

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT CHRISTIANSTED

ALLIANCE ASSURANCE CO., DICK BOEHM)
ENTERPRISES, INC. & CLUB COMANCHE,)
INC.)

Plaintiffs)

vs.)

GOVERNMENT OF THE VIRGIN ISLANDS)

Defendant)

CIVIL NO. 723/1982

ACTION FOR DAMAGES

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FINCH, Judge

MEMORANDUM OPINION AND ORDER

This matter came before the Court on Plaintiffs' Motion for Entry of Default pursuant to Fed. R. Civ. P. 55(a) and Defendant's Motion to Dismiss for plaintiffs' failure to comply with the procedural provisions of the Virgin Islands Tort Claims Act, 33 V.I.C. §§3408-3415 (1982 Supp.).

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A ruling on defendant's motion to dismiss will resolve the matter before the Court.

For the reasons set forth below defendant's motion to dismiss will be granted.

Plaintiffs' suit is time-barred because of their failure to comply with the procedural requirements of the Virgin Islands Tort Claims Act, 33 V.I.C. et seq. Section 3409(c) of Title 33 of the Virgin Islands Code which states in pertinent part:

[A] claim to recover damages for injuries to property or for personal injury caused by the tort of an officer or employee of the Government of the Virgin Islands while acting as such officer or employee, shall be filed within ninety days after the accrual of such claim unless the claimant shall within such time file a written notice of intention to file a claim therefor, in which event the claim shall be filed within two years after the accrual of such claim (emphasis added).

Section 3410 of Title 33 of the Virgin Islands Code provides in relevant part:

The claim or notice of intention shall be filed in the Office of the Governor and a copy shall be served upon the Attorney General and a written receipt therefor shall be issued with the date of filing indicated thereon... The claim and notice of intention to file a claim shall be verified (emphasis added).

In applying the above statutory requirements, plaintiffs' notice of intention is defective in that:

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1. The notice of intention was not filed within the ninety (90) day period for filing tort claims against the Government as required by Section 3409(c) of Title 33 of the Virgin Islands Code;^{1/} and
2. The notice of intention was not verified as required by Section 3410 of Title 33 of the Virgin Islands Code.

Assuming, arguendo, that plaintiffs had complied with the procedural requirements of the Tort Claims Act by filing a valid notice of intention within ninety days, the instant action is still barred because of plaintiffs' failure to commence their suit within two years of the accrual of the cause of action as required by Section 3409(c) of Title 33 of the Virgin Islands Code. Specifically, plaintiffs filed their complaint on August 12, 1982. This is more than three years after the accrual of their cause of action, which occurred on February 21, 1979, the date of the alleged tortious injury to plaintiffs' property.

Plaintiffs' suit is further barred by Title 5 V.I.C. Section 31(5)(A), which requires that an action for libel, slander, assault, battery, seduction, false imprisonment, or

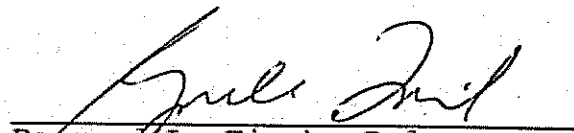
^{1/} Plaintiffs have filed with the Court a letter dated June 22, 1979, and addressed to Governor Juan Luis notifying the government of their intention to file a claim against the government pursuant to Title 33 V.I.C. §§3409, 3410. However, such notice was filed 121 days after plaintiffs cause of action had accrued.

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for any injury to the person or right of another not arising out of contract be commenced within two years after the cause of action shall have accrued.

Accordingly, plaintiffs have failed to comply with the procedural requirements of the Virgin Islands Tort Claims Act. Rule 12(b)(1) of the Federal Rules of Civil Procedure therefore authorizes dismissal of plaintiffs' complaint for lack of subject matter jurisdiction. For the foregoing reasons, the Court must dismiss the complaint.

DATED: April 20th 1983.


Raymond L. Finch, Judge