

Plaintiff, Government Employees Retirement System of the Virgin Islands (“GERS”), is an agency created by the Virgin Islands Legislature to administer and oversee the retirement benefits for officers and employees of the Government of the Virgin Islands. *See generally*, 3 V.I.C. § 701, *et seq.* GERS initiated this debt action on June 2, 2016, against the Governor Juan F. Luis Hospital and Medical Center (“JFL”). The complaint alleges that JFL

owes GERS a total of \$7,143,485.55 for past due employer and employee retirement contributions, including interest and penalties, dating back to April 21, 2012. Compl. ¶¶ 8-10.

On June 28, 2016, Defendant filed a motion to dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(7), contending that JFL is not an entity that has the authority to sue or be sued and that GERS has failed to join a necessary and indispensable party in this lawsuit.

On July 29, 2016, GERS filed a motion seeking leave to amend the complaint to name the Government of the Virgin Islands ("Government") and the Virgin Islands Government Hospitals and Health Facilities Corporation ("VIGHHFC") as defendants in this case.

II. LEGAL STANDARD

When considering a Rule 12(b)(6) motion to dismiss, the Court must perform a three-step analysis. *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011). First, the Court must note the elements that must be pled to sufficiently state a claim. Second, the Court must identify the allegations that are not entitled to the assumption of truth because they are no more than mere conclusions. Finally, the Court must assume the veracity of well-pleaded factual allegations and then determine whether they could plausibly establish entitlement of relief. *Brady*, 55 V.I. at 823. Thus, "a motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." *Robles v. HOVENSA, L.L.C.*, 49 V.I. 491, 494 (2008) (citations omitted). Although the Court is required to accept as true all factual allegations, "unsupported conclusions and unwarranted inferences" are

not entitled to the presumption of truthfulness. *Schuylkill Energy Res., Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997). In deciding a Rule 12(b)(6) motion to dismiss, the Court may consider “the allegations contained in the complaint, exhibits attached thereto, and matters of public record.” *Beverly Enters., Inc. v. Trump*, 182 F.3d 183, 190 n.3 (3d Cir. 1999).

Defendant also argues that the complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(7). This rule permits a court to dismiss a complaint for failure to join a party under Rule 19. The relevant portions of Rule 19 provides:

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

- (A) in that person’s absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:
 - (i) as a practical matter impair or impede the person’s ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1). “If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.” Fed. R. Civ. P. 19(a)(3).

III. DISCUSSION

I. The Court will Dismiss JFL from this Case Because the Legislature has not Granted it with the Authority to Sue or be Sued

GERS initiated this complaint alleging that JFL failed to timely remit past due employer and employee retirement contributions. Under Virgin Islands law, covered

employees and employers must submit certain contributions to GERS as a mechanism to finance certain obligations of GERS. 3 V.I.C. § 718. For purposes of the retirement statute, an “employer” is defined as “the Government of the United States Virgin Islands and its agencies and instrumentalities including all autonomous and semiautonomous agencies of the Government of the Virgin Islands.” *Id.* at 702(c).¹ Section 736(b) of the retirement statute states “[w]henver any agency, department, instrumentality, or employer fails to make timely contributions, interest shall accrue on the amount of the contributions not paid based on [GERS’] domestic fixed income investment rate of return not to exceed the rate of 9%.” Paragraph 5 of the GERS’ complaint alleges that Defendant JFL “is an independent instrumentality of the Government of the Virgin Islands pursuant to 19 V.I.C. § 240 *et seq.*” Comp. ¶ 5. The crux of the Defendant’s argument is that JFL is neither an agency, department, nor instrumentality of the Government, and therefore, the complaint should be dismissed because GERS has failed to state a plausible claim for relief by failing to name or otherwise identify the proper defendant. Technically, Defendant is correct.

The status of JFL can best be characterized as a medical facility that is under the jurisdiction and control of the VIGHHFC. *See* 19 V.I.C. § 245(c). The Virgin Islands Legislature established the VIGHHFC as “a body corporate and politic constituting a public benefit corporation of the Government of the Virgin Islands.” *Id.* at § 243(a); *see also* 19 V.I.C. § 245(a) (providing that the VIGHHFC “is a public entity of the Government of the Virgin Islands”). One of the major purposes for the creation of the VIGHHFC is to “provide quality,

¹ Similarly, “employee” is defined as “an official or employee in the service of the employer who is employed by the employer for compensation.” 3 V.I.C. § 702(e).

comprehensive health care through the efficient management of hospitals and health facilities.” *Id.* at § 242(a). The VIGHHFC is to be governed and administered by a fifteen-member Board of Directors. *Id.* at § 243(a). The VIGHHFC is also to be comprised of two district governing boards: one for the District of St. Croix and one for the District of St. Thomas-St. John. *Id.* at § 243(g).² The VIGHHFC also has the power to delegate to the District Governing Board the authority to run “the day-to-day operations of the respective district health facilities . . .” *Id.* at § 244(k). Finally, the VIGHHFC employs and removes, through the District Governing Boards, the Chief Executive Officers who serves as the head for each hospital. *Id.* at §§ 244(h), 244a.

The Legislature explicitly granted the VIGHHFC with the power to “sue and be sued subject to the limitations of existing law applicable to the Government of the Virgin Islands.” 19 V.I.C. § 244(a). Additionally, the Legislature authorized the VIGHHFC to “manage, operate, superintend, control, and maintain the hospitals and health facilities of the Government of the Virgin Islands in partnership with the Government.” *Id.* at § 244(e). Most relevant to the pending motion, section 245(c) of title 19 provides:

The [VIGHHFC] shall have jurisdiction over the Governor Juan F. Luis Hospital and Medical Center, the St. Thomas Hospital and Community Center, and the Myrah Keating Health Center; and all personnel and equipment associated therewith.

19 V.I.C. § 245(c) (emphasis added).

² Pursuant to 19 V.I.C. § 244(j), the Board of Directors for the VIGHHFC formulates and determines hospital policy and planning for health care delivery at the territorial level. The District Governing Boards formulate and determine hospital policy and planning for health care delivery for their respective districts “consistent with the hospital policy and planning established by the Board of Directors for the Territory.”

Ordinarily, when the Legislature seeks to authorize an agency created by statute to have the power to sue and be sued, it has expressly done so. *See, e.g.*, 29 V.I.C. § 496(d) (establishing the Virgin Islands Waste Management Authority as an autonomous instrumentality of the Government of the Virgin Islands with the power “to sue and be sued in its corporate name”). Similarly, the Legislature has also explicitly pronounced when a public corporation is to have a legal existence separate and apart from the government. *See, e.g.*, 29 V.I.C. § 541 (establishing the Virgin Islands Port Authority as a public corporation and autonomous governmental instrumentality for the Government of the Virgin Islands and as “a corporation having legal existence and personality separate and apart from the Government and the officers controlling it”); *see also* 29 V.I.C. § 1101(a) (creating the Virgin Islands Economic Development Authority as “a semi-autonomous governmental instrumentality” and “a public corporation having legal existence and personality separate and apart from the Government”). Furthermore, all departments of the Government are specifically identified as such in that department’s enabling legislation. *See, e.g.*, 3 V.I.C. § 91 (providing that the Department of Education is an “executive department in the Government of the Virgin Islands”); 3 V.I.C. § 171 (providing that the Department of Finance is an “executive department in the Government of the Virgin Islands”).

This Court was able to find only one provision in the Virgin Islands Code that refers to a hospital under the jurisdiction of the VIGHHFC as an “instrumentality” of the Government. Title 3, section 530 of the Virgin Islands Code authorizes a regular employee of the Government to appeal a decision made by the head officer of an executive department, agency, or instrumentality of the Government to dismiss, suspend, or demote that employee.

Section 530(a)(2) defines “head officer” as “the Commissioner of an executive branch department, the director of an executive branch agency or instrumentality or the director, executive director, chief executive officer, president or other titular head of an instrumentality of the Government of the Virgin Islands.” Section 530(a)(2)(B)(ix) defines “instrumentality of the Government” to include “a hospital under the jurisdiction of the [VIGHHFC].” Notwithstanding the language in section 530, there is no indication that the Legislature authorized JFL to sue or be sued in its own name in a civil action or that it was established as having a legal existence separate and apart from the VIGHHFC or the Government. Rather, it appears that JFL is a public healthcare facility that is managed, operated, and controlled by the VIGHHFC in partnership with the Government. *See* 19 V.I.C. § 241(g) (defining “health care facilities” or “health facilities” as “the hospitals and clinics under the jurisdiction of the [VIGHHFC]”). Thus, because JFL is a public healthcare facility without the authority to sue or be sued and not having a recognized legal existence, it cannot properly be named as defendant in this lawsuit. *See, e.g., LaCedra v. Donald W. Wyatt Det. Facility*, 334 F. Supp. 2d 114, 132 (D.R.I. 2004) (“In initially naming the [Donald W.] Wyatt Facility, Plaintiff mistakenly made the name of a building, a non-existent entity, a defendant in this case.”). The Court will, therefore, grant Defendant’s motion and dismiss JFL from this lawsuit.

II. The Court will Permit GERS to Amend the Complaint to Name the VIGHHFC and the Government as Defendants in this Action

Despite the fact that GERS named the wrong entity, the Court must provide GERS with the opportunity to cure this deficiency. *See Philips v. County of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008) (“In the event a complaint fails to state a claim, unless amendment would be

futile, the court must give a plaintiff the opportunity to amend her complaint.”). Shortly after Defendant filed the motion to dismiss, GERS filed a motion to amend the complaint to add the Government and the VIGHHFC as defendants in this matter. Superior Court Rule 8 provides that “[t]he court may amend any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial.” The Supreme Court has explained that “such amendments are not as of right, but are vested in the sound discretion of the Superior Court.” *Harvey v. Christopher*, 55 V.I. 565, 577 (V.I. 2011). Case law interpreting Federal Rule of Civil Procedure 15(a) has typically guided the Superior Court in the application of this discretion. *Peters v. V.I. Water & Power Auth.*, 58 V.I. 49 (V.I. Super. Ct. 2013). “Under Federal Rule of Civil Procedure 15(a), courts should freely grant leave to amend a complaint, ‘when justice so requires.’” *Adams v. North West Co., Inc.*, 63 V.I. 427, 452 (V.I. Super. Ct. 2015) (citing FED. R. CIV. P. 15(a)). This standard is a liberal one, guided by the long-standing policy that claims should be tested on their merits. *Forman v. Davis*, 371 U.S. 178, 182 (1962); *Marshall v. Sielaff*, 492 F.2d 917, 918 (1974) (“The policy of the law is to favor the hearing of a litigant’s claim on the merits.”). “In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules requires, be ‘freely given.’” *Id.*

Defendant has not asserted any reason why the Court should deny GERS’ request to amend the complaint. In fact, throughout its dismissal motion, Defendant recognizes that the proper defendant in this case is either the Government, the VIGHHFC, or both. *See* Def.’s

Memo of Law in Support of Mot. to Dis. at 7 (“Plaintiff cannot be awarded any relief in this matter without the inclusion of the Government of the Virgin Islands and/or the [VIGHHFC] as a defendant.”). GERS filed the original complaint on June 2, 2016 and filed the motion to amend the complaint on July 29, 2016, approximately one month after Defendant filed its dismissal motion. The Court finds that none of the apparent or declared reasons which would justify a denial of a motion to amend the complaint are present in this case.

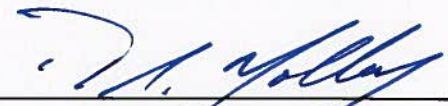
Additionally, the Court takes judicial notice that the Legislature annually appropriates money from the General Fund to the VIGHHFC to fund the operating expenses of the two hospitals under its jurisdiction. *See, e.g.*, Act No. 7782 (providing for the appropriation of \$42,621,392 to the VIGHHFC from the General Fund for fiscal year 2016 operating expenses; \$20,148,874 for the operations of the Governor Juan F. Luis Hospital and Medical Center and \$22,472,518 for the operations of the Schneider Regional Medical Center). Virgin Islands law also requires that each District Board under the jurisdiction of the VIGHHFC establish and maintain separate bank accounts for the payment of expenses. *See* 19 V.I.C. § 261(a) (“Each District Board shall establish and maintain separate bank accounts and may make direct fiscal disbursement from such accounts to pay all necessary costs and obligations . . . The disbursements shall be made by the District Board pursuant to regulations issued by the Corporation.”); 19 V.I.C. § 261(b) (“Notwithstanding the establishment of separate bank accounts under this section, the Department of Finance shall continue to be responsible for the payrolls of the Governor Juan F. Luis and Roy L. Schneider Hospitals subject to the appropriation and allotment process.”). Thus, it appears that the legal entity responsible for making the employee and employer retirement contributions to

the GERS is the VIGHHFC, the Government, or both. Accordingly, the Court will grant GERS' motion to amend the complaint to name the VIGHHFC and the Government as defendants in this matter.

IV. CONCLUSION

For the reasons stated above, the Court will grant Defendant's motion to dismiss JFL as a defendant in this lawsuit. Because the Legislature has not authorized JFL to sue or be sued in a civil action, JFL is not a proper defendant in this case. However, the Court will grant GERS' motion to amend the complaint to name the VIGHHFC and the Government as defendants. Permitting GERS to amend the complaint to name the VIGHHFC and the Government moots any issues pertaining to whether GERS has failed to name any indispensable parties. An appropriate Order follows.

Dated: August 29, 2016



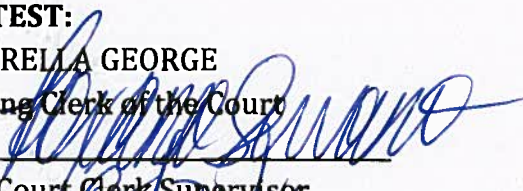
ROBERT A. MOLLOY

Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE

Acting Clerk of the Court

By: 

Court Clerk/Supervisor

Dated: 