

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LUGO, NAOMI, et al.,

Case No. SX-15-CV-0622

Plaintiffs,

v.

**ST. CROIX ALUMINA LLC, GLENCORE
INTERNATIONAL AG, ALCOA, GLENCORE, LTD.
f/k/a CLARENDON, LTD., CENTURY ALUMINUM
COMPANY, and ST. CROIX RENAISSANCE
GROUP, LLLP,**

Defendants.

ANSWER

1. Paragraph 1 is denied, as the U.S. District Court dismissed these claims before remanding this case. Moreover, this paragraph contains a jurisdictional averment based on factual information unknown to Defendant, and is therefore further denied.

2. Paragraphs 2-11 are factual averments regarding the Plaintiffs, (lead Plaintiff born 12/1/1982, 2 Plaintiffs in total), including residential and personal averments based on factual information unknown to Defendant, and thus each corresponding paragraph is separately denied.

3. Paragraphs 12-32 are all averments about the facts and legal status of other entities, based on factual information unknown to Defendant, and are therefore each corresponding paragraph is separately denied, except paragraphs 16, 31 and 32. As to those, SCRG admits as to paragraph 16 that it *is* a limited liability limited partnership, but denies any legal conclusions about it or what its citizenship is "deemed" to be; also SCRG admits that it purchased and is the owner the physical property where the refinery once was, as set forth in paragraphs 31 and 32, but denies, as to paragraph 32, it has owned or operated a "refinery" -- stating that SCRG is a protected purchaser, under applicable law, of a 'brownfields' site.

FACTUAL BACKGROUND (This and all captions below are from the Complaint)**A. St. Croix Alumina Refinery**

4. All of the paragraphs in this section deal with refining bauxite and a refinery operation prior to SCRG's 2002 ownership; SCRG was not in existence and has no actual knowledge, and thus each corresponding paragraph is separately denied.

B. Hurricane Georges

4. All of the paragraphs in this section deal with Hurricane Georges and alleged injuries to Plaintiffs prior to SCRG's 2002 ownership; SCRG was not in existence and has no actual knowledge, and thus each corresponding paragraph is separately denied.

C. After Hurricane Georges

5. SCRG separately denies all of the corresponding paragraphs in this section, except for paragraphs 74 through 80 which are admitted.

D. Related litigation

SCRG separately denies all of the corresponding paragraphs in this section, as they deal with a recitation of a purported 'legal history' that is a matter of record, on which SCRG relies.

COUNTS I THROUGH VII

SCRG separately denies all of the corresponding paragraphs in Count I, except that it admits there are residential communities North of the property.

SCRG separately denies all of the corresponding paragraphs in Count II,

SCRG separately denies all of the corresponding paragraphs in Count III.

SCRG separately denies all of the corresponding paragraphs in Count IV.

SCRG separately denies all of the corresponding paragraphs in Count V.

SCRG separately denies all of the corresponding paragraphs in Count VI.

SCRG separately denies all of the corresponding paragraphs in Count VII.

AFFIRMATIVE DEFENSES

For its affirmative defenses to the allegations in the Complaint, SCRG states:

FIRST DEFENSE

1. The complaint is barred in whole or in part because some or all of Plaintiffs' claims and causes of action fail to state a claim for which relief may be granted.

SECOND DEFENSE

2. The complaint is barred in whole or in part by the statutes of limitations.

THIRD DEFENSE

3. The complaint is barred in whole or in part because of the doctrine of comparative negligence.

FOURTH DEFENSE

4. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, one or more of the releases or threatened releases of a hazardous substance and the damages resulting therefrom were caused solely by acts or omissions of third parties: other than SCRG, an employee or agent of SCRG. SCRG took precautions against foreseeable acts or omissions of those defendants and of such third parties and the consequences that could foreseeably result from such acts or omissions. SCRG took reasonable precautions against foreseeable consequences of any such third party.

FIFTH DEFENSE

5. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, some or all the damages alleged to have resulted from releases of substances or hazardous substances were due to acts of the USVI or US Governments or of SCRG acting under lawful orders of the USVI or US Governments.

Moreover, to the extent the materials released are alleged to be harmful substances under CERCLA, Plaintiffs' recovery is barred or reduced in proportion to the liability of others under CERCLA.

SIXTH DEFENSE

6. The complaint is barred in whole or in part because Plaintiffs have failed to join indispensable parties necessary for adjudication of its distinct claims, and its action should be dismissed, for example, the Government of the US Virgin Islands.

SEVENTH DEFENSE

7. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, one or more of the releases or threatened releases of a hazardous substance and the damages resulting therefrom resulted from one or more permitted uses.

EIGHTH DEFENSE

8. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, SCRG may not be held liable for some or all of the damages alleged by Plaintiffs because such damages were specifically identified as an irreversible and irretrievable commitment of the premises and its resources in an applicable permit, environmental impact statement or other comparable environmental analysis, and decisions to grant a permit or license authorized such commitment of natural resources.

NINTH DEFENSE

9. The complaint is barred in whole or in part because some or all of Plaintiffs' claims for damages seek a double recovery.

TENTH DEFENSE

10. The complaint is barred in whole or in part because some or all the releases, costs sought to be recovered and other actions for which relief is sought in the Complaint, if they occurred, are preempted by the adoption of CERCLA or other federal statutes, and, therefore, are barred.

ELEVENTH DEFENSE

11. The complaint is barred in whole or in part because the real property on which the facility was located was acquired by SCRG after the disposal or placement of the alleged hazardous substances on, in or at the facility by permitted use. At the time SCRG acquired the facility, SCRG did not know or have reason to know that one, some or all the alleged hazardous substances which are allegedly subject to release or threatened release were disposed of on, in or at the facility.

TWELFTH DEFENSE

12. The complaint is barred in whole or in part because SCRG is not liable under federal and USVI laws as it meets the definition of a *bona fide purchaser*, and/or a *bona fide prospective or actual purchaser*.

THIRTEENTH DEFENSE

13. The complaint is barred in whole or in part because SCRG is not liable for indistinguishable releases from contiguous properties, including, but not limited to, the HOVENSA Refinery, Port Authority and WMA sewer and dump facilities.

FOURTEENTH DEFENSE

14.. The complaint is barred in whole or in part because some or all requests for relief have already been discharged or satisfied, because of SCRG's legal actions, such as, but not limited to, the red mud removal, the covering and remediation of the site and restoration pursuant to DPNR and Federal Court orders.

Moreover, SCRG has been prohibited from acting, ordered not to act or ordered to act as a part of those other consents or proceedings.

FIFTEENTH DEFENSE

15. The complaint is barred in whole or in part because Plaintiffs have failed to fulfill statutory or procedural prerequisites as to some or all of their claims.

SIXTEENTH DEFENSE

16. The complaint is barred in whole or in part because if the releases alleged in Complaint occurred and have resulted in harm, all of which SCRG denies, the harm caused is a divisible harm; accordingly, SCRG cannot be held jointly and severally liable for such harm as it did not cause, as the damages or relief should be allocated.

SCRG is entitled to a percentage reduction offset against any recovery of damages for the amount paid by any other liable party or the equitable share of the liability of any person that has received or will receive a release from liability or covenant not to sue from Plaintiffs.

SEVENTEENTH DEFENSE

17. To the extent Plaintiffs seek to recover money damages for alleged future injuries, such future injuries are speculative, and recovery based thereon would violate SCRG's due process rights.

EIGHTEENTH DEFENSE

18. The complaint is barred in whole or in part because the Complaint lacks sufficient specificity to allow SCRG to understand the claims or assert defenses. Plaintiffs have failed to allege (a) the specific nature of SCRG's involvement, (b) the specific locations where each such release/contamination/injury/act of recovery or remediation occurred, (c) the specific substances released, (d) when the releases occurred, (e) when each injury occurred and (f) which release of what hazardous substance was the sole or substantially contributing cause of such injury (g) by what pathway exposure to the hazardous substance occurred, and (h) the resultant harm.

NINETEENTH DEFENSE

19. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, one or more of the releases or threatened releases of a hazardous substance and the damages resulting therefrom were caused by one or more Acts of God.

TWENTIETH DEFENSE

20. The complaint is barred in whole or in part because Plaintiffs are barred from obtaining the relief sought in this action by the doctrines of unclean hands, waiver or equitable estoppel.

TWENTY-FIRST DEFENSE

21. Plaintiffs have accepted remediation and other relief, which has addressed and alleviated some or all of the damages alleged. This includes but is not limited to the cleaning of premises and cisterns.

TWENTY-SECOND DEFENSE

22. The complaint is barred in whole or in part because SCRG has not engaged in processing of bauxite ore or the creation of red mud piles. SCRG has not engaged in any abnormally dangerous activity. SCRG has simply attempted to reclaim a brownfield site consistent with the policy of the USVI and US governments.

TWENTY-THIRD DEFENSE

23. The complaint is barred in whole or in part by the equitable doctrine of laches.

TWENTY-FOURTH DEFENSE

24. The complaint is barred in whole or in part because by res judicata, collateral estoppel and/or law of the case, including but not limited to the Memorandum Opinion and Order of the U.S. District Court dismissing some or all of these claims as to SCRG.

TWENTY-FIFTH DEFENSE

25. The complaint is barred in whole or in part by the Plaintiffs "coming to" the nuisance.

TWENTY-SIXTH DEFENSE

26. The complaint is barred in whole or in part because Plaintiffs have failed to mitigate their alleged damages.

TWENTY -SEVENTH DEFENSE

27. The complaint is barred in whole or in part due to the defense of privilege, as SCRG is not liable for activities that either or both of DPNR and/or Plaintiffs either permitted, acquiesced in, or knowingly failed to prohibit and/or prevent while having a duty to do so.

TWENTY-EIGHTH DEFENSE

28. The complaint is barred in whole or in part because Plaintiffs seek injunctive and prospective relief for a situation or condition that has been remediated.

TWENTY-NINTH DEFENSE

29. The complaint is barred in whole or in part because it is unclear whether the Complaint seeks pass through damages regarding violation of environmental permits, even though much, if not all, of the conduct alleged to have been done by SCRG is conduct fully authorized by statute, ordinance, regulation.

THIRTIETH DEFENSE

30. The complaint is barred due to the doctrine of Force Majeure, as certain events were Acts of God.

THIRTY-FIRST DEFENSE

31. The complaint is barred due to the Plaintiffs' spoliation of evidence.

THIRTY-SECOND DEFENSE

32. The complaint is barred in whole or in part because SCRG is an "innocent land owner" within the meaning of 12 V.I.C. § 551 (g), and is not liable for damages under some or all the claims pursuant to 12 V.I.C. § 555(c)(1).

THIRTY-THIRD DEFENSE

33. The complaint is barred in whole or in part because any contamination is due to contamination and releases from contiguous properties, including but not limited to, the HOVENSA REFINERY. Consequently, SCRG is not liable for damages for such contamination pursuant to 12 V.I.C. § 555(d).

THIRTY-FOURTH DEFENSE

34. The complaint is barred in whole or in part because the statutory limitation period for the actions in this cause includes no acts by SCRG prior to June 22, 2002 -- as it was not an owner or in any way involved with the property until June 22, 2002. Thus, no equitable or other order which is predicated on prior dates can be entered, nor can damages be allowed.

THIRTY-FIFTH DEFENSE

35. SCRG adopts by reference all affirmative defenses heretofore or hereafter pled by any other Defendant, to the extent applicable to SCRG.

THIRTY-SIXTH DEFENSE

36. SCRG intends to rely upon all other applicable affirmative defenses as may become apparent during discovery in this action and reserves the right to amend its answer accordingly.

THIRTY-SEVENTH DEFENSE

37. The complaint is barred in whole or in part because Plaintiffs' Complaint does not describe its claims or events with sufficient particularity to allow SCRG to ascertain what other affirmative and other defenses may exist, and SCRG therefore reserves the right to assert any and every other defense that may be available to it under the various statutes, regulations and common law theories that they are alleged to have violated or under which they are alleged to have liability.

Dated: January 2, 2018



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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e) and that on this 2nd day of January, 2018, I served a copy of the foregoing by DropBox/email, as agreed by the parties, on:

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