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

TITAN MEDICAL GROUP, LLC and TITAN NURSE STAFFING, LLC, Plaintiffs,	SX-13-CV-497
v.	SX-2013-CTO-00004
GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER and GOVERNMENT OF THE VIRGIN ISLANDS ex. Rel. GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, Defendants.	ACTION FOR BREACH OF CONTRACT

MEMORANDUM OPINION

THIS MATTER comes before the Court on Plaintiffs Titan Medical Group, LLC's ("Titan Medical") and Titan Nurse Staffing, LLC's ("Titan Nursing") (jointly "Titan") Motion for Summary Judgment and Incorporated Memorandum of Law ("Motion"), filed April 8, 2015; Defendants Governor Juan F. Luis Hospital and Medical Center's ("Hospital") and the Government of the Virgin Islands' ("Government") Opposition thereto ("Opposition"), filed May 15, 2015; and Plaintiffs' Reply to Defendants' Opposition ("Reply"), filed May 26, 2015. The Court also reviews Plaintiffs' Statement of Undisputed Material Facts ("Pl. SOF"), filed April 8, 2015.[1] For the reasons that follow, Titan's Motion for Summary Judgment will be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 23, 2010, the Hospital, acting through its Interim CEO, entered into a Staffing Agreement ("Agreement") with Titan, by which Titan would provide temporary medical and nursing staffing services. Pl. SOF ¶1. The Hospital was responsible only for selecting among the candidates pre-selected by Titan, who were then guaranteed weekly hours at a pre-determined hourly billing rate. *Id.* at

[1] The separate statement of material facts about which Titan contends there is no genuine issue was submitted pursuant to LRCIP 56.1(a)(1), applicable per SUPER. CT. R. 7. As Defendants have failed to respond to Plaintiffs' Statement of Undisputed Material Facts, the Court finds that the asserted facts are not disputed for purposes of summary judgment. LRCIP 56.1(d).

¶¶2, 3. Titan paid each staff member directly, including lodging, travel, and expenses, and would invoice the Hospital on a weekly basis, to be paid within 45 days of receipt, with a finance charge of 9% per annum on amounts outstanding for more than 60 days. *Id.* at ¶¶4-6. The Hospital stopped making timely payments on invoices sent from Titan in September 2012, and the Hospital stopped all payments to Titan in January 2013, but continued to provide services to the Hospital at the specific requests of the Hospital's then CEO and CFO until August 26, 2013. *Id.* at ¶¶8, 9.

The unpaid invoices represent the placement of 28 individual members of Titan's medical staff, exceeding 10,000 hours of professional services provided. *Id.*at ¶10. The principal amounts due on the unpaid invoices amount to $131,236.51 for Titan Medical and $659,930.28 for Titan Nursing. Through April 1, 2015, interest on the amounts to Titan Medical was in the sum of $21,322.85; and interest due to Titan Nursing was in the amount of $113,007.94. *Id.* at ¶11. As such, in the aggregate, the total amount owed to Titan as of April 1, 2015, including interest, was $925,497.58. *Id.* The Hospital has never disputed any of the outstanding invoices or denied the validity of the debt for services rendered. *Id.* at ¶12.

Plaintiffs' Complaint, filed December 27, 2013, named the Hospital and the Government as Defendants. Complaint, at ¶3. Plaintiffs allege that Defendants materially breached the Agreement by failing to pay for services provided by Titan. *Id.* at ¶¶18-20. Plaintiffs also allege that Defendants were unjustly enriched by the professional medical personnel services provided by Titan. *Id.* at ¶27. Plaintiffs request entry of judgment declaring Defendants' breach of the Agreement, awarding Plaintiffs amounts due under the Agreement, plus interest, expenses, finance charges, costs, and attorney's fees that Titan incurred as a result of the breach of the Agreement. *Id.* at ¶¶ a-e. In the alternative, Plaintiffs seek entry of judgment requiring Defendants to reimburse Plaintiffs the amount that Defendants were enriched by Plaintiffs' provision of professional services to Defendants. Defendants filed their Answer to the Complaint on June 19, 2014, admitting that the Hospital is an alter-ego/public entity of the Government and that the Government owns the Hospital, and that on or about June 23, 2010 Defendants entered into the Agreement with Titan to provide temporary clinical staffing and nursing services, which services Titan did provide. Answer, at ¶¶3, 6, 26.[2]

II. LEGAL STANDARD

A moving party will prevail on a motion for summary judgment where the record shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The Court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the Court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no unresolved genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing that there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The non-moving party then has the burden of "set[ting] out specific facts showing a genuine issue for trial." FED. R. CIV. P. 56(e). *See also Williams v. United Corp.*, 50 V.I. 191, 195 (V.I. 2008). As to

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[2] On December 29, 2014, the parties attended a mediation conference in this matter. By Mediation Report filed January 9, 2015, Mediator Henry C. Smock, Esq. reported that as the result of the mediation conference, "The conflict has been completely resolved. The parties are submitting a Stipulation Agreement and/or Notice of Dismissal." Thereafter, by Notice to the Court, filed February 12, 2015, Defendants' counsel advised that "The Mediation Settlement Agreement entered into by both Parties on December 29, 2014 was conditional and subject to the approval of the St. Croix District Governing Board." Further, "the St. Croix District Governing Board has not approved the Settlement and it appears unlikely that the Settlement will be approved by the St. Croix District Governing Board." As such, "the Parties are proceeding with discovery and preparation for trial."

materiality, "only those facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Williams*, 50 V.I. at 195 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248).

III. DISCUSSION

To state a claim for a breach of contract under Virgin Islands law, a plaintiff must allege: "(1) an agreement, (2) a duty created by that agreement, (3) a breach of that duty, and (4) damages." *Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 473 (V.I. 2013) (citing *Arlington Funding Services, Inc. v. Geigel*, 51 V.I. 118, 135 (V.I. 2009); *United Corp. v. Tutu Park, Ltd.*, 55 V.I. 702, 707 (V.I. 2011) (*see also Marcus v. BMW of America, LLC*, 687 F.3d 583 (3d Cir. 2012)).

A. <u>The Virgin Islands Government Hospitals and Health Facilities Corporation is not an indispensable party.</u>

Defendants dispute the existence of a contract. Opposition, at 9. Defendants aver that the Virgin Islands Government Hospitals and Health Facilities Corporation ("VIHHFC") is the only entity that can enter into a valid contract on behalf of the Hospital and that because VIHHFC is not a party to the Agreement, a valid and enforceable contract between Titan and the Hospital was never formed. *Id.* Defendants explain that the Hospital is not a corporation, and can only enter into contracts as delegated or authorized by VIHHFC. *Id.* Because Plaintiffs' claims relate to contractual obligations of the Hospital and because only VIHHFC can legally enter into contracts on behalf of the Hospital, VIHHFC is an indispensable party to the action, in the absence of which complete relief among the parties cannot be accorded. Therefore, Defendants assert, Plaintiffs' Complaint must be dismissed pursuant to FED. R. CIV. P. 19(a)(1)(A) (applicable per SUPER. CT. R. 7).

The burden is on Defendants to prove a party is necessary and indispensable. *Walsh v. Daly*, 2014 V.I. LEXIS 36, at *6 (V.I. Super. Ct. June 18, 2014), (citing *Richards v. Gov't of the V.I.*, 49 V.I. 1086 (D.V.I. 2008)). To support their contention that VIHHFC is an indispensable party and that a valid contract was never formed, Defendants direct the Court to *Hospital Resource Management, L.C. v. Governor Juan F. Luis Hospital & Medical Center, et al.*, Civil No. 2003-0056, slip opinion June 7, 2004 (D.V.I. 2004), an unpublished opinion, specifically designated as "not precedential."

Hospital Resource makes several findings in the context of a diversity jurisdiction analysis: 1) prior to 1994, the Virgin Islands Government owned and operated Virgin Islands public hospitals; as such, any claim against the Hospital was a claim against the Government of the Virgin Islands; 2) VIHHFC was created by V.I. CODE ANN. tit. 19, §§240-249 in 1995 wherein all management and operations responsibilities were transferred to VIHHFC by statute; and 3) ownership of the Hospital was never transferred to VIHHFC; thus, the Hospital remains a Government hospital. To conclude, *Hospital Resource* states:

> JFL Hospital is a health care facility owned by the Government without any separate, independent status, albeit under the primary control of the VIHHFC in *partnership* with the Government of the Virgin Islands. Therefore, in a suit against the JFL Hospital, the real party in interest is the Government of the Virgin Islands.

Civil No. 2003-0056, slip opinion, at 4 (emphasis added).

A subsequent Third Circuit case clarifies that *Hospital Resource*

> address[ed] the issue of whether the Hospital can be a considered a citizen for diversity purposes. Based on that case, one could conclude that a suit against the Hospital is a suit against the Government of the Virgin Islands and/or that the Hospital is an alter ego or arm of the Government of the Virgin Islands. Either way, the Hospital is not a citizen for diversity purposes.

Doolin v. Kasin, 424 Fed. Appx. 106, 110 (3d Cir. 2011).

The Third Circuit notes that the *Hospital Resource* decision is limited to deciding diversity jurisdiction in the federal court with regard to the Hospital, without regard to the different questions we review relative to the Hospital's capacity to enter into contracts.[3]

[3] The Court noted that to determine for diversity purposes whether a political entity or subdivision of a state is simply the arm or alter ego of the state, such that a suit against the entity is actually a suit against the state itself, three co-equal factors are considered: (1) the source of the money that would pay the judgment (i.e. would the state pay the judgment); (2) the status

Moreover, 19 V.I.C. §244(a) does not state that VIHHFC has the *exclusive* power to sue and be sued on behalf of the Hospital.[4] Although neither *Hospital Resource* nor *Doolin* decide whether the Virgin Islands Government must pay for judgments issued against the Hospital, they both confirm that a suit against the Hospital is a suit against the Government of the Virgin Islands. The District Court has simply recited the applicable statutory language to find that VIHHFC is "in partnership" with the Government of the Virgin Islands. As such, the Court finds that VIHHFC is merely a management arm of the Hospital in partnership with the Government. Defendants' present assertion that VIHHFC is a necessary party to this action is unpersuasive.[5]

Through its Interim CEO, the Hospital entered into the Agreement and paid Titan according to the terms of the Agreement over a two year period, from 2010 to 2012, without the participation of VIHHFC. When the Hospital fell behind in its contract payments, Titan agreed to continue to provide services at the direct request of the Hospital's new CEO and CFO, without reference to or participation of VIHHFC. In their Answer, Affirmative Defenses, Rule 26 disclosures and responses to discovery in this action, Defendants have never mentioned VIHHFC prior to filing their present Opposition in response to Titan's dispositive Motion, in May 2015, one month shy of five years from the date of the Agreement.[6]

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of the entity under state law; and (3) the degree of autonomy of the entity. *See Doolin v. Kasin*, 424 Fed. Appx. at 109. Those factors have no application to our analysis, but their review confirms that the Government is the real party in interest in this action.

[4] The statute states that VIHHFC may: "sue and be sued subject to the limitations and requirements of existing law applicable to the Government of the Virgin Islands; Provided That, the Corporation may report any individual to the Credit Bureau and may file a civil action although the Government may owe the individual income tax refunds or retroactive payments notwithstanding the provisions of Act No. 6190 §5." 19 V.I.C. §244(a).

[5] *See* 19 V.I.C. §244(e): VIHHFC has the power to "manage, operate, superintend, control, and maintain the hospitals and health facilities of the Government of the Virgin Islands in partnership with the Government."

[6] A cynic could argue, as do Plaintiffs, that Defendants' newly presented arguments are "simply dilatory tactics to continue avoidance of the valid debt at issue." (Reply, at 2). As a practical matter, because the six-year statute of limitations (5 V.I.C. §31(3)(A)) has not yet run on Plaintiffs' breach of contract action, if the dismissal of the Complaint Defendants seek by their Opposition were to be granted due to the failure to join VIHHFC, Plaintiffs would not be precluded from immediately refiling the same action against VIHHFC.

Defendants' Opposition is devoid of case law support that stands for the proposition they ask the Court to adopt. Defendants have cited no cases, of the few in which VIHHFC has been a party, in which VIHHFC has been viewed as an indispensable party,[7] in addition to or in the place of the Hospital or the Government of the Virgin Islands.

B. <u>There is no genuine issue of material fact in dispute.</u>

"It is well settled that an enforceable contract requires an offer and acceptance." *Terrace v. Williams*, 52 V.I. 225, 241 (V.I. 2009) (*see also Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 250 (3d Cir. 2007)). An enforceable contract also requires consideration, (the bargained-for legal benefit and/or detriment), and a manifestation of mutual assent. *Id.* (*see also Navair, Inc. v. IFR Americas, Inc.*, 519 F.3d 1131, 1137-39 (10th Cir. 2008)).

The manifestation of mutual assent almost invariably takes the form of an offer by one party which is accepted by the other party. *Isidor Paiewonsky Assoc. v. Sharp Properties*, 761 F. Supp. 1231, 1233 (D.V.I. 1991). "[T]he most basic prerequisite for the formation of a contract: that there was a mutual assent to a bargained-for-exchange in which one party made a promise in return for another promise." *Walters v. Walters*, 60 V.I. 768, 796-797 (V.I. 2014). An offer is the manifestation of willingness to enter into a bargain and assent is completed only upon acceptance of the offer by the offeree. *Isidor Paiewonsky Assoc.*, at 1233.

[7] *See James-St. Jules v. Thompson*, 2015 V.I. LEXIS 74, at *14, n.5 (V.I. Super. Ct. June 25, 2015) (a medical malpractice case where the court stated that the Hospital is an arm of VIHHFC and "falls within the definition of 'Government'" under the V.I. Tort Claims Act); *Romano v. V.I. Gov't Hosps. & Health Facilities Corp.*, 2014 V.I. LEXIS 30, at *3 (V.I. Super. Ct. May 28, 2014) (in action for a "bill of discovery," the court noted that a wrongful death medical malpractice action may be brought against VIHHFC per 19 V.I.C. §244(a)); *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 47 V.I. 430, 433 n.2 (V.I. Super. Ct. 2006) (dismissing VIHHFC petition for writ of review for lack of standing without reaching Government argument that VIHHFC cannot sue other Government entities "as it is their alter-ego"), *V.I. Gov't Hosps. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, (V.I. 2008) (attorney fee award vacated, appeal dismissed on jurisdictional grounds as appeal was then pending in District Court Appellate Division. That appeal was dismissed with prejudice by stipulation, per Order dated September 17, 2008: D.C. Civ. App. 2006-155); *Najawicz v. V.I. Gov't Hosps. & Health Facilities Corp.*, 2009 V.I. LEXIS 23 (V.I. Super. Ct. Oct. 5, 2009) (court issued a stay of depositions in breach of contract and defamation action without reference to VIHHFC status).

In the case at bar, the undisputed facts show that the Agreement was executed on June 23, 2010 by the Interim CEO of the Hospital and Titan's VP of Operations. Pl. SOF, Exhibit A. The Agreement clearly states that Hospital would timely pay for the professional staffing services provided by Titan over a period of two years, automatically renewable thereafter on a one year basis. Pl. SOF ¶¶2, 3.

Defendants' sole argument in their Opposition rests upon the fact that VIHHFC is not a party to the Agreement and is not named as a party to the suit, without reference to the substantive allegations of the Complaint or the Motion and the proofs presented by Plaintiffs. Defendants failed to respond to Plaintiffs' Statement of Undisputed Facts and, in their filed Opposition, do not refute any of Plaintiffs' proofs. Rather, Defendants claim that a valid contract never existed because VIHHFC did not act as the contracting signatory on behalf of the Hospital.

Because the Hospital, owned by the Government of the Virgin Islands, acting through its Interim CEO, managing the health facility in partnership with VIHHFC, entered into an Agreement with Titan, a duty to pay Titan for services rendered was created. The Hospital does not dispute that it failed to pay invoices starting in September 2012; that it discontinued all payments on the Agreement by January 2013; or that the Hospital's CEO and CFO coaxed Titan to continue to provide professional staffing services by promising that payment would be forthcoming. Pl. SOF. ¶8. Similarly, the Hospital does not dispute any aspect of the accounting or invoices presented by Plaintiffs, or the amount due Titan for professional services admittedly provided. *Id.* at ¶10.

Titan has proven (1) the existence of the Agreement; (2) that the Agreement imposed a duty on Defendants to pay for services provided pursuant to the Agreement; (3) that Defendants breached that duty to pay; and (4) that Plaintiffs have suffered damages as a result of Defendants' breach of the Agreement, in Titan paid and continued to pay its personnel staff to provide services to the Hospital, for which Defendants have not compensated Titan.

The substance of Titan's invoices are undisputed. It is also undisputed that Titan is owed the value of the services provided as reflected by the unpaid invoices, plus interest that has accrued at a rate of 9% per annum pursuant to the Agreement terms, in the amount of $925,497.58 as of April 1, 2015.

Because there are no genuine issues of material fact in dispute, and the Court finds that Plaintiffs are entitled to judgment as a matter of law, the Court will grant summary judgment in favor of Plaintiffs and against Defendants. A Judgment Order consistent with this Memorandum Opinion will be issued herewith.

Dated: July 14, 2015.

DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: ______________________
Court Clerk Supervisor 7/14/15

CERTIFIED A TRUE COPY
DATE: July 14, 2015
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: ______________________
COURT CLERK II

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

TITAN MEDICAL GROUP, LLC and TITAN NURSE STAFFING, LLC, Plaintiffs, v. GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER and GOVERNMENT OF THE VIRGIN ISLANDS ex. Rel. GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, Defendants.	)	SX-13-CV-497 SX-2013-CTO-00004 ACTION FOR BREACH OF CONTRACT

JUDGMENT ORDER

In accordance with the Memorandum Opinion entered herewith, it is hereby

ORDERED that Plaintiffs' Motion for Summary Judgment is GRANTED; and it is further

ORDERED that Plaintiff Titan Medical Group, LLC shall have JUDGMENT against Defendants in the amount of $131,236.51, together with interest which has accrued thereon to April 1, 2015 in the amount of $21,322.85, together with interest that has accrued thereafter on the principal sum of the Judgment to the date of entry of this Judgment Order at the rate of 9% per annum; and it is further

ORDERED that Plaintiff Titan Nurse Staffing, LLC shall have JUDGMENT against Defendants in the amount of $659,930.28, together with interest which has accrued thereon to April 1, 2015 in the amount of $113,007.94, together with interest that has accrued thereafter on the principal sum of the Judgment to the date of entry of this Judgment Order at the rate of 9% per annum.

Dated: July 14, 2015.

DOUGLAS A. BRADY, JUDGE

ATTEST:
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