

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

MERAL SMITH,

Plaintiff, SX-03-CV-719

v.

KENNETH E. MAPP, Governor of the Virgin Islands, in his official capacity, CLAUDE E. WALKER, Attorney General of the Virgin Islands, in his official capacity, CHARLES W. TURNBULL, in his individual capacity and IVER STRIDIRON, in his individual capacity,

CIVIL RIGHTS ACTION

Defendants.

MEMORANDUM OPINION

THIS MATTER is before the Court *sua sponte*.

For the reasons stated below, the Governor of the Virgin Islands and the Attorney General of the Virgin Islands, shall be dismissed for lack of subject matter jurisdiction. The case shall proceed against the remaining defendants— Charles W. Turnbull and Iver Stridiron.

BACKGROUND¹

In 1972, Meral Smith (hereinafter “Smith”) was convicted of the shooting deaths of eight people at the Fountain Valley Golf Course in St. Croix. He was sentenced to serve eight consecutive life sentences. On December 1, 2003, Smith originally filed a *pro se* complaint in the Superior Court against Iver Stridiron (hereinafter “Stridiron”)—the Attorney General of the Virgin Islands at the time of Smith's transfer and Charles W. Turnbull (hereinafter “Turnbull”)—the Governor of the Virgin Islands at the time of Smith's transfer — in both their official and

¹ The factual background was adopted from *Smith v. Turnbull*, No. 2005-187, 2011 U.S. Dist. LEXIS 40920, at *1 (D.V.I. Apr. 14, 2011) and *Smith v. Turnbull*, 54 V.I. 369, 372 (2010). This background is limited to the present issues related to this memorandum opinion. For a complete history of the case, refer to *Smith v. Emps. of the Bureau of Corr.*, 64 V.I. 383 (2016).

individual capacities, seeking money damages for alleged violations of his civil rights. On June 16, 2004, Smith filed an amended complaint suing Turnbull and Stridiron, in both their official and individual capacities under Title 42, Section 1983 of the United States Code (hereinafter “Section 1983”). 42 U.S.C. § 1983.

A hearing on the motions was scheduled on June 29, 2018. The Court arranged for Smith to appear by video conference at the June 29, 2018 hearing. However, because of technical difficulties, the June 29, 2018 hearing was continued *sine die*.

To clarify the record, the Court entered an Order *sua sponte* amending the caption to substitute the current Governor of the Virgin Islands Kenneth E. Mapp (hereinafter “Mapp”) in place of former Governor Charles W. Turnbull and to substitute current Attorney General of the Virgin Islands Claude E. Walker (hereinafter “Walker”) in place of former Attorney General Iver Stridiron as defendants because they are being sued in their official capacities. V.I. R. Civ. P. 25(d). V.I. R. Civ. P. 15-2. Turnbull and Stridiron are being sued in their individual capacities.

STANDARD OF REVIEW

“It is well established that a court may consider the issue of subject matter jurisdiction *sua sponte*.” *See Drayton v. Drayton*, 65 V.I. 325, 332 (V.I. 2016) (quoting *Virgin Islands Waste Management Auth. v. Bovoni Investments, LLC*, 61 V.I. 355, 363 (V.I. 2014)(internal quotation marks and citation omitted)); *see also Chavavez v. Buhler*, No. 2007-060, 2009 V.I. Supreme LEXIS 26, at *7 (V.I. June 25, 2009) (a court may consider the issue of subject matter jurisdiction *sua sponte*). “Prior considering the merits of a matter before it, a court is obligated to examine whether it has subject matter jurisdiction over the dispute.” *See Brunn v. Dowdye*, 59 V.I. 899, 904 (V.I. 2013) (citing *V.I. Gov’t Hosp. & Health Facilities Corp. v. Gov’t of the V.I.*, 50 V.I. 276, 279 (V.I. 2008). “The plaintiff always bears the burden of convincing the court, by a

preponderance of the evidence, that the court has jurisdiction.” *See Hypolite v. Francois*, 2013 V.I. LEXIS 27, *6 (V.I. Super. Ct. May 10, 2013). *See also James-St. Jules v. Thompson*, 2015 V.I. LEXIS 74, *7 (V.I. Super. Ct. June 25, 2015) (citing *Carpet Group Intern. v. Oriental Rug Importers Ass'n, Inc.*, 227 F.3d 62, 69 (3d Cir. 2000) (the burden of proving the existence of subject matter jurisdiction lies with the plaintiff). “If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *See* V.I. R. Civ. P. 12(h)(3).

DISCUSSION

I. Smith’s Section 1983 claims against the Governor of the Virgin Islands and the Attorney General of the Virgin Islands in their official capacities must be dismissed for lack of subject matter jurisdiction.

As previously mentioned, Smith is suing the Governor of the Virgin Islands and the Attorney General of the Virgin Islands in their official capacities. In his *pro se* amended complaint, Smith states that “this court has jurisdiction pursuant to 4 V.I.C. §76, *et. seq.*, and 42 U.S.C. §1983.” (Am. Compl. at 2). “Section 1983 allows a person to bring a suit against a public official in an individual capacity for the deprivation of any rights, privileges, or immunities secured by the Constitution and federal law.” 42 U.S.C. § 1983. *See Olive v. deJongh*, 57 V.I. 24, 40 (V.I. Super. Ct. 2012). “Under Section 1983, state officers may be held personally liable even for ‘official’ actions taken while in public office.” *Id.* (citing *Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991)).

However, “Congress did not intend to encompass a Territory among those ‘persons who could be exposed to § 1983 liability.’” *See Ngiraingas v. Sanchez*, 495 U.S. 182, 191-92, 110 S. Ct. 1737, 109 L. Ed. 2d 163 (1990). In *Ngiraingas*, the U.S. Supreme Court reasoned that “if Guam is not a person, neither are its officers acting in their official capacity.” *Id.* Like Guam, the U.S. Virgin Islands is a territory. Therefore, “[n]either the Territory of the Virgin Islands nor its

officers acting in their official capacities are ‘persons’ under 42 U.S.C. § 1983.” *See Hill v. De Jongh*, No. ST-10-CV-585, 2012 V.I. LEXIS 11, at *8-9 (V.I. Super. Ct. Apr. 19, 2012) (quoting *Brow v. Farrelly*, 994 F.2d 1027, 1037, 28 V.I. 345 (3d Cir. 1993)).

Consequently, “employees of a territory such as the Virgin Islands acting in their official capacities cannot be made defendants in a 42 U.S.C.S. § 1983 action because a territory [is] not a person as defined in § 1983.” *See Eddy v. V.I. Water & Power Auth.*, 955 F. Supp. 468, 471 (D.V.I. 1997). As a result, “government officials [such as Mapp and Walker] could be sued only in their individual capacities under [Section] 1983 for damages inflicted while performing their duties.” *See id.* Since Smith is suing Mapp and Walker in their official capacities under Section 1983, these claims must be dismissed for lack of subject matter jurisdiction.

II. This Court has subject matter jurisdiction over Smith’s Section 1983 claims against Turnbull and Stridiron in their individual capacities.

Smith is also suing Turnbull and Stridiron in their individual capacities under Section 1983 for official actions taken while they were in public office.

As previously mentioned, “Section 1983 allows a person to bring a suit against a public official in an individual capacity for the deprivation of any rights, privileges, or immunities secured by the Constitution and federal law.” 42 U.S.C. § 1983. *See Olive*, 57 V.I. at 40. “Under Section 1983, state officers may be held personally liable even for ‘official’ actions taken while in public office.” *Id.* (citations omitted).

Here, Turnbull and Stridiron are former public officials who can be sued in their individual capacities under Section 1983. Therefore, the final inquiry is whether this Court—a state court—has subject matter jurisdiction over Smith’s personal Section 1983 against Turnbull and Stridiron since 42 U.S.C. §1983 is a federal statute.

“In 1984, Congress amended the [Revised Organic Act] to provide the District Court of the Virgin Islands the entire jurisdiction of a District Court of the United States, and general original jurisdiction in all causes in the Virgin Islands not vested by law in the local courts.” 48 U.S.C. §§ 1612(a) & (b). *See H & O Food Warehouse, Inc. v. V.I. Pub. Fin. Auth.*, 70 F. App'x 611, 613 (3d Cir. 2003). “In 1991, the Virgin Islands Legislature exercised its power to vest local civil actions in the Territorial Courts, 4 V.I.C. § 76(a), and thereby divested the District Court of jurisdiction over all local civil suits. *Id.*

In 1991, “[w]ith the enactment of 4 V.I.C. § 76(a), the District Court of the Virgin Islands now has exclusive jurisdiction over all purely federal matters, and concurrent federal question and diversity jurisdiction.” *See Brow v. Farrelly*, 994 F.2d 1027, 1031 (3d Cir. 1993). “Local civil actions, in contrast, are within the exclusive jurisdiction of the Territorial Courts.” *See Club Comanche, Inc. v. Gov't of the V.I.*, 278 F.3d 250, 256 (3d Cir. 2002). “48 U.S.C. § 1612(a) vests the District Court with ‘the jurisdiction of a District Court of the United States,’ including ‘original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States,’ 28 U.S.C. § 1331, such as 42 U.S.C. § 1983.” *See Bryan v. Fawkes*, 61 V.I. 201, 220 n.9 (2014). 48 U.S.C. § 1612(a).

“In our federal system of government, state as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law.” *See Haywood v. Drown*, 556 U.S. 729, 731, 129 S. Ct. 2108, 2111 (2009); *see also O'Neill v. City of Phila.*, 32 F.3d 785, 798 (3d Cir. 1994) (state trial courts have concurrent jurisdiction over § 1983 suits). *See also Eugster v. Wash. State Bar Ass'n*, 198 Wash. App. 758, 780, 397 P.3d 131, 143 (2017)

(state courts hold concurrent jurisdiction with federal courts over claims under the federal constitution and 42 U.S.C. § 1983).

In *Haywood*, the Supreme Court explained that “[a]lthough § 1983, a Reconstruction-era statute, was passed ‘to interpose the federal courts between the States and the people, as guardians of the people's federal rights,’ *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972), state courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law.” *See id.* at 735 (quoting *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 506-507, 102 S. Ct. 2557, 73 L. Ed. 2d 172 (1982) (noting that “many legislators interpreted [§ 1983] to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief”)).

In the case at bar, a Section 1983 claim is not a purely federal matter within the original jurisdiction of the District Court. Therefore, this Court also has jurisdiction over Section 1983 claims against persons sued in their individual capacities. Therefore, Smith’s Section 1983 claims against Turnbull and Stridiron in their individual capacities are within this Court’s jurisdiction.

CONCLUSION

Based on the foregoing analysis, Smith’s Section 1983 claims against Mapp and Walker in their official capacities shall be dismissed for lack of subject matter jurisdiction. However, this Court has jurisdiction over Smith’s Section 1983 claims against Turnbull and Stridiron in their individual capacities. The Court will *sua sponte* grant Smith leave to amend the complaint for the sole purpose of removing the Section 1983 claims against the governor and the attorney general in their official capacities. V.I. Civ. P. 15-2. Turnbull and Stridiron will be required to

notify the court about whether they have retained private counsel or whether they intend to proceed *pro se*. An Order consistent with this Memorandum Opinion follows.

DATED this 20 day of August, 2018.

ATTEST:

Estrella H. George
Acting Clerk of the Court



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By:



Court Clerk Supervisor

Dated:

8/20/18