

NOT FOR PUBLICATION

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

VERONICA STEVENS,

Plaintiff/Counter Defendant, SX-14-CV-456

v.

ZERA LOUISE A/K/A ZERA EUGENE,

Defendant/Counter Plaintiff. ACTION FOR DAMAGES

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff/Counter Defendant Veronica Stevens's (hereinafter "Stevens") Motion to Dismiss Complaint filed on October 13, 2015. Counter Plaintiff has not responded to this Motion, nor has there been a Request for leave of the Court for an Extension to respond to this Motion. For the reasons stated below, the Court will grant the Counter Defendant's Motion.

FACTS AND PROCEDURAL HISTORY

Stevens is the former mother in law of Zera Louise a/k/a Zera Eugene (hereinafter "Eugene"). Eugene is a member of the Virgin Islands National Guard. In 2004, Eugene was notified that she was being deployed overseas. Stevens alleges in her complaint that Eugene asked her to care for the minor children while she was on deployment. Stevens denies this fact stating that the children, while living with Eugene, were in the custody of their father Thomas Eugene.

Stevens states that Eugene was granted permission through the U.S. Immigration and Customs Enforcement agency to remain in the Virgin Islands for the specific purpose of caring for the children while Eugene was deployed. Steven alleges that Eugene agreed to provide Stevens with \$800.00 that is designated as the housing allowance by the National Guard. Steven further alleges that no payments were made to her during the course of Eugene's deployment and upon Eugene's return to the Virgin

Islands no money has been paid to date. Stevens contacted the National Guard in order to inquire as to the allowance and when she would receive payment, to which she has had no resolution.

Stevens filed an action for debt and breach of contract claim at the Superior Court on November 26, 2014. In Eugene's answer she also filed a Counterclaim on the basis of defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and punitive damages. Eugene argues that there was never an agreement made promising a housing allowance to Stevens and that Stevens has "continually harassed" her by going to her job and making malicious, unfounded complaints to Eugene's superiors at her place of Employment.

STANDARD FOR MOTION TO DISMISS

In ruling on a motion to dismiss for failure to state a claim for relief, the Superior Court must apply the three-step analysis that requires that it:

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.¹

DISCUSSION

It is Steven's contention that Eugene's Counterclaim fails to plead any supporting facts to support her claims of claim of defamation *per se*, intentional infliction of emotional distress, or negligent infliction of emotional distress.

¹ *Fleming v. Cruz*, 62 V.I. 702, 713-714 (2015)

DEFAMATION

In the Virgin Islands, a claim of defamation requires: “(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Kendall v. Daily News Publ. Co.*, 55 V.I. 781, 787 (VI. 2011). In *Simpson v. Capdeville P.C.*, the Supreme Court explained that “because the First Amendment to the United States Constitution protects the freedom of expression in the Virgin Islands, a party cannot succeed on a defamation claim if doing so would infringe on this fundamental right.” 2016 V.I. Supreme LEXIS 11, *1 (2016). “A disparaging remark tending to harm someone in his business or profession fits within the definition of slander per se. Furthermore, a plaintiff so injured does not need to prove special harm to recover.” *Ross v. Bricker*, 770 F. Supp. 1038, 1042 (D.V.I. 1991) Eugene must provide sufficient factual matter which, when accepted as true, would state a claim to relief that is plausible on its face as required under these standards. *See Fleming v. Cruz*, 62 V.I. 702, 714 (VI. 2015).

A Court is unable to find that the statements are false where the Plaintiff has failed to identify the statements that are said to be libelous or defamatory. *See Int'l Islamic Cmty. of Masjid Baytulkhaliq v. United States*, 981 F. Supp. 352, 370 (D.V.I. 1997) In Count I of her Counterclaim, Eugene alleges that Stevens’s actions constitute defamation *per se* and that she has suffered and will continue to suffer future “loss of reputation, emotional damages, lost wages, lost benefits, loss of future earnings capacity, mental anguish, pain and suffering, and loss of enjoyment of life”. Counter Compl.¶10-13. Eugene however, has failed to identify any statements that were libelous or defamatory.

While under the Federal Rules of Civil Procedure Rule 8 does not require Eugene to make detailed factual allegations, she is required to assert “more than an unadorned, the-defendant-

unlawfully-harmed-me accusation.” A Plaintiff should not merely contain labels and conclusions, and baldly assert that the defendants' actions resulted in unlawful harm without the “factual enhancement[s]” needed in order to support such claims. *See Fleming v. Cruz*, 62 V.I. 702, 714 (2015). Eugene has failed to provide this court with any basis to determine whether there was even a disparaging statement to amount to slander per se. Based on Eugene’s failure to state a claim upon which relief could be granted the court will dismiss Count I for defamation.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

There has not yet been an established test in the Virgin Islands that a claimant must satisfy to successfully plead a claim for intentional infliction of emotional distress. The Courts have been charged with shaping the common law of the Virgin Islands by performing a “Banks analysis” in the absence of binding precedent. This analysis requires that court to determine (1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions; and (3) which approach represents the soundest rule for the Virgin Islands. *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (VI. 2011).

This Court finds that based on previous cases in the Virgin Islands, the Restatement Second of Torts § 46 has been applied as common law in the Territory. This section has been used in several cases in addressing an intentional infliction of emotional distress claim in the past. When looking at both minority and majority jurisdictions in order to determine what is being used, this Court finds that the majority jurisdictions also apply the Restatement (Second) of Torts § 46. This Court finds that this is the soundest rule of the Virgin Islands and is not against public policy.

A claim for intentional infliction of emotional distress requires a plaintiff to allege facts showing that the defendants engaged in extreme and outrageous conduct to intentionally or recklessly cause severe emotional distress to another. A defendant's conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. *Hill v. De Jongh*, 2012 V.I. LEXIS 11, *1 (V.I. Super. Ct. Apr. 19, 2012)

In explaining the extreme and outrageous element, the Restatement (Second) of Torts § 46 explains that

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability *has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.* Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt. Restat 2d of Torts, § 46 cmt.d (2nd ed. 1979) [emphasis added].

This Court finds that Eugene's assertion that Stevens has been continually harassing her, going to her job making unfounded complaints to her superiors at her employment is again, not enough to amount to extreme and outrageous without some supporting facts. Again, there must be "more than an unadorned, the-defendant-unlawfully-harmed-me accusation."² Eugene has failed to present anything to this court that amounts to going "beyond all bounds of decency and to be regarded as atrocious and utterly intolerable." Restat 2d of Torts, § 46 cmt.d.

Eugene has failed to provide this court with any basis to determine whether there was anything done amounting to the level of being extreme or outrageous in order to satisfy a crucial element for intentional infliction of emotional distress. Based on Eugene's failure to state a claim upon which relief could be granted the court will dismiss Count II.

² *Fleming v. Cruz*, 62 V.I. 702, 714 (2015)

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

The Restatement (Second) of Torts §313 provides that a person may be liable for negligent infliction of emotional distress

- (1) [i]f the actor unintentionally causes emotional distress to another, he is subject to liability to the other for resulting illness or bodily harm if the actor
 - (a) Should have realized that his conduct involved an unreasonable risk of causing the distress, otherwise than by knowledge of the harm or peril of a third person, and
 - (b) From facts known to him should have realized that the distress, if it were caused, might result in illness or bodily harm.
- (2) The rule stated in Subsection (1) has no application to illness or bodily harm of another which is caused by emotional distress arising solely from harm or peril to a third person, unless the negligence of the actor has otherwise created an unreasonable risk of bodily harm to the other. Restat 2d of Torts, § 313 (2nd ed. 1979)

Negligent Infliction of Emotional Distress liability is found where the defendant's negligent conduct inflicts only emotional distress, without resulting bodily harm or any other invasion of the other's interests. "Such emotional distress is important only in so far as its existence involves a risk of bodily harm, and as affecting the damages recoverable if bodily harm is sustained. *Hill v. De Jongh*, 2012 V.I. LEXIS 11, *15 (2012). Plaintiff does not allege that Defendant committed any physical harm to her nor that the actor caused the distress unintentionally. Accordingly, Plaintiff's claim for negligent infliction of emotional distress will be dismissed.

PUNITIVE DAMAGES

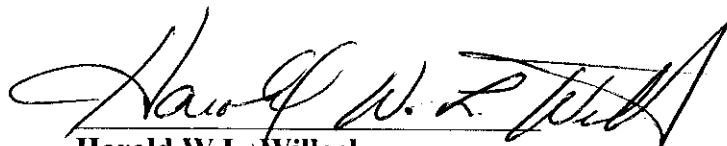
"Punitive damages is not a separate cause of action." *Bonelli v. Gov't of the V.I.*, 2015 V.I. LEXIS 29, *1 (V.I. Super. Ct. Mar. 19, 2015) "A plaintiff seeking punitive damages must demonstrate conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. The primary purpose behind punitive damages, compared to nominal or compensatory damages, is to punish the tortfeasor for outrageous conduct and to further deter him and others like him from similar conduct in the future." *Adams v. N. W. Co. Int'l*, 2015

V.I. LEXIS 123, *1 (V.I. Super. Ct. Oct. 6, 2015). Eugene has failed to state the supporting claims required in order to bring a claim for punitive damages therefore this claim is also dismissed.

CONCLUSION

Based on the foregoing reasons, the Court will grant Steven's Motion to Dismiss based on Counter Plaintiff's failure to state a claim in which relief could be granted. The Court will issue an Order consistent with this Opinion.

Dated: 6-13-16



Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:
Estrella George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 6/20/16