

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

COLLISTER MCKINLEY FAHIE,	)	
	)	CASE NO.: ST-16-CV-638
Plaintiff,	)	
v.	)	ACTION FOR FRAUD,
	)	DEFAMATION, INJURIOUS
	)	FALSEHOOD, CONSPIRACY,
DWIGHT B. FERGUSON, SR. and MONIQUE	)	INENTIONAL INFLICTION OF
VANTERPOOL-CHETRAM,	)	EMOTIONAL DISTRESS
	)	
Defendants.	)	JURY TRIAL DEMANDED
_____	)	
	)	
DWIGHT B. FERGUSON, SR. and MONIQUE	)	CASE NO: ST-16-CV-682
VANTERPOOL-CHETRAM,	)	
	)	ACTION FOR FRAUD,
Counterclaim-Plaintiffs,	)	DEFAMATION, INJUNCTIVE
v.	)	RELIEF
	)	
COLLISTER MCKINLEY FAHIE,	)	
	)	JURY TRIAL DEMANDED
Counterclaim-Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

Before the Court are Defendants/Counterclaim-Plaintiffs Dwight B. Ferguson, Sr. and Monique Vanterpool-Chetram's Motion to Strike Defendant's Answer & Counterclaim, which was filed on December 19, 2016, and Defendants/Counterclaim-Plaintiffs Dwight B. Ferguson, Sr. and Monique Vanterpool-Chetram's Motion to Strike Defendant's Answer and Counterclaim filed on January 20, 2017, which was filed on February 9, 2017. A response and reply have been filed for both motions to strike.

I. BACKGROUND

On October 26, 2016, Collister McKinley Fahie, *pro se*, filed a Complaint for Fraud, Defamation, Injurious Falsehood, Conspiracy, and Intentional Infliction of Emotional Distress ("Complaint") against Dwight B. Ferguson, Sr. and Monique Vanterpool-Chetram. The action was docketed under Case Number ST-16-CV-638. In response to the complaint, Dwight B. Ferguson, Sr. and Monique Vanterpool-Chetram, proceeding *pro se*,¹ filed two separate documents: Defendants [sic] Answer & Complaint and Temporary and Permanent Injunction Relief Request.

Instead of both responses being docketed together, Ferguson, Sr. and Vanterpool-Chetram's Temporary and Permanent Injunction Relief Request was docketed as a new action

¹ On December 12, 2016, Attorneys Christopher Allen Kroblin and Marjorie Whalen (Kellerhals Ferguson Kroblin PLLC) filed a Notice of Appearance of Counsel on behalf of Ferguson, Sr. and Vanterpool-Chetram.

under Case Number ST-16-CV-682.² Fahie filed an Answer to Plaintiff's Action for Temporary and Permanent Injunction and Counterclaim for Temporary and Permanent Injunction Enjoining the USVI Soccer Association and Defendant's Request for an Order Requiring the Office of the Lieutenant Governor to Correct the Governmental Record on November 28, 2016. Fahie's Answer prompted Ferguson, Sr. and Vanterpool-Chetram to file the first of two motions to strike because, as they argue, the request for injunctive relief is not a complaint or pleading that requires an answer.³

On January 20, 2017, Fahie filed an Answer and Counterclaim for Breach of Fiduciary Duty. According to Fahie, Ferguson, Sr. and Vanterpool-Chetram brought an action for breach of fiduciary duty on January 10, 2017.⁴ The Court's records reflect that only a Summons was issued on January 10, 2017 to Fahie, and the caption of the Summons read, "Action for Breach of Fiduciary Duty." In response to Fahie's January 20 Answer, Ferguson, Sr. and Vanterpool-Chetram filed their second motion to strike and argue that the January 20 Answer is redundant due to Fahie's previous answer to the request for injunctive relief.⁵

II. STANDARD

Rule 12(f) of the Virgin Islands Rules of Civil Procedure permits the Court, on motion or *sua sponte*, to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."⁶ Granting a motion to strike is strongly disfavored absent a strong reason for such.⁷ For instance, a motion to strike should be granted where "the allegations have no possible relation to the controversy and may cause prejudice to one of the parties."⁸ Also, a court should consider the liberal pleading standards of Rule 8 of the Virgin Islands Rules of Civil Procedure and the lack of a developed factual record at the early stages of litigation.⁹ Ultimately, "[a] decision to grant or deny a motion to strike a pleading is vested in the trial court's discretion."¹⁰

III. DISCUSSION

In their motions to strike, Ferguson, Sr. and Vanterpool-Chetram seek to have two separate responses filed by Fahie stricken from the record: (1) Answer to Plaintiff's Action for Temporary and Permanent Injunction and Counterclaim for Temporary and Permanent Injunction Enjoining

² On February 24, 2017, the Honorable Judge Dunston issued a Memorandum Opinion and Order consolidating Case No. ST-16-CV-638 and Case No. ST-16-CV-682 together, and those cases are now calendared together before the Court.

³ Mot. to Strike Def.'s Answer & Countercl. 1-2.

⁴ Answer and Countercl. for Breach of Fiduciary Duty 1.

⁵ Mot. to Strike Def.'s Answer and Countercl. Filed on January 20, 2017, 3-4.

⁶ V.I.R. Civ. P. 12(f).

⁷ See *Aoki v. Benihana, Inc.*, 839 F. Supp. 2d 759, 764 (D. Del. 2012) (quoting *Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893 (2d Cir. 1976)).

⁸ *U.S. v. Sea Winds of Marco, Inc.*, 893 F. Supp. 1051, 1056 (M.D. Fl. 1995).

⁹ See *Simmons v. Nationwide Mut. Fire Ins. Co.*, 788 F. Supp. 2d 404, 407 (W.D. Penn. 2011).

¹⁰ *Id.* (quoting *Snare & Triest v. Friedman*, 169 F. 1, 6 (3d Cir. 1909)).

the USVI Soccer Association and Defendant's Request for an Order Requiring the Office of the Lieutenant Governor to Correct the Governmental Record; and (2) Answer and Counterclaim for Breach of Fiduciary Duty.

The Court must consider the fact that Fahie is a *pro se* litigant when determining whether or not these documents should be stricken. Virgin Islands courts provide *pro se* litigants with "greater leeway in dealing with matters of procedure and pleading."¹¹ *Pro se* filings should be liberally construed, and the Court must "allow[for] reasonable accommodations for the *pro se* litigant so long as no harm is done [to] an adverse party."¹²

A. The Motion to Strike Defendant's Answer & Counterclaim.¹³

Ferguson, Sr. and Vanterpool-Chetram argue that Fahie's Answer to Plaintiff's Action for Temporary and Permanent Injunction is not a proper response because their request for injunctive relief was not a complaint as defined in Rule 8 of the Federal Rules of Civil Procedure.¹⁴ Further, since the request for injunctive relief is not a complaint, Ferguson, Sr. and Vanterpool-Chetram also argue that Fahie's counterclaims are improper because a party can only assert counterclaims in response to a complaint.¹⁵

Ferguson, Sr. and Vanterpool-Chetram's assertions are not without merit. Pleading is generally defined as "[a] formal document in which a party to a legal proceeding[] sets forth or responds to allegations, claims, denials, or defenses."¹⁶ However, Rule 7(a) of the Virgin Islands Rules provides an exclusive list of pleadings allowed in civil suits; a complaint, an answer to a complaint, and a counterclaim or crossclaim are forms of pleadings included in that list.¹⁷ Further,

¹¹ *Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011).

¹² *Smith v. Empls. of the Bureau of Corrections*, 64 V.I. 383, 392 (V.I. 2016) (Swan, J., concurring in part and dissenting in part) (quoting *Bernhardt v. Bernhardt*, 51 V.I. 341, 352 n.8 (V.I. 2009)).

¹³ The two motions to strike, along with the two separate cases, were filed prior to the adoption of the Virgin Islands Rules of Civil Procedure. Where an action was pending on the effective date of the Virgin Islands Rules, Rule 1-1 requires that the Court make "an express finding that applying them in a particular previously-pending action would be infeasible or would work an injustice." Seeing no difference between the Federal Rules and Virgin Islands Rules pertaining to the matter at hand, the Court finds that the Virgin Islands Rules apply here.

¹⁴ Mot. to Strike Def.'s Answer & Countercl. 1-2.

¹⁵ Mot. to Strike Def.'s Answer & Countercl. 1-2.

¹⁶ Black's Law Dictionary (9th ed.).

¹⁷ V.I.R. Civ. P. 7(a) allows for only ten different pleadings:

- (1) complaint;
- (2) an answer to a complaint;
- (3) a counterclaim or crossclaim;
- (4) an answer to a counterclaim designated as a counterclaim;
- (5) an answer to a crossclaim;
- (6) a third-party complaint;
- (7) an answer to a third-party complaint;
- (8) if the court orders one, a reply to an answer;
- (9) a complaint in intervention; and
- (10) an answer to a complaint in intervention.

Rule 8(b)(1)'s language explains that a response to a complaint, counterclaim, or crossclaim is designated as an answer: "In responding to a complaint, counterclaim, crossclaim or third-party complaint[,] a party's *answer* must respond separately to the corresponding paragraphs of the pleading being answered."¹⁸ Rule 13 also refers to compulsory and permissive counterclaims, as well as crossclaims, as pleadings.¹⁹ It is clear that pleadings and responsive pleadings within the context of civil suits are meant to be filed in the initial stages of a litigation and not as independent motions throughout the course of that litigation.

However, when *pro se* litigants choose to navigate the legal system themselves, the Court must ensure that they receive a fair chance at having their issues and arguments be heard. Though Fahie's response to the request for injunctive relief is titled and structured as an answer that includes counterclaims, the document, in part, provides substantive arguments as to why the request for injunctive relief should be denied.²⁰ Further down, the document requests that the Court grant a preliminary injunction for Fahie and provides supporting arguments.²¹ Lastly, the document requests that the Court order that the Office of the Lieutenant Governor "correct the governmental record as it pertains to [United We Stand] in accordance with the law."²²

The Court concludes that Fahie's Answer to Plaintiff's [sic] Action for Temporary and Permanent Injunction is not a Rule 7(a)(2) answer but is instead a mixture of different filings combined into a single lengthy document. Paragraphs 2 through 53 incorporates Fahie's recitation of facts.²³ Paragraphs 54 through 61 provide arguments against Ferguson, Sr. and Vanterpool-Chetram's request for injunctive relief.²⁴ Paragraphs 62 through 69 make a separate request for injunctive relief on behalf of Fahie.²⁵ Finally, paragraphs 70 through 92 appear to seek an order requiring that the Office of the Lieutenant Governor correct the governmental record.²⁶ Therefore, the Court finds that fairness and justice require that Fahie's document be treated as (1) a response to Ferguson, Sr. and Vanterpool-Chetram's request for injunctive relief, (2) a motion for injunctive relief, and (3) a motion to correct the governmental records of the Office of Lieutenant Governor.²⁷

Having determined that Fahie's document is not a Rule 7 answer, the Court determines that Ferguson, Sr. and Vanterpool-Chetram's motion to strike the document must be denied. Rule 12(f)

¹⁸ V.I.R. Civ. P. 8(b)(1) (emphasis added).

¹⁹ V.I.R. Civ. P. 13.

²⁰ Answer to Pl.'s [sic] Action for Temporary and Permanent Inj. and Countercl. for Temporary and Permanent Inj. Enjoining the USVI Soccer Association and Def.'s Req. for an Order Requiring the Office of the Lieutenant Governor to Correct the Governmental Record 10-12.

²¹ Answer to Pl.'s [sic] Action 12-13.

²² Answer to Pl.'s [sic] Action 13-19.

²³ Answer to Pl.'s [sic] Action 2-10.

²⁴ Answer to Pl.'s [sic] Action 10-12.

²⁵ Answer to Pl.'s [sic] Action 12-13.

²⁶ Answer to Pl.'s [sic] Action 13-19.

²⁷ *Cf. Bond v. ATSI/Jacksonville Job Corps Center*, 811 F. Supp. 2d 417, 421 (D.D.C. 2011) ("[T]he Court will deny plaintiff's motion to strike, but will consider the substantive arguments made therein . . . as supplementing her opposition to defendants' dispositive motions.").

explicitly allows the Court to strike material from a *pleading*; pleadings do not include motions, responses, oppositions, etc.²⁸ The separate suit began with the filing of Ferguson, Sr. and Vanterpool-Chetram's request for injunctive relief. Ferguson, Sr. and Vanterpool-Chetram clearly did not intend to file a new complaint;²⁹ therefore, the Court will not assume that Fahie intended to file an answer when he responded to the request for injunctive relief.

The Court will deny the December 19, 2016 Motion to Strike Defendant's Answer & Counterclaim.

B. The Motion to Strike Defendant's Answer and Counterclaim Filed on January 20, 2017.

In their second motion to strike, Ferguson, Sr. and Vanterpool-Chetram argue that Fahie's Answer and Counterclaim for Breach of Fiduciary Duty must be stricken because Fahie has already filed an answer to the Temporary and Permanent Injunction Relief Request and having two answers is redundant and confusing.³⁰

In the Answer and Counterclaim for Breach of Fiduciary Duty, Fahie asserts that "Plaintiffs merely attach[ed] a summons for Breach of Fiduciary duty to their 'Action for Temporary and Permanent Injunction,'" and states that Ferguson, Sr. and Vanterpool-Chetram brought this claim on January 10, 2017.³¹ It appears, though, that Fahie misunderstood the significance of the summons that was served upon him on January 10 given the caption of the summons: "Action for Breach of Fiduciary Duty." According to Ferguson, Sr. and Vanterpool-Chetram, the summons dated January 10 was for the Temporary and Preliminary Injunctive Relief Request.³² They have not asserted a claim for breach of fiduciary duty in either case.

Therefore, the Court concludes that striking Fahie's document completely from the record is necessary here given that its contents are immaterial and irrelevant to anything in the record of either case. Here, unlike Fahie's response to the request for injunctive relief, Fahie filed the Answer and Counterclaim for Breach of Fiduciary Duty as a Rule 7(a) answer. Retaining the answer when no claim for breach of fiduciary duty exists in a pleading in either case file would cause confusion in the record and would prejudice Ferguson, Sr. and Vanterpool-Chetram.

The Court will grant the Motion to Strike Defendant's Answer and Counterclaim Filed on January 20, 2017 that was filed on February 9, 2017.

²⁸ V.I.R. Civ. P. 12(f) ("The court may strike from a *pleading* . . .") (emphasis added). See *In re Bear Stearns Companies, Inc. Securities, Derivative, and ERISA Litigation*, 763 F. Supp. 2d 423, 581 (S.D.N.Y. 2011) (citing cases) (noting that motions, declarations, and exhibits are not "pleadings" within the meaning of Federal Rule of Civil Procedure 7(a)).

²⁹ They consistently assert that their request for injunctive relief is not a complaint under the Federal Rules of Civil Procedure. See Mot. to Strike Def.'s Answer & Countercl. 2-3.

³⁰ Mot. to Strike Def.'s Answer and Countercl. Filed on January 20, 2017, 2-4.

³¹ Answer and Countercl. For Breach of Fiduciary Duty 1.

³² Mot. to Strike Def.'s Answer and Countercl. Filed on January 20, 2017, 2.

IV. CONCLUSION

Since Fahie's Answer to Plaintiff's Action for Temporary and Permanent Injunction and Counterclaim for Temporary and Permanent Injunction Enjoining the USVI Soccer Association and Defendant's Request for an Order Requiring the Office of the Lieutenant Governor to Correct the Governmental Record is not a pleading under Rule 7(a) of the Virgin Islands Rules of Civil Procedure, the Court will not strike that document from the record. However, the Court will strike Fahie's Answer and Counterclaim for Breach of Fiduciary Duty from the record because the document is immaterial and irrelevant given that no claim for breach of fiduciary duty was ever pleaded in either case. Accordingly, it is hereby

ORDERED that Defendants/Counterclaim-Plaintiffs Dwight B. Ferguson, Sr. and Monique Vanterpool-Chetram's December 19, 2016 Motion to Strike Defendant's Answer & Counterclaim is **DENIED**; and it is further

ORDERED that Defendants/Counterclaim-Plaintiffs Dwight B. Ferguson, Sr. and Monique Vanterpool-Chetram's Motion to Strike Defendant's Answer and Counterclaim Filed on January 20, 2017 is **GRANTED**; and it is further

ORDERED that Plaintiff/Counterclaim-Defendant Collister McKinley Fahie's Answer and Counterclaim for Breach of Fiduciary Duty, filed on January 20, 2017, is hereby **STRICKEN** from the Court's record for Case No. ST-16-CV-682; and it is further

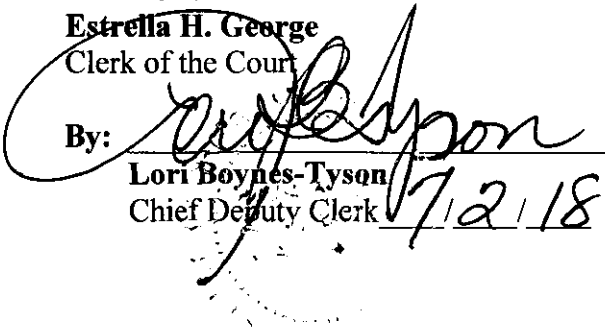
ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Collister McKinley Fahie, *pro se*, P.O. Box 301831, St. Thomas, VI 00803, and Attorneys Christopher Allen Kroblin and Marjorie Whalen (Kellerhals Ferguson Kroblin PLLC).

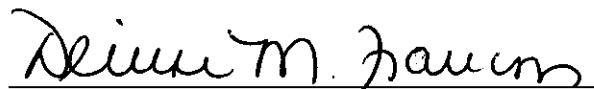
Dated: June 29, 2018.

ATTEST:

Estrella H. George
Clerk of the Court

By:


Lori Boynes-Tyson
Chief Deputy Clerk


DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands