

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

CLAYTON NURSE,

Plaintiff,

v.

JOSEPH PARRIS, JR., and ST. CROIX
FINANCIAL CENTER, INC. d/b/a
GREEN CAY MARINA,

Defendants.

Civil No. SX-14-CV-011

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Plaintiff's Motion to Dismiss Defendant Joseph Parris Jr.'s Counterclaim (Motion), filed April 1, 2014; Defendant Joseph Parris Jr.'s Opposition to Plaintiff's Motion to Dismiss Counterclaim (Opposition), filed May 9, 2014; and Plaintiff's Reply to Opposition to Motion to Dismiss (Reply), filed May 27, 2014. Because the Court finds that Defendant Parris' Counterclaim is barred by the two-year statute of limitations for personal injury claims, Plaintiff's Motion will be granted.

BACKGROUND

Plaintiff filed his Complaint on January 24, 2014 seeking damages in connection with a January 29, 2012, incident in which he alleges that Defendant Parris, while in the employ of Defendant St. Croix Financial Center, Inc. (SCFC), assaulted him with a machete. Complaint ¶¶5-8. Plaintiff's Complaint alleges two counts: assault and battery against Defendant Parris, and negligent hiring, supervision, and retention against Defendant SCFC. On February 13, 2014, Defendant Parris filed his Answer, Counterclaim, and Cross Claim alleging that it was in fact Plaintiff who attacked Defendant Parris with a machete in the January 29, 2012 incident. Counterclaim ¶5.

In his Motion, Plaintiff argues that Parris' Counterclaim is barred by the two-year statute of limitations for personal injury claims pursuant to 5 V.I.C. §31(5). Motion at 1. Additionally, Plaintiff's Motion argues that the statute of limitations for the filing of Parris' Counterclaim should not be tolled from the time of the filing of Plaintiff's Complaint. Motion at 4. Plaintiff supports his argument with a full *Banks* analysis of the issue, reviewing the limited relevant precedent in the Virgin Islands, evaluating the different approaches taken by other jurisdictions, and arguing why courts in the Virgin Islands should not toll the applicable statute of limitations in cases such as this. In his Opposition, Defendant Parris simply argues that the statute of limitations should be tolled because he filed his Counterclaim at the "first opportunity to file his answer and compulsory counterclaim," in compliance with Fed. R. Civ. P. 13(a) governing the filing of compulsory counterclaims. Opposition at 2. Additionally, Parris asserts, without any supporting discussion or argument, that "the filing of the complaint effectively tolled the statute of limitation[s] on the compulsory counterclaim."¹ *Id.* at 3.

LEGAL STANDARD

The Supreme Court of the Virgin Islands has established a three-prong analysis to be used in reviewing motions to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6):

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

¹ Parris does cite *James v. Antilles Gas Corp.*, 43 V.I. 37 (V.I. Super. 2000), in support of this assertion. However Parris offers no discussion of the factual or legal issues involved in *James* and no attempt to refute the extensive analysis of *James* included in Plaintiff's Motion; which concluded that *James* was distinguishable, and in any event, did not represent the soundest rule for the Virgin Islands. See generally Opposition; Motion.

draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.

Joseph v. Bureau of Corrections, 54 V.I. 645, 649-650 (V.I. 2011) (internal quotations and citations omitted); *see also Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471-472 (V.I. 2013).

The statute of limitations for the Virgin Islands is codified at 5 V.I.C. §31(5), which establishes a two-year limitation on the commencement of claims for personal injury.

DISCUSSION

The Supreme Court of the Virgin Islands has never addressed the question of whether the statute of limitations applicable to a given counterclaim should be tolled from the time of filing of the preceding complaint. In the absence of any binding precedent, the Court must conduct the analysis mandated by *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011), to determine the soundest rule for the Virgin Islands.² The *Banks* analysis consists of a balancing of the following three non-dispositive factors: (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) most importantly, which approach represents the soundest rule for the Virgin Islands. *See Simon v. Joseph*, 59 V.I. 611, 623 (V.I. 2013); *Government of the Virgin Islands v. Connor*, 60 V.I. 597, 603 (V.I. 2014).

In the only case in which a Virgin Islands court has considered the issue, the Superior Court, held that under the majority view, “the filing of the plaintiff’s suit tolls the limitation period for compulsory counterclaims.” *James v. Antilles Gas Corp.*, 43 V.I. 37, 47 (Super. Ct. 2000) (adopting the “majority rule” pursuant to 1 V.I.C. §4). In *James*, the court found that the statute of limitations for a third-party defendant’s counterclaim was tolled by the filing of the third-party complaint because “the issue [was] the same: whether the negligence of either party or both parties proximately caused

² In the exercise of its “concurrent authority with [the Supreme] Court to shape Virgin Islands common law” in the absence of local law to the contrary or binding precedent, this Court must conduct a “Banks analysis” to determine the applicable common law. *Government of the Virgin Islands v. Connor*, 60 V.I. 597, 604 (V.I. 2014).

[the injury].” *Id.* at 47. However, as *James* is the only case that has directly addressed this issue, it cannot be said that this rule is well established in the Virgin Islands.

A review of relevant decisions in other jurisdictions reveals two main approaches taken by courts outside the Virgin Islands. The first approach, adopted by the Superior Court in *James*, holds that “although there is some conflict on the subject, the majority view appears to be that the institution of plaintiff’s suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.” *See James*, 43 V.I. at 44-45 (citing Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1419, at 151 (2nd ed. 1990)).

On the other hand, *Moore’s Federal Practice* summarizes the state of the law as follows:

Counterclaims and cross-claims for affirmative relief are, with some exceptions, subject to the operation of applicable statutes of limitations. If the main action is timely, a claim for recoupment, arising out of the same transaction or occurrence as the main claim and not seeking affirmative relief nor relief different from that sought in the main claim, relates back to the filing of the plaintiff’s claim and is not time barred. Even if compulsory, counterclaims for affirmative relief will be time barred.

Wm. Moore et al., *Moore’s Federal Practice*, § 14.93 (3d ed. 1999).

Under this approach, counterclaims for affirmative relief are subject to the statute of limitations applicable to the claim presented. The statute of limitations will only be tolled from the filing of the complaint in limited circumstances such as those in which counterclaimant brings a claim for recoupment, or another “defensive” claim arising out of the same transaction or occurrence. *See e.g. Armstrong v. Logsdon*, 469 S.W.2d 342, 343 (Ky. 1971) (noting that cases in which the statute of limitations for a counterclaim was tolled from the filing of the complaint “all involved counterclaims in the nature of setoffs or credits against claims arising out of contractual or estate-settlement transactions... [and] recognized this type of counterclaim is a matter of defense”).

After considering the differing approaches taken by other jurisdictions, the Court finds that the approach outlined by Professor Moore represents the soundest rule for the Virgin Islands. The

Court finds that this rule best advances the goals of the statute of limitations—encouraging timely resolution of disputes, preserving evidence, and preventing the filing of stale claims—while preserving the basic interest of every defendant in having a fair chance for their claims to be heard in court. This approach prevents potential counterclaimants from sleeping on their claims and from using their counterclaim solely in retaliation for a plaintiff's decision to file a complaint. At the same time, this approach does not necessarily bar the tolling of the statute of limitations for those types of “defensive” counterclaims³ that are only brought in reaction to a plaintiff filing a complaint in order to mitigate or otherwise offset any liability to which a party would be exposed by virtue of the plaintiff's underlying claim.⁴

In this case, Parris' Counterclaim cannot be said to be “defensive” in any way. By his Counterclaim, Parris alleges that on January 29, 2012, Plaintiff attacked him with a machete causing him serious personal injury. Counterclaim ¶6. This Counterclaim does not seek recoupment, or to offset liabilities that might be incurred as a result of Plaintiff's claim. In fact, Parris' Counterclaim is conceptually separate and distinct from Plaintiff's claim as they represent conflicting, and mutually exclusive versions of the events of January 29, 2012. Either Parris assaulted Plaintiff with a machete without provocation, or Plaintiff assaulted Parris with a machete without provocation, but both cannot be true.

Parris' Counterclaim seeks affirmative relief in the form of damages for injuries allegedly suffered when Plaintiff assaulted him with a machete. Assuming, *arguendo*, the veracity of Parris' allegations, this means that Parris suffered serious physical and emotional injury at Plaintiff's hands

³ Such as “counterclaims in the nature of setoffs or credits against claims arising out of contractual or estate-settlement transactions...” See *Armstrong*, 469 S.W.2d at 343.

⁴ Because the Court only holds that the statute of limitations will not automatically be tolled from the filing of the preceding complaint for “offensive” counterclaims seeking affirmative relief, the Court does not reach the issue of whether and when the statute of limitations should be tolled for the type of “defensive” counterclaims described above.

but, for no discernable reason, elected not to file his cause of action at any time within the two-year statute of limitations period. It was only when Plaintiff filed his Complaint that Parris decided that his claim was worth pursuing. This is not the type of situation in which the need for recovery under the counterclaim arises solely in response to the filing of the original claim as in a counterclaim for recoupment or to offset damages. The Court need not speculate as to either why Parris decided not to file his potential personal injury claim within the limitations period, or what his motivations for doing so might be.

Under the rule adopted herein, Parris' Counterclaim clearly constitutes an affirmative claim for relief arising from an incident that is conceptually distinct from the incident described in Plaintiff's Complaint. Because Parris' Counterclaim is in no way dependent on Plaintiff's claim, there is no reason why Parris could not have brought his personal injury claim at any point prior to the expiration of the two-year limitation period. The Court must not reward Parris for his delay in bringing his claim by tolling the statute of limitations; particularly where, as here, Parris has offered no explanation or excuse for the delay. Therefore, because Parris' Counterclaim seeks affirmative relief for personal injuries, and because Parris offers no explanation for his delay in bringing his claim, the Court finds that the two-year statute of limitations was not tolled by the filing of Plaintiff's Complaint.

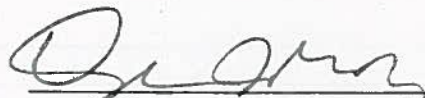
Defendant Parris alleges that his personal injury claim accrued on January 29, 2012. Accordingly, pursuant to 5 V.I.C. §31(5) Parris had until January 29, 2014 to bring his claim. However, Parris did not file his Answer, Counterclaim, and Crossclaim until February 13, 2014. Thus, Parris' Counterclaim is barred by the statute of limitations.

On the basis of the foregoing, it is hereby

ORDERED that Plaintiff's Motion to Dismiss Counterclaim is GRANTED. It is further

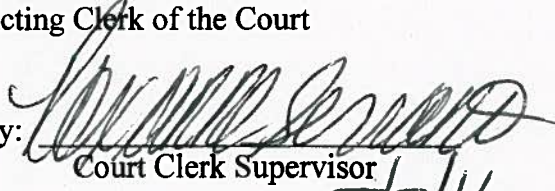
ORDERED that Defendant Parris' Counterclaim is DISMISSED.

Dated: May 3, 2016.


DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

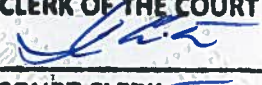
By: 

Court Clerk Supervisor
5/5/16

CERTIFIED A TRUE COPY

DATE: May 5, 2016

ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT

BY: 

COURT CLERK II

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE:)
) MISC NO. DAB 011/2018
ORDER DESIGNATING CERTAIN)
OPINIONS FOR PUBLICATION.)

**TO: Clerk of the Court
Counsel of Record
Law Library / LexisNexis / Westlaw**

ORDER

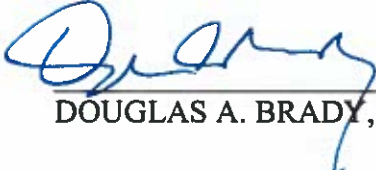
THE PREMISES considered, it is hereby

ORDERED that the following memorandum opinions issued in the below listed cases are hereby designated FOR PUBLICATION.

Pappas v. Hotel on the Cay Time-Sharing Ass'n, Inc., opinion dated April 27, 2015;
Estate of Burnett v. Kazi Foods of the V.I., SX-12-CV-139; opinion dated May 24, 2016;
FirstBank of Puerto Rico v. Prosser, SX-09-CV-520, opinion dated June 22, 2015;
James v. Guardian Insurance Company, SX-10-CV-435, opinion dated July 14, 2015;
Nurse v. Parris, SX-14-CV-011, opinion dated May 3, 2016;
Charles v. Arcos Dorados USVI, Inc., SX-13-CV-336, opinion dated August 18, 2016;
McGary v. J.S. Carambola, LLP, SX-13-CV-289, opinion dated October 7, 2016;
Whyte v. Bockino, SX-15-CV-083, opinion dated January 26, 2017;
Chiverton v. World Fresh Market, LLC, SX-10-CV-575, opinions dated March 10 & 28, 2017;
People v. Melendez, SX-16-RV-003, opinion dated March 22, 2017;
Edwards v. Hess Oil V.I. Corp., SX-15-CV-382, opinion dated June 28, 2017;
In re: Red Dust Claims, SX-15-CV-620, *et seq.*, opinion dated July 7, 2017;
Hamed v. Yusuf, SX-12-CV-370, *et seq.*, opinions dated July 21, 2017 and March 14, 2018;
Toutouyouthe v. St. Croix Trading Co., Inc., SX-16-CV-457, opinion dated May 31, 2018.

Finally, it is ORDERED that a copy of this Order be served on counsel for the parties in the above-captioned cases (or the party if proceeding *pro se*), be filed in each of above-captioned matters, and forwarded to the Law Library for distribution to LexisNexis and Westlaw, FORTHWITH.

Dated: October 1, 2018.

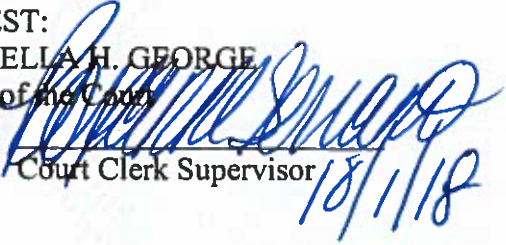

DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA H. GEORGE

Clerk of the Court

By:


Court Clerk Supervisor 10/1/18