

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

ELIZABETH ROSE SERVICE,	)	
	)	
Plaintiff,	)	CASE NO. ST-16-CV-280
	)	
vs.	)	
	)	
ALMOD DIAMONDS, LTD.,	)	ACTION FOR DAMAGES
JEWELRY EXCHANGE, INC. d/b/a	)	
DIAMONDS INTERNATIONAL and	)	
JEWELRY EXCHANGE, INC. d/b/a	)	
DIAMONDS INTERNATIONAL	)	JURY TRIAL DEMANDED
COLLECTION,	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Jewelry Exchange, Inc.’s Partial Motion to Dismiss Count II And Motion For More Definite Statement (filed July 16, 2016).¹ For the reasons set forth herein, Defendant’s Motion to Dismiss will be denied and Defendant’s Motion for More Definite Statement will be granted in part and denied in part.

Facts as Alleged

Plaintiff Elizabeth Rose Service became employed by Defendant Jewelry Exchange, Inc. on October 25, 2004. Pl.’s Compl. ¶ 9. Throughout her employment “she had to fight her way for promotions...” and in certain situations even worked without pay. *Id.* at ¶¶ 12-14. While other less-experienced employees advanced through the company, Plaintiff was never promoted above store manager. *Id.* at ¶¶

¹ Defendant filed a single motion addressing two separate issues.

25-26. Plaintiff complained to Human Resources and also directly to Defendants. *Id.* at ¶¶ 44, 47. Eventually Plaintiff's nine year career with Defendants ended after she had a dispute with a new employee who was promoted to a position above her, even though the new employee had only been with the company for two months. *Id.* at ¶¶ 43, 53-69.² Plaintiff—believing she faced discrimination as a “result of her religion, [and] national origin” *Id.* at ¶ 89—has filed a three count complaint with allegations of (1) discrimination, (2) breach of good faith and fair dealing (including breach of reasonable expectations as to fair treatment), and (3) wrongful discharge.

I. Defendant's Motion to Dismiss Count II of Plaintiff's Complaint

Defendant Jewelry Exchange moves to dismiss Count II of Plaintiff's complaint pursuant to Fed. R. Civ. P. 12 (b)(6) for failure to state a claim upon which relief can be granted. Defendant argues Plaintiff's claim for breach of good faith and fair dealing “must be dismissed because the claim necessitates an employment contract which did not exist and thus cannot be alleged in this case.” The Court disagrees.

“A Rule 12(b)(6) motion does not address the merits of the claim but merely tests whether the claim has been adequately stated in the complaint.” *Hans Lollik Corp. v. Gov't of the Virgin Islands*, 17 V.I. 220, 230 (VI. Terr. Ct. 1981). “To survive a motion to dismiss for failure to state a claim upon which relief can be granted, ‘a

² Plaintiff's complaint alleges Defendant Jewelry Exchange, Inc. is a wholly owned subsidiary of Defendant Almod Diamond, Ltd. ¶ 3-5. Plaintiff alleges she became an employee of Defendants on October 25, 2004. ¶ 9. There is no distinction in the dates of employment between the two defendants.

[pleading] must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Kiwi Constr., LLC. v. Pono*, No. ST-2013-CV-011, 2016 WL 213037, at *2 (VI. Super. Ct. Jan. 15, 2016) (alteration in original) (quoting *Ashcroft v. Iqbal*, 559 U.S. 662, 677 (2009)). “Determining whether a complaint states ‘a plausible claim for relief’ is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Molloy v. Gov’t of the Virgin Islands*, No. SX-15-CV-0000301, 2016 WL 3583332, at *2 (VI. Super. Ct. Jun. 23, 2016) (quoting *Ashcroft v. Iqbal*, 559 U.S. 662, 679 (2009)).

In making the plausibility determination, the Supreme Court of the Virgin Islands instructs that:

“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 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 the remaining facts are sufficient enough for the court to draw a reasonable inference that the defendant is liable based on the elements the plaintiff must plead, then the claim is considered plausible.

Clearview Fin. Serv. LLC. v. Jim Tillet Caribbean, Inc., No. ST-2014-CV-621, 2015 WL 5598922, at *2 (VI. Super. Ct. Sept. 14, 2015) (quoting *Brady v. Cintron*, 55 V.I. 802, 822-23 (2011)).

The implied covenant of good faith and fair dealing states that every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. *See, e.g., Bethea v. Merch. Comm. Bank*, Civ No. 11-51, 2014 WL 4413045, at *15 (D.VI. Sept. 8, 2014); *Magras v. De Jongh*, Civ No. 201-091, 2013 WL 692510, at *8 (D.VI. Feb. 26, 2013). “[T]he implied covenant of good faith and fair dealing may lie even in the absence of an express contract.” *Edwards v. Marriott Hotel Mgmt. Co.*, ST-14-CV-222, 2015 WL 476216, at *4 (VI. Super. Ct. Jan. 29, 2015). “A successful claim ... requires proof of acts amounting to fraud or deceit on the part of the employer.” *Chapman v. Cornwall*, 58 V.I. 431, 441 (VI. 2013) (internal quotation mark omitted). “Fraud means an intention to deceive, while deceit involves the act of intentionally giving a false impression.” *Hiss v. Comm. Sec. LLC, Inc.*, Civ No. SX-15-CV-104, 2016 WL 3092511, at *3 (VI. Super Ct. Apr. 08, 2016) (internal quotation marks omitted).

Defendant quotes *Greene v. Virgin Island Water and Power Auth.*, Civ No. 06-cv-11, 2011 WL 3032466, at *12 (D.VI. July 22, 2011) to correctly state “[w]ithout the existence of a contract, ‘any discussion of the duty of good faith and fair dealing is a blind alley.’” Def’s Mot. To Dismiss 4. In *Greene*, the plaintiff could not establish the existence of an employment contract—primarily because his employee manual specifically stated a contract did not exist, and his rights were unilaterally

modifiable.³ *Greene* at *12. However, our Plaintiff is distinguishable from the employee in *Greene* because neither party has suggested her rights were unilaterally modifiable in a similar way through an employee manual.

Instead, Plaintiff pleads that she became employed by the Defendants on October 25, 2004, she was employed for more than 10 years, received various promotions, conducted trainings, and at one point was even transferred to-and-from Alaska. These facts—entitled to the assumption of truth—show it is plausible there was at least an implied employment contract between the parties. Accordingly, even in the absence of an express contract, such employment would contain the implied covenant of good faith and fair dealing.

Plaintiff's complaint also shows it is plausible that this covenant of good faith and fair dealing was breached. Plaintiff alleges in some instances she “was falsely told no management positions were available” Pl.’s Compl. ¶ 30; her employer did not post certain management positions, and then promoted employees who were less-experienced, *Id.* at ¶ 38-42; and she was also deprived the benefit of being compensated like the other employees doing the same work. *Id.* at ¶ 20. Assuming these allegations as true—the Court is able to draw a reasonable inference that the Defendants had an intention to mislead, or an intention to give the Plaintiff a false

³ Consistently, “[c]ourts sitting in the Virgin Islands have held that, where an employer reserves to itself the absolute discretion to modify, amend or alter the rules without any input whatsoever from the employee, the employer's personnel policies are not intended to constitute an employment contract.” *Fraser v. Kmart Corp.*, Civ No. 2005-0129, 2009 WL 1124953, at *14 (D.VI. Apr. 24, 2009) (citing *James v. Indian Burgers*, 24 V.I. 67, 71 (VI. Terr. Ct. 1988)).

impression. Plaintiff has stated a plausible claim for relief, and therefore Defendant's Motion to Dismiss for Failure to State a Claim for Which Relief Can be Granted will be denied.

II. Defendant's Motion for More Definite Statement

Defendant moves pursuant to SUPER. CT. R. 31 for a More Definite Pleading. Defendant argues all three counts of the Plaintiff's complaint are vague and ambiguous, and therefore deprive the Defendant of a meaningful opportunity to accurately respond. The Court agrees in regards to Counts I and III, but not Count II.

A motion for a more definite pleading pursuant to Superior Court Rule 31 is governed by Rule 12(e) of the Federal Rules of Civil Procedure. SUPER. CT. R. 31. Rule 12(e) allows a party to "move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). The complaint must be written in such a way "that the defendant (1) has notice of all the allegations against them and (2) has a meaningful opportunity to reply so that they fairly respond to the substance of the allegation[s], thereby also subsequently placing the plaintiff on notice of the defendant's defenses, admissions, and denials." *George v. Wenhaven*, No. ST-12-CV-34, 2012 WL 5270924, at *3 (VI. Super. Ct. Sept. 29, 2012) (alteration in original) (internal quotation marks omitted).

Count I.

Defendant argues that Count I is deficient because the words “retaliated against” and “hostile work environment” were not used in a statutory context, thereby depriving Defendants from being able to properly prepare a defense. Defs Mot. Definite. Plead. 5.

For example, in Count I Plaintiff claims she was “discriminated against in violation of Chapters 10 V.I.C. and 24 V.I.C.” Pl.’s Comp. ¶ 88. She also alleges in Count I that “Plaintiff was retaliated against for complaining about being discriminated against.” *Id.* at ¶ 89. First, the Court must assume Plaintiff erred in her complaint, and instead of “chapters”, meant to cite Titles 10 V.I.C. and 24 V.I.C. Even so, Count I is still vague and ambiguous because Plaintiff cited to the entire title, without specifying which statutes in each title she is relying on. This does not give Defendants notice of all the allegations against them, or allow them to fairly respond. For example, in regards to the Plaintiff being “retaliated against,” Defendants will not know if they should prepare for her claim based on Title 10 or Title 24, or both. Additionally, both titles have numerous sections addressing retaliation.⁴ In addition, Count I does not have enough specificity to give defendants

⁴ For example, in *Frorup-Alie v. V.I. Hous. Fin. Auth.*, 2003 WL 23515136, at * 4 (D.VI. Oct. 26, 2003), the court stated 24 V.I.C. § 451(a) “does not provide a private cause of action.” However the Defendant would not know if they should assert this defense, because the motion does not specifically cite which provision of retaliation they are alleging.

notice of all the allegations against them and deprives them of meaningful opportunity to reply so that they “fairly respond to the substance of the allegations.” Therefore the motion for a more definite statement in regards to Count I will be granted.

Count II.

Defendant argues that Count II is deficient because Plaintiff’s claim for breach of good faith and fair dealing “does not reference any substantive law or legal code and it is therefore unclear whether these claims are based on contract law or common law.” Def’s Mot. Definite. Plead. ¶¶ 6-7. The Court finds the Defendant’s argument unpersuasive.

As stated above, Count II of Plaintiff’s complaint survives the Defendant’s motion to dismiss because she has sufficiently pleaded a plausible claim. Based on the standard presented in Part I, Defendant may fairly respond to the substance of the allegations in regards to breach of good faith and fair dealing. Therefore, the motion for a more definite statement in regards to the claim for breach of good faith and fair dealing will be denied.

Count III.

Finally, Defendant claims it cannot properly respond to Count III because Plaintiff claims she was “wrongfully discharged,” but does not give any legal basis of

her claim. Def's. Mot. Definite. Statement 7. Defendant argues Plaintiff's failure to cite a specific statute, prevents it from determining if Plaintiff's claim is based on "federal law or local statutes." *Id.* The Court agrees. For example, the complaint may be alleging that Plaintiff was wrongfully discharged under the Virgin Islands Wrongful Discharge Act (WDA), V.I. CODE ANN. tit. 24 §§ 76-79, or wrongfully discharged under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e—or both. While "wrongfully discharged" mirrors the title of the WDA, Plaintiff also uses language in her complaint that mirrors language from Title VII by stating "Plaintiff has been discriminated as a result of her religion, national origin..." Pl.'s Comp. ¶ 85.⁵

Even though "a claim under the WDA operates substantially the same as a claim alleging discrimination in termination under Title VII" *Galloway v. Islands Mech. Contr. Inc.*, Civ No. 2008-071, 2012 WL 3984891, at * 17 (D.VI. Sept. 11, 2012), Defendant contends it "would have the option of removal" *if* Plaintiff is alleging wrongful discharge under the federal statute. Def's Mot. Definite. Plead. 7. Under these circumstances, Plaintiff's use of the term "wrongful discharge" is too generic and ambiguous. Count III of Plaintiff's complaint does not give the Defendant notice of all the allegations against it and deprives it of meaningful opportunity to reply so

⁵ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-(2)(a) "It shall be unlawful...to discriminate...because of such individual's race, color, religion, sex, or national origin."

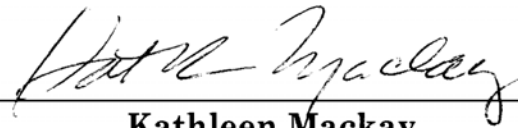
that it may “fairly respond to the substance of the allegations.” Therefore the motion for a more definite statement in regards to Count III will be granted.

III. Conclusion

The Motion To Strike will be denied. The Motion For More Definite Statement will be denied as to Counts I and III, but not Count II.

An Order consistent with this Memorandum Opinion will be entered.

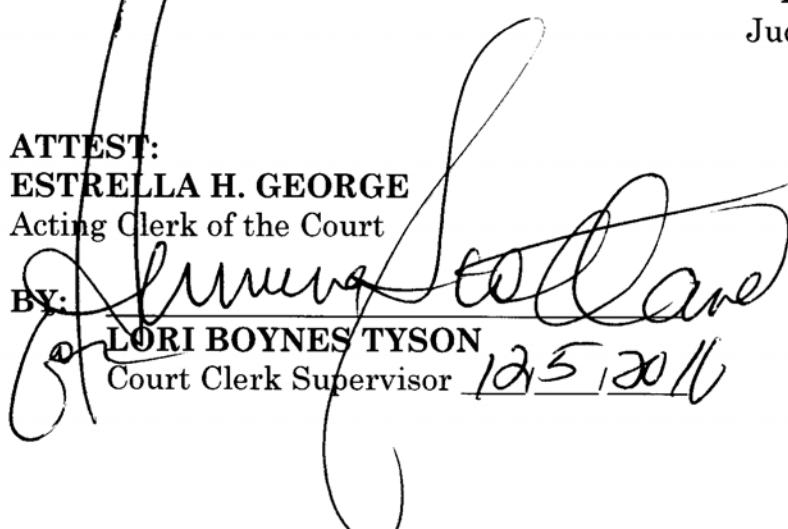
DATED: December 5, 2016



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:



LORI BOYNES TYSON
Court Clerk Supervisor 12/5/2016

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DIAMONDS INTERNATIONAL	)	JURY TRIAL DEMANDED
COLLECTION,	)	
Defendants.	)	
_____	)	

ORDER

THIS MATTER is before the Court on Defendant Jewelry Exchange, Inc.'s Partial Motion to Dismiss Count II And Motion For More Definite Statement and Plaintiff's Motion To Amend (filed July 16, 2016). In addition, Plaintiff's Motion To Amend Complaint to correct the name of Defendant Diamonds International is also before the Court. For the reasons set forth in the Memorandum Opinion entered on this day, it is hereby

ORDERED that Defendant's Motion to Dismiss is **DENIED**;

ORDERED that Defendant's Motion for More Definite Statement is granted in part and denied in part;

ORDERED that Defendant's Motion for More Definite Statement is **GRANTED** as to Counts I and III;

ORDERED that Defendant's Motion for More Definite Statement is **DENIED**
as to Count II;

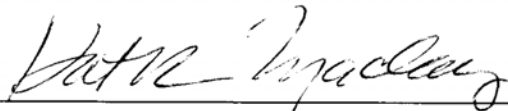
ORDERED that Plaintiff's Motion To Amend Complaint is **GRANTED** and
the First Amended Complaint is deemed filed as of this day and the caption is
amended as shown herein;

ORDERED that Plaintiff shall amend Counts I and III of her First Amended
Complaint;

ORDERED that Plaintiff shall file her Second Amended Complaint, as well
as a red lined version, by no later than **December 29, 2016**; and it is further

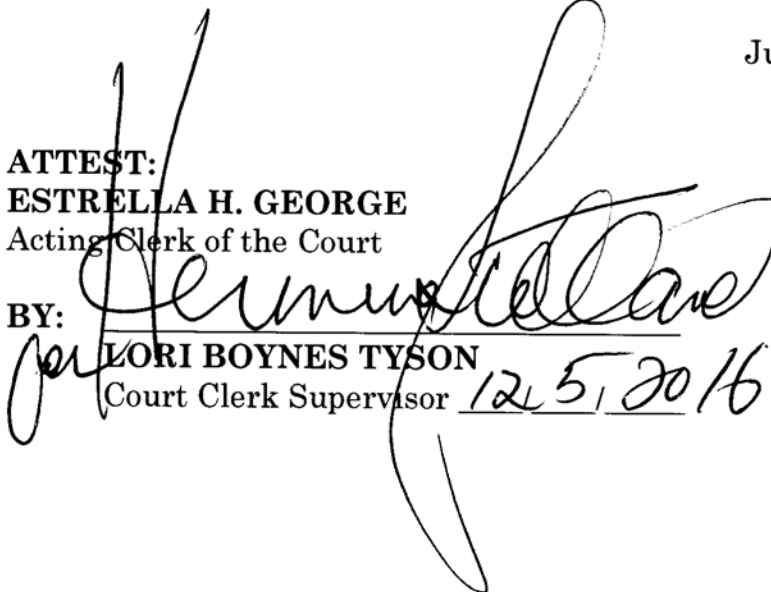
ORDERED that copies of this Order and the Memorandum Opinion shall be
directed to counsel of record.

DATED: December 5, 2016



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 
LORI BOYNES TYSON
Court Clerk Supervisor 12.5.2016