

On October 11, 2016, Defendant Siri Akal filed a motion for a more definite statement, arguing the Plaintiff's complaint is (1) "vague and ambiguous," (2) uses "shotgun pleadings," and (3) may even violate the "gist of the action" doctrine.

II. Discussion

A motion for a more certain and definite pleading is governed by Rule 12(e) of the Virgin Islands Rules of Civil Procedure. Rule 12(e) states that such a motion “must point out the defects complained of and the details desired.”¹ While still applying the Federal Rules of Civil Procedure the Superior Court held “[a] complaint has to be written in such a way that the defendant (1) has notice of all the allegations against them and (2) has a meaningful opportunity to reply so that they fairly respond to the substance of the allegations.” *George v. Wenhaven Inc.*, Case No. ST-12-CV-34, 2012 V.I. LEXIS 66, *11 (V.I. Super. Ct. 2012). “If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement.” *Id.* at *8-9.

“However, Rule 12(e) motions are highly disfavored since the overall scheme of the federal rules calls for relatively skeletal pleadings and places the burden of unearthing factual details on the discovery process.” *Ch&H Pa. Props., Inc., v. Heffernan*, 2003 U.S. Dist. LEXIS 14736, *7 (E.D. Pa. 2003) (Internal citations omitted).

¹ The subject Motion was briefed before the adoption of the Virgin Islands Rules of Civil Procedure. However, the content of the pertinent rule has not changed as Rule 12(e) of the Virgin Islands Rules of Civil Procedure is identical to Rule 12(e) of the Federal Rules of Civil Procedure. So there is no prejudice to the parties by the application of the Virgin Islands Rules of Civil Procedure.

1. Vague and Ambiguous

Akal asserts the Complaint is factually “vague and ambiguous.” Def.’s Mot. Definite Statement 2. Akal specifically points out certain paragraphs of the complaint to support her assertion. However, all the referenced paragraphs are either not actually ambiguous, or the ambiguity does not interfere with the substance of Woodson’s allegations.

For example, Akal argues that paragraph 15 of the complaint is vague because Akal cannot determine to whom the word “jointly” refers. Paragraph 15 of the complaint states, “Plaintiff and Defendant jointly negotiated with Clayton until he was no longer able to negotiate.” The Court finds paragraph 15 is not ambiguous, because “jointly” can be very reasonably read to refer to the “Plaintiff and Defendant.”

As another example, Akal states that in paragraph 39 of the complaint, the word “intention” is unclear. Paragraph 39 of the complaint states, “On June 28, 2014, Defendant communicated to Rosenberg in an email, with a copy to Plaintiff, her intention to submit to him another joint letter of intent to purchase the Red Hook Family Practice with repayment terms.” A reasonable reader may find some ambiguity regarding whether it was the Defendant’s “intention”, or the Plaintiff’s “intention” to submit the letter. However, Akal does not explain how the alleged ambiguity interferes with her ability to fairly respond to the substance of Plaintiff’s allegation. Instead, the intention seems to be insignificant because none of the counts

in Plaintiff's complaint specifically depend on whether paragraph 39 refers to the defendant's intention, or her own.²

Each paragraph specified by Akal is either not vague or ambiguous, or is "not so vague or ambiguous that the [defendant] cannot respond, even with a simple denial, in good faith or without prejudice to [herself]." *Stout v. Government of the Virgin Islands*, Civ. No. 234/1992, 1982 V.I. LEXIS 151, *4 (V.I. Terr. Ct. 1982). Thus, because the paragraphs are "sufficiently intelligible for the court to make out a potentially viable legal theory," Akal's assertion that the complaint is too vague and ambiguous fails.

2. Shotgun Pleading

Akal also argues that this Court "should insist on repleader" because Woodson has filed a "shotgun pleading." Def.'s Mot. Definite Statement 2. A "shotgun pleading" describes a complaint that, in each count, incorporates all the preceding paragraphs of the complaint, making it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief. *Bell v. Radcliffe*, Case No. ST-13-CV-392, 2014 V.I. LEXIS 119, *38 (V.I. Super. Ct. 2014). However, "the regular practice in the Virgin Islands of incorporating factual allegations by reference does not, without more, create inadequate notice." *Marian v. Fraser*, Case No. ST-13-CV-549, 2014 V.I. LEXIS 19, *3 (V.I. Super Ct. 2014).

² The intention of the letter does not have an effect on Count II of Plaintiff's complaint, because this representation was made to a third party, which is not the same as the representation that Plaintiff actually relied on in paragraph 8.

Defendant relies on *Henry v. Hovenssa LLC.*, Case No. SX-15-CV-568, 2016 V.I. LEXIS 55 (V.I. Super. Ct. 2016), where the plaintiff was ordered to amend his complaint to provide a more definite statement because incorporating the preceding paragraphs of his complaint into each of his counts was “so vague, ambiguous and conclusory, that it fail[ed] to provide Defendant Pinnacle with reasonable notice of the nature and extent of the allegations against it.” *Id.* at *14. Due to the incorporations throughout the complaint, the *Henry* court struggled to determine which allegations were being asserted against each individual defendant.

However, Woodson’s complaint is distinguishable from the plaintiff’s complaint in *Henry*. First, Woodson is only asserting allegations against one defendant. Second—as explained below—although Woodson incorporates the preceding paragraphs of the complaint into Count II and III, she includes the additional facts necessary to support her specific claim for each count, and also identifies and meets the appropriate pleading standard. For example, Woodson’s Count II is a claim for misrepresentation and fraud. Thus the Court can identify the appropriate pleading standard. Virgin Islands Rule of Civil Procedure 9(b) states that, when alleging fraud, “a party must state with particularity the circumstances constituting fraud...” This Court has considered and applied Rule 9(b) of the Federal Rules of Civil Procedure “to all averments of fraud.” See *Tutu Park, Ltd. v. Harthman Leasing I, LLLP*, 2016 V.I. LEXIS 159 (V.I. Super. Ct. 2016). This Court

finds the analysis similarly applicable to Rule 9(b) of the Virgin Islands Rules of Civil Procedure.

In addition, Virgin Islands courts have found that a plaintiff meets this standard by specifying the date, time and place of the alleged fraud; or by using an alternative means of “injecting precision and some measure of substantiation.” *Merchants Commercial Bank v. Oceanside Village, Inc.*, 64 V.I. 3, 24 (V.I. Super. Ct. 2015).

Count II of Woodson’s complaint incorporates all previous allegations of the complaint, including paragraphs 7-9. Paragraphs 7-9 state that in July 2013 Woodson and Akal resumed effort to purchase the practice, agreed to become 50/50 owners, and even retained a law firm to represent their interests. Then in paragraphs 43, 44 and 48, Woodson alleges that on July 14, 2014, Defendant informed Plaintiff that she no longer wished to purchase the Red Hook Family Practice with Plaintiff, and Defendant made a separate offer to purchase the business while the parties joint offer remained in full force and effect, all while pretending to partner with Plaintiff. Woodson particularly alleges that it was approximately 10 p.m. on July 14, 2014 when Akal informed Woodson that she no longer wished to make a joint offer. Paragraph 43, compl.

Finally, paragraph 63 states that Plaintiff relied to her detriment on Defendant’s false representations that they would jointly purchase the Red Hook Family practice. The Court finds Woodson satisfied the particularity requirement by

identifying the dates on which the representations were made, thereby injecting precision and some measure of substantiation.

Similarly, although Count III of Woodson's complaint incorporates all previous allegations, she includes the additional facts necessary to allege a breach of contract claim. For example, Woodson includes allegations of an agreement, duty, breach, and damages.

Therefore, Woodson not having created inadequate notice by incorporating the factual allegations throughout her complaint, Akal's argument that this Court "should insist on repleader" fails.

3. Gist of the Action

Finally, Akal believes that Woodson's complaint may implicate the "gist of the action" doctrine. Akal argues, "Without a more definite statement, however, neither Akal nor this Court could possibly determine the applicability of the doctrine." The Court disagrees.

"[T]he gist of the action doctrine precludes tort suits for the mere breach of contractual duties unless the plaintiff can point to separate or independent events giving rise to the tort." *Pollara v. Chateau St. Croix, LLC*, 2016 V.I. LEXIS 49, *15 (V.I. Super. Ct. 2016).³ The important difference between contract and tort actions is

³ This Court possesses—in the absence of binding precedent from the Supreme Court of the Virgin Islands—concurrent authority with the Supreme Court of the Virgin Islands to shape Virgin Island common law. When this Court is confronted with such an issue of Virgin Island common law, the Court must engage in a three-factor

that the latter “lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals.” *Id.* at 22-23.

Count One of Woodson’s complaint does not allege breach of contract at all, but instead alleges that, “As a partner of Plaintiff...Defendant Siri Akal breached her fiduciary duty to Plaintiff.” Pl’s. Comp. ¶53-54. Thus, Count I did not arise from a duty imposed by the “contractual agreement” to buy the property together, but instead a fiduciary duty imposed by their partnership.⁴

Count II of Woodson’s complaint alleges misrepresentation and fraud against Akal.

“Where fraud claims are inextricably intertwined with the contract claims, the gist of the action is contractual, and the fraud claim should be dismissed. However, the distinction between fraud in the inducement and fraud in the performance claims with regard to the gist of the action doctrine is crucial as fraud to induce a person to enter into a contract is generally collateral to (i.e., not ‘interwoven’ with) terms of the contract itself.”

V.I. Port Auth. v. Callwood, Case No. ST-11-CV-305, 2014 V.I. LEXIS 11, *13 (V.I. Super. Ct. 2014) (internal citations omitted). Woodson alleges that, “Defendant intended all along to purchase the Red Hook Family Practice without Plaintiff,” and “by deceiving Plaintiff, Defendant planned to profit from her deceit.” Plt.’s Comp. 7. Thus, the Court finds that Woodson is alleging that Akal fraudulently induced her to

analysis known as a “Banks Analysis.” *See Gov’t of the Virgin Islands v. Connor*, 60 V.I. 597, 604 (V.I. 2014) in regards to the gist of the action doctrine, the Court adopts the “Banks Analysis” in *Pollara*.

⁴ *See e.g.*, 26 V.I.C. § 74 (specifying the fiduciary duties of loyalty and due care owed in a partnership).

enter the contract. Therefore, Count II is not precluded under the gist of the action doctrine.

Count III is the breach of contract claim itself, and thus cannot be dismissed on the basis of the gist of the action doctrine.

Count IV of Woodson's complaint alleges tortious interference. Woodson alleges, "Defendant knew of Plaintiff's reasonable expectation and indeed induced Plaintiff to believe they would jointly participate in the purchase," but then "purposefully interfered and prevented the Plaintiff's legitimate expectancy from ripening into a valid business relationship [with Red Hook Family Practice]." Plt.'s Compl. 9. Based on Woodson's allegations, the Court finds that Akal's alleged tortious interference with Red Hook Family Practice is independent of the breach of contract claim. Therefore Count IV is also not precluded under the gist of the action doctrine.

III. Conclusion

Any perceived vagueness in Woodson's complaint is minor, and such vagueness does not interfere with the Akal's ability to respond. The Court finds that the efforts Woodson would expend refining the pleading are better spent facilitating the discovery process. Furthermore, Woodson did not improperly incorporate preceding paragraphs in the pleadings or implicate the gist of the action doctrine. Therefore, Akal's motion to dismiss will be denied.

An Order consistent herewith will be entered.

DATED: August 17, 2017

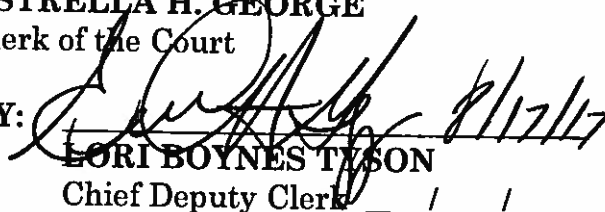


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON

Chief Deputy Clerk / /