

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

CARMEN ORTIZ individually and as Personal
Representative of JESSE EMILE

Plaintiff,

v.

GOV. JUAN F. LUIS HOSPITAL and MEDICAL
CENTER, and the VIRGIN ISLANDS HOSPITALS
and HEALTH FACILITIES, DR. LLOYD HENRY,
Individually and in their capacities as employees of the
Hospital,

Defendants.

CASE NO. SX-04-CV-309

ACTION FOR MALPRACTICE

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendants' Motion to Dismiss Pursuant to FRCP 12(b)(6) ("Motion"), filed August 10, 2012; and Plaintiff's Motion and Memorandum in Support to Deny Defendants' Motion to Dismiss ("Opposition"), filed July 28, 2014.¹ For the reasons that follow, Defendants' Motion will be denied.

Plaintiff filed her Complaint, individually and on behalf of the estate of decedent Jesse Emile, on June 18, 2004, alleging medical malpractice arising from the care and treatment rendered to him while a patient at Gov. Juan Luis Hospital ("Hospital"). Following a car accident on or about March 24, 2002, decedent was transported to Puerto Rico for medical care. Complaint, ¶7. Approximately two months later, on or about May 14, 2002 decedent was discharged and returned home to St. Croix where he was admitted to the Hospital. *Id.* ¶9. He received treatment from Dr. Lloyd Henry, as well as several other Hospital staff members who have not been identified, until his death on June 20, 2002. *Id.* ¶10.

Plaintiff alleges that the named Defendants engaged in medical malpractice, to wit: Defendants "... failed to properly diagnose and treat [Jesse Emile's] injuries..." (Complaint, ¶10).

¹ Defendants filed a Motion to Dismiss John Doe Defendants on August 10, 2012 which was granted by Order entered June 20, 2014. The caption has been amended accordingly.

These actions, including the "...failure to properly monitor his condition, failure to properly administer the correct type and dosage of antibiotic and other medicine, and failure to properly clean his wounds" (Complaint, ¶10) "... fell below the care and skill ordinarily exercised by healthcare providers in the Virgin Islands" (Complaint, ¶11) and proximately led to his death (Complaint, ¶13).

Defendants move to dismiss Plaintiff's Complaint on the basis that "...the instant complaint shows that plaintiff has failed to comply with the minimum requirements stated in *Ashcroft v. Iqbal*... and by *Twombly*." Motion, 8. Defendant claims that Plaintiff's Complaint lacks sufficient facts "...to conclude that the alleged conduct worked a detrimental effect on plaintiff." *Id.* According to Defendants, "... Plaintiff's right for relief against the appearing defendants does not rise 'above the speculative level.'" *Id.* 9. As a result, "Defendants are forced to speculate as to why Plaintiff believes they are negligent." *Id.* 10.

Plaintiff responds by arguing that "...Plaintiff is not required to prove his claim in the Complaint. The Plaintiff is only required to plead sufficient facts to show a legitimate claim." Opposition, 3. Plaintiff asserts that her Complaint contains sufficient facts to support a claim for medical malpractice, demonstrating that Plaintiff will be able to produce evidence to eventually fully substantiate his claim. *Id.* 4. Plaintiff claims that Defendants are "...proposing a level of factual allegations in the Complaint that is beyond the level that makes a Complaint sufficient to withstand a Motion to Dismiss." *Id.* 5.

DISCUSSION

Defendants' Motion is premised upon Federal Rule of Civil Procedure 12(b)(6), applicable pursuant to Superior Court Rule 7.² A defendant may move to dismiss a complaint for "failure to

² "While Superior Court Rule 22 provides that '[a] civil action is commenced by filing a complaint with the court,' no Superior Court rule establishes any standards with respect to the contents of a complaint. Accordingly, Federal Rule of Civil Procedure 8(a)(2) is applicable to civil actions in the Superior Court through Superior Court Rule 7." *Joseph v. Bureau of Corrections*, 54 V.I. 645, 649, n.5 (V.I. 2011)

state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). The United States

Supreme Court has established a heightened pleading standard for all civil complaints:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss.

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007) (internal quotation marks omitted).

The Supreme Court of the Virgin Islands has articulated a three-prong analysis in reviewing motions to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6):

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.

Joseph v. Bureau of Corrections, 54 V.I. at 649-650 (internal quotations and citations omitted).

Addressing the first prong of the required analysis, “[e]stablishing a claim of negligence requires the plaintiff to demonstrate that the defendant owed the plaintiff a legal duty, that the defendant breached that duty, and that the defendant’s negligence caused the plaintiff’s injury.”

Brady v. Cintron, 55 V.I. 802, 823 (V.I. 2011). Under the theory of *respondeat superior*, an employer is liable for the actionable negligence of its employee if the employee is acting in the

course and scope of his employment. To determine whether an employee acted in the course and scope of his employment, courts determine whether “...the employee's tort encompasses the type of action the employee was hired to perform ...” *Walker v. V.I. Waste Mngmt. Auth.*, 2014 V.I. LEXIS 58 (V.I. Super. August 7, 2014)³ and whether the act “occurs substantially within the authorized time and space limits.” *Williams v. Rene*, 72 F.3d 1096, 1100 (3d Cir. 1995) (citing RESTATEMENT (SECOND) AGENCY § 228(1)(a)–(b)).

Having taken note of the elements Plaintiff must sufficiently plead to state a claim against the Hospital and Dr. Henry, the Court next identifies those allegations of Plaintiff's Complaint that constitute sufficient facts to survive a motion to dismiss compared to either legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement, which are not entitled to the assumption of truth..

Here, Plaintiff has sufficiently pled the following facts relevant to establishing a negligence claim: Dr. Henry was employed by the Hospital at the time this incident occurred and that his interactions with the decedent were in the course and scope of his employment with the Hospital (Complaint, ¶6); that a duty of care exists for the Hospital and its staff to properly treat a patient pursuant to commonly accepted medical standards (Complaint, ¶11); that while decedent was admitted to the hospital he did not receive the required care, i.e. Defendants failed “to properly monitor his condition...,” did not properly administer the correct medication and did not properly clean his wounds (Complaint, ¶10). Therefore, Defendants breached that duty of care by their acts and omissions, which breach resulted in decedent's death. Complaint, ¶13.

While Plaintiff applies certain legal labels (“as a direct and proximate result of the

³ The Court conducted a “*Banks* analysis” in the referenced case and adopted RESTATEMENT (SECOND) OF AGENCY § 219 as the best rule for the Virgin Islands regarding the theory of *respondeat superior*.

Defendants' conduct, Emile endured pain and suffering, mental anguish and then died"), certain facts do not need to be expanded on to outline the basic elements of a negligence claim and give Defendants sufficient notice to properly defend themselves. Based on Plaintiff's Complaint, assuming the veracity of Plaintiff's well-pleaded facts, the Complaint plausibly gives rise to entitlement to relief for medical malpractice.

On the basis of the foregoing, it is hereby

ORDERED that Defendants' Motion to Dismiss Pursuant to FRCP 12(b)(6) is DENIED.

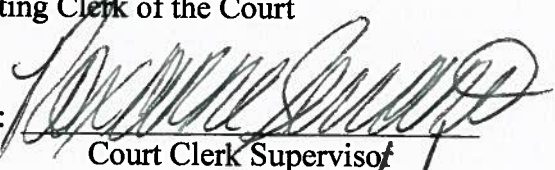
It is further

ORDERED that Plaintiff and Defendants shall meet and confer and jointly submit a proposed scheduling order within twenty-one (21) days following the entry of this Order, to include dates for completion of all fact and expert discovery, mediation, dispositive motions, and trial to be scheduled within 240 days.

Dated: August 31, 2015.


DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

9/1/15

CERTIFIED A TRUE COPY

DATE: Sept. 1, 2015
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: 
COURT CLERK II