

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

EMMETT HANSEN, II,

Plaintiff,

vs.

**GOVERNOR JUAN F. LUIS HOSPITAL &
MEDICAL CENTER, VIRGIN ISLANDS
GOVERNMENT HOSPITAL & HEALTH
FACILITIES CORPORATION, and
GOVERNMENT OF THE VIRGIN ISLANDS,**

Defendants.

Case No. SX-15-CV-509

ACTION FOR BREACH
OF CONTRACT

JURY TRIAL

MEMORANDUM OPINION

THIS MATTER is before the Court on a Motion to Dismiss for failure to state a claim, filed by Defendant Juan F. Luis Hospital & Medical Center (the "Hospital") pursuant to Fed. R. Civ. P. 12(b)(6)¹ and a Motion to Amend Complaint,² filed by Plaintiff Emmett Hansen, II. Plaintiff incorporated his Response in Opposition to the Hospital's Motion to Dismiss and his Motion To Amend into a single document. The Hospital did not file a reply to Hansen's Opposition, nor did it file an opposition to Hansen's Motion to Amend Complaint. Defendants Virgin Islands Government Hospital And Health Facilities Corporation and Government of the Virgin Islands (collectively "the GVT") joined in the Hospital's Motion To Dismiss, but the GVI has

¹ Filed on November 25, 2015.

² Filed on January 22, 2016.

not filed any other pleadings. For the reasons set forth herein, the Motion to Dismiss will be denied and the Motion to Amend Complaint will be granted.

BACKGROUND

On December 5, 2014, the interim chief executive officer of the Hospital, Dr. Kendall Griffith, extended an offer of employment to Plaintiff. The offer of employment was memorialized in a letter ("Letter Agreement"). The Letter Agreement offered the position of Vice President of Strategy and Communication to Plaintiff at an annual salary of \$95,000. Plaintiff signed the letter, thereby accepting the offer. Plaintiff started working for the Hospital in the aforesaid position on December 15, 2014 and his employment was terminated on March 10, 2015.

Plaintiff's (original) Complaint includes five counts, as follows: breach of contract, wrongful discharge, emotional distress, punitive damages and an enumeration of losses suffered.

The parties disagree as to whether Plaintiff was an at-will employee who could be terminated by the Hospital at any time for any reason. Plaintiff contends that he was not an at-will employee because the Letter Agreement specified a minimum period of employment subject only to termination by way of performance evaluation. He claims that the Hospital never conducted any performance evaluations; thus, the Hospital had no valid reason for terminating his employment prior to the conclusion of his employment period as stated in the Letter Agreement.

ANALYSIS

I. DEFENDANTS' MOTION TO DISMISS

Defendants move to dismiss Hansen's entire complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Specifically, as to Count I (breach of contract), Defendants argue that a Hansen cannot establish any element of a breach of contract; as to Count II (wrongful discharge), Defendants argue that as a public employee, and as a supervisory employee, Hansen cannot avail himself of the Wrongful Discharge Act codified at Title 24, V.I.C. § 76, relying upon *Chapman v. Cornwall*, 2013 WL 2145092 at *6, 58 V.I. 431 (V.I. May 15, 2013); as to Count III (seeking damages for wrongful discharge), Defendants argue that since Hansen's claim of wrongful discharge under the local statute fails as a matter of law, his claim for damages also fails; as to Count IV (punitive damages), Defendants argue that it should be placed in the *ad damnum* clause and may not be pled as a separate cause of action; as to Count V (claim for damages), Defendants argue that the recitation of all the losses suffered may not constitute a separate cause of action.

Hansen filed an opposition to the Motion to Dismiss and included a motion to amend the complaint.

II. MOTION TO AMEND COMPLAINT

Plaintiff moves to amend his complaint in various ways. First, he adds a new paragraph (§ 17) (in the fact section) that alleges the failure of the Hospital to provide him with a performance evaluation prior to termination deprived him of due process, “was outrageous, reckless and beyond the bound of decency, and intolerable in a civilized society.” Second, Plaintiff adds a clause to Count I (for breach of contract) expounding the losses (of salary and benefits) he suffered due to the alleged breach of contract by the Hospital. Third, Hansen inserts the word “standards” into Count II to clarify that though he may not be entitled to invoke the Wrongful Discharge Act, he argues it sets general employment standards, which he claims the Defendants violated. Fourth, in Count III, Hansen added a paragraph alleging that the Hospital “intentionally, with gross recklessness or by negligence” violated a duty it had to Hansen in an “extreme or outrageous” manner. The Amended Complaint removes Count IV of the original Complaint (which sought punitive damages). It also moves the language in Count V of the original Complaint (which sought damages for lost salary, insurance, vacation pay and reputation) into the prayer for relief section. Finally, the Amended Complaint adds a new count V, which alleges that the Hospital breached a covenant of good faith and fair dealing.

The Court finds that Hansen’s original complaint (Count I) sufficiently pled a claim for breach of contract and therefore survives the 12(b)6 standard. As result, there were no grounds to dismiss that count. Moving to Count II, the amended count

cures the particular deficiency identified by the Defendants in the original complaint.³ the Court is not completely persuaded that the amended Count II recites an existing standard for employment law to which the Hospital is bound, but it does cure the there being no opposition to the motion to amend the Court will allow it.

With respect to Count III,

Similarly, the amended Count III cures the Defendants' challenge in their motion to dismiss as it is no longer a derivative claim of the original Count II. Finally, the offered amendments to counts IV and V of the original complaint cure the defects and the amended counts, if permitted, state a plausible claim for relief.

Superior Court Rule 8 permits the Court to "amend any process or pleading for any omission or defect therein." Plaintiff seeks to amend his complaint under Fed. R. Civ. P. 15(a)(2), which states that "a party may amend its pleading only with the opposing party's written consent or the court's leave." But, Superior Court Rule 8, not Rule 15 of the Federal Rules of Civil Procedure, governs amendments to complaints.⁴ Thus, Fed. R. Civ. P. Rule 15 does not constrain the Court in its application of Rule 8 but may assist the Court in its interpretation of Rule 8 to the extent that it is not inconsistent with the Superior Court Rules.⁵

³ The Court did not consider whether the amended Count II is futile as Defendants did not challenge it as such.

⁴ *Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 275 (V.I. 2012) (Rule 8 governs amendment to pleadings, "even if Superior Court Rule 8 provides a less comprehensive framework than Federal Rule of Civil Procedure 15.").

⁵ *Brooks v. Gov't of the Virgin Islands*, 58 V.I. 417, 427 (V.I. 2013).

Pursuant to Fed. R. Civ. P. 15(a)(2), “[t]he court should freely give leave [to amend a pleading] when justice so requires.” A motion to amend may be denied for “reasons such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.”⁶ “[U]ndue prejudice is the touchstone for the denial of leave to amend.”⁷

There is insufficient justification to find that undue delay occurred. Less than one year has passed since the original complaint was filed and the “mere passage of time” is not enough for denial.⁸ Furthermore, nothing in the record indicates bad faith on Plaintiff’s part, and the motion at hand is Plaintiff’s first motion to amend, so there is no history of repeated failure to cure deficiencies.

Except for recent Rule 26 disclosures, no discovery has been turned over and, of course no answer been filed as the motion to dismiss is still pending. Furthermore, Defendants have not filed any opposition to Plaintiff’s Motion to Amend Complaint

⁶ *Mountaintop Ltd. P’ship v. Colombian Emeralds Int’l, Inc.*, 43 V.I. 193, 204 (Terr. Ct. 2001) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962));

⁷ *Josephat v. St. Croix Alumina, LLC*, No. 1999-0036, 2000 WL 1679502, at *15 (D.V.I. Aug. 7, 2000) (internal quotation marks omitted). Rule 15.1 of the Local Rules of Civil Procedure, applicable to Superior Court proceedings through Rule 7 of the Superior Court Rules, governs the form of motions to amend. It requires a party moving to amend its complaint to “reproduce the entire pleading as amended specifically delineating the changes or additions.” This is sometimes referred to as a “red-lined” copy of the pleading to be amended. Hansen did not file a red-lined copy of the First Amended Complaint with his Motion to Amend, but Defendants have not opposed the Motion. The Court will evaluate Plaintiff’s Motion despite his lack of full compliance with LRCi 15.1. Plaintiff is advised, however, that any future motions to amend must comply with LRCi 15.1 and a red-lined copy of the pleading being amended must accompany the amended pleading itself. The Court will not again submit itself to the exercise of comparing two complaints line by line to determine the additions and deletions.

⁸ See *Cureton v. Nat’l Coll. Athletic Ass’n*, 252 F.3d 267, 273 (3d Cir. 2001).

and do not claim that granting the Motion would prejudice the Defendants. The Court, having considered Plaintiff's Motion and the proposed Amended Complaint, discerns no prejudice to Defendants nor any other reason to deny Plaintiff leave to amend the Complaint. Accordingly, the Motion for Leave to Amend Complaint will be granted.

III. CONCLUSION

The Plaintiff's proffered Amended Complaint cured the deficiencies articulated in Defendants' Motion to Dismiss. Therefore, the Court will grant Hansen's motion to amend and deny Defendants' motion to dismiss.⁹

The Court will enter an Order consistent with this Memorandum Opinion.

DATED: July 11, 2016



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 
LORI BOYNES TYSON
Court Clerk Supervisor

⁹ The Court finds it necessary to point out that, though the Motion to Dismiss will be denied, Defendants are free to file another 12(b)(6) motion to dismiss the Amended Complaint as it relates to the new Count V.