property.

There are a number of encroachments on the roadway, including a pedestal with power lines, a septic, steps, (septic and steps are part of the property that the Devlins are residing in), and some others. However, none were so far in the way that a roadway could not be cleared, and Mr. Cuffy said he would work around the encroachments to clear a path, although, longterm, they needed to be removed, he said.

During cross examination, Attorney Eckhard asked Mr. Cuffy whether he agreed with expert testimony that concluded that the 15 feet of road on either side of the center of the easement, belonged to private owners along the road. Mr. Cuffy said no and attempted to explain why. Mr. Eckard sought to get clarity from Mr. Cuffy on whether Mr. Cuffy was stating that he disagreed with his own expert, but the answer he was looking for never materialized. Judge Meade eventually stepped in to say that the court understood where Attorney Eckard was leading.

Over and over again, Mr. Eckard sought to build his case on the premise that the land on which the road runs belongs to the private owners, but he was challenged every time, even by Judge Meade, who on a number of occasions asked Mr. Eckard whether he was asking the court to stop a man from clearing a path on a subdivision right of way/easement/roadway that was provided as part of a subdivision.

In a display of how important the case has become to the public, Senators Javan James and Allison DeGazon visited the courtroom on Monday (Mr. James stayed for a number of hours until the end). In the Legislature, Senators Kurt Violet and Alicia Barnes also spoke on the matter.

Ms. Barnes asked Department of Public Works officials on Monday to find out whether the road leading to Mr. Cuffy's home was private or public. "If it is a public road, can we just make the path accessible, and if it's not I definitely will work towards ensuring that it can become a part of the local road system," Ms. Barnes said. "We cannot have that sort of occurrence in our United States Virgin Islands in 2019. Absolutely unacceptable."

"The bigger issue is whether anybody can determine how you access your property if there's an existing road whether private or public," said Senator Kurt Violet. "Unless it's a part of that person's property, nobody has the right to just erect boulders and say you have to access your property from a next direction. Even if it's private and it doesn't belong to that individual, then I think we still need to do it, because then you'll have individuals just [saying], 'well I don't want this person to drive here', and that's not a good message for the Virgin Islands."

The case continues, and is expected to end, today.

Complaint allege trespass