

DIVISION OF ST. THOMAS AND ST. JOHN

Defendants.

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) **CASE NO. ST-12-CV-733**

¹ *Santiago v. Warminster Tp.*, 629 F.3d 121, 130 (3d Cir.2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 881 (2009)).

A motion to dismiss a complaint should be denied if the factual allegations are “enough to raise a right to relief above the speculative level.”²

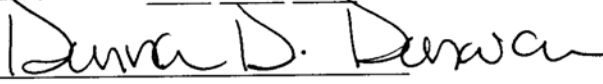
ANALYSIS

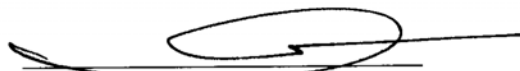
Defendant asserts that Count III of Plaintiff’s Complaint entitled “Punitive Damages” should be dismissed for failure to raise a claim upon which relief can be granted. A “claim for punitive damages is not a distinct cause of action and ... is ... improperly pled as a separate count.”³ Notwithstanding, the facts pled in Count III regarding punitive damages are repeated in the section of the Complaint where Plaintiff makes requests for relief. As the content of Count III appears to be surplusage, the Court will not dismiss Count III for failure to state a claim upon which relief can be granted and will not require the Complaint be amended. In addition, in his request for relief, Plaintiff has alleged enough facts⁴ in support of his claim for punitive damages that raise a plausible right of relief. Accordingly, Defendant’s motion will be denied.

An Order consistent with this Opinion will follow.

Dated: April 5, 2013

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor 5/8/2013


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

² *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d. Cir. 2008). See also *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

³ *McDonald v. Davis*, 2009 U.S. Dist. LEXIS 17309, at *55-56, 2009 WL 1117651 (D.V.I.2009) (citing *Urgent v. Hovensa, LLC*, 2008 U.S. Dist. LEXIS 77455, *31, 2008 WL 4526677 (D.V.I. Oct. 2, 2008)).

⁴ For instance, Plaintiff has alleged that Defendant constructed a wall, generator, and weatherhead within Plaintiff’s right of way and failed to remove the structures upon request.