

In a January 9, 2014, Order, the Court directed Bert Veldman, Denise Veldman, and Indian Lake Properties Corp., to move to amend their Answer by January 29, 2014. The Court also ordered Elizabeth Huton to move to intervene and amend her *pro se* “Answer” by January 29, 2014. Since the January 9, 2014, Order, neither Bert Veldman, Denise Veldman, Indian Lake Properties Corp., or Elizabeth Huton have complied with

the Order, and none of them have made any representations to the Court. As a result, consistent with the January 9, 2014, Order, the Court shall *sua sponte* (1) dismiss the Veldmans and Indian Lake Properties Corp.'s *pro se* counter-claim and cross-claim against Plaintiffs and Rizzo;¹ and (2) dismiss Elizabeth Huton's *pro se* counter-claim against Plaintiffs and strike Elizabeth Huton's "Answer" filed on June 15, 2009.

ANALYSIS

While *sua sponte* dismissals for failure to state a claim upon which relief can be granted "should be dispensed sparingly,"² *sua sponte* dismissals may be appropriate where the party's claim is "patently meritless and beyond all hope of redemption."³

When considering *sua sponte* dismissal pursuant to Fed. R. Civ. P. 12(b)(6) for a party's "failure to state a claim upon which relief can be granted,"⁴ the Court is still bound by the same considerations set forth by the Supreme Court of the United States in *Bell Atlantic Corp. v. Twombly*⁵ and *Ashcroft v. Iqbal*.⁶ Specifically, the Court must first liberally construe the pleadings, to the extent permitted by the pleading requirements of Fed. R. Civ. P. 8,⁷ and "accept as true all well-pleaded allegations in the complaint" in favor of the party against whom dismissal is sought.⁸ While "the Court must take all of

¹ The Veldmans and Indian Lake Properties Corp. are unclear in their July 1, 2009, Answer, whether they are asserting counter-claims or cross-claims against either Plaintiffs or Rizzo. However, in the abundance of caution, the Court has treated the July 1, 2009, Answer as a request for both.

² *Gonzalez-Gonzalez v. U.S.*, 257 F.3d 31, 33 (1st Cir. 2001).

³ *Chute v. Walker*, 281 F.3d 314, 319 (1st Cir. 2002) (citing *Gonzalez-Gonzalez*, 257 F.3d at 37).

⁴ Fed. R. Civ. P. 12(b)(6).

⁵ 550 U.S. 544 (2007).

⁶ 556 U.S. 662 (2009).

⁷ *Id.* ("the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation") (citing *Twombly*, 550 U.S. at 555 (2007)).

⁸ *Gov't Guarantee Fund v. Hyatt Corp.*, 166 F.R.D. 321, 325-26 (D.V.I. 1996) *aff'd sub nom. Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 95 F.3d 291 (3d Cir. 1996) ("[I]n considering a

the factual allegations in the [c]omplaint as true, courts are not bound to accept as true a legal conclusion couched as a factual allegation.”⁹ Second, once the legal and factual allegations have been distinguished, the Court must decide whether “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,”¹⁰ such that the claim is plausible on its face. In other words, “[a] motion to dismiss a complaint should be denied if the factual allegations are ‘enough to raise a right to relief above the speculative level.’”¹¹

I. Veldmans and Indian Lake Properties Corp.’s *pro se* cross-claim and counter-claim against Plaintiffs and Rizzo.

As discussed in the Court’s January 9, 2014, Memorandum Opinion, it appears that the Veldmans and Indian Lake Properties Corp. allege that they incurred unnecessary expenses because of Denise Rizzo’s alleged fraudulent misrepresentation at the time she entered into a contract of sale with Indian Lake Properties Corp. for Parcel No. 5B Estate Freemans Ground. The Veldmans and Indian Lake Properties Corp., assert that they first

motion to dismiss under Rule 12(b) (6), the Court must accept as true the well-pleaded allegations in the complaint . . . [T]he plaintiff is required to set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist. . . . Finally, when evaluating a 12(b) (6) motion the court must be mindful of the liberal pleading practice permitted by Rule 8(a)” (internal citations omitted).

⁹ *Webster v. CBI Acquisitions, LLC*, 2012 WL 832044, at *1 (V.I. Super. 2012) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

¹⁰ *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 446). See also *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011) (“First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked [factual] assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.”).

¹¹ *Williams v. Seabourne Virgin Islands, Inc.*, 2010 WL 7371480, at *1 (V.I. Super. 2010) (citing *Phillips v. County of Allegheny*, 2008 WL 305025, at *6 (3d Cir. 2008)).

learned of Denise Veldman's alleged "fraud" in February 2004 during a conversation between Charles Rizzo's attorney, Gerianne Kotas, Esq., and the Veldmans' attorney, Ruth Ann Magnuson, Esq.¹² Under 5 V.I.C. § 31, fraud, a tort, carries a two-year statute of limitation. Consequently, the statute of limitation on the Veldmans and Indian Lake Properties Corp.'s claim expired long before the filing of their July 1, 2009, *pro se* Answer.¹³ Considering that the Veldmans and Indian Lake Properties Corp. have not responded to the Court's January 9, 2014, Order and that the Veldmans and Indian Lake Properties Corp.'s cross-claim and counter-claim against Plaintiffs or Rizzo are without any hope of cure because the statute of limitations has long expired, the Court shall dismiss the Veldmans and Indian Lake Properties Corp.'s *pro se* counter-claim and cross-claim against Plaintiffs and Rizzo.

II. Elizabeth Huton's Counter-claim Against Plaintiffs.

On June 15, 2009, Elizabeth Huton filed a *pro se* "Answer" asserting a lien, recorded against Denise Rizzo's interest in the property with the Recorder of Deeds Office, St. Thomas and St. John, as Doc. No. 2002006699, in the amount of Four thousand four hundred fifty dollars (\$4,450.00), plus statutory interest from December 1, 1993 to June 14, 2009, in the amount of Six thousand two hundred twenty-two dollars and twenty-two cents (\$6,222.22).

Huton is barred from asserting her claim because the Estate of Adeline Geritano has already completed the probate process. Once an estate has completed the probate

¹² Indian Lake Properties Corp., Denise Veldman, and Bert Veldman July 1, 2009, *pro se* Answer, at p. 5.

¹³ See 5 V.I.C. § 31.

process it legally ceases to exist.¹⁴ Denise Rizzo passed away on January 13, 2005. Thereafter, Denise Rizzo's interest passed to her sole heir, Adeline F. Geritano, who subsequently passed away intestate on September 22, 2007. The final adjudication of the Estate of Adeline F. Geritano was concluded on May 6, 2010, after which the Estate of Adeline F. Geritano ceased to exist. Additionally, during the probate process of the Estate of Adeline F. Geritano, Case No. ST-2005-PB-69, notice to all creditors of the Estate of Adeline F. Geritano was published in the St. Croix Avis, a newspaper of general circulation in the Virgin Islands, on October 18, 2005, October 25, 2005, November 1, 2005, and November 8, 2005. Thus, while the Court makes no finding regarding whether Huton may assert claims for debt against Rizzo's heirs, even construing the facts in a light most favorable to Huton, Huton's allegations here are insufficient to support a valid interest in Parcel No. 5B Estate Freemans Ground because the Estate of Denise Rizzo, and the Estate of Denise Rizzo's sole heir, Adeline F. Geritano, have long been resolved.¹⁵ As a result, the Court finds Huton's "Answer" and counter-claim patently meritless and shall dismiss and strike Huton's counter-claim against Plaintiffs and strike Huton's "Answer."

¹⁴ *Montgomery v. Estate of Griffith*, 49 V.I. 255 (V.I. Super. Ct. 2008) ("Specifically, a probate estate ceases to have legal existence once it is settled.") (citing 1 V.I. Op. A.G. 39-40, No.1937-8 (Aug. 27, 1937)).

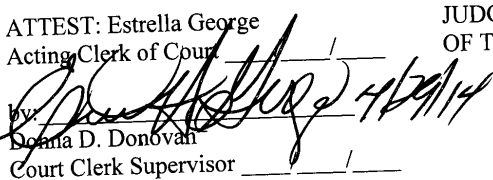
¹⁵ 28 V.I.C. § 171 ("Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.").

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An Order consistent with this Memorandum Opinion shall issue.

Dated: April 28, 2014

ATTEST: Estrella George
Acting Clerk of Court

by:  4/29/14
Donna D. Donovan
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS