

NOT FOR PUBLICATION

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

J'ADA THOMAS,

Plaintiff, SX-15-CV-179

v.

**LAURITZ BLACKWOOD, ROBERTO V.
RIVERA, and REHABILITATION CENTER
AT BEESTON HILL. INC.,**

Defendants.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Rehabilitation Center at Beeston Hill, Inc.'s (hereinafter "Defendant" or "Beeston Hill") motion to dismiss based on subject matter jurisdiction (hereinafter "Motion") filed by the Government of the Virgin Islands Office of the Attorney General on June 17, 2016. Plaintiff J'ada Thomas (hereinafter "Plaintiff" or "Thomas") filed an opposition (hereinafter "Opposition") on July 26, 2016. Beeston Hill replied to the Opposition (hereinafter "Reply") on August 3, 2016. For the reasons stated below, the court will grant Beeston Hill's Motion and dismiss the case for lack of subject matter jurisdiction.

BACKGROUND

This matter arose from a automobile accident. On May 14, 2015, Thomas filed a Complaint alleging negligence against Defendants Roberto V. Rivera (hereinafter "Rivera") and Beeston Hill and negligent entrustment against Lauritz Blackwood (hereinafter "Blackwood"). According to the Complaint, Thomas was allegedly injured when Rivera collided with her vehicle on the West Airport Road on February 24, 2014. Compl. ¶¶ 7, 14. From July 31, 2014 to September 2014, Thomas received treatment for her injuries at Beeston Hill. Compl. ¶ 18. While receiving therapy at Beeston Hill, Thomas alleges that she was "negligently placed on a treatment table in a manner which caused her to fall and aggravate her existing injuries and incur

additional injuries.” Compl. ¶ 18. Rivera and Blackwood were dismissed without prejudice on February 23, 2016. Beeston Hill is the only remaining defendant.

STANDARDS OF REVIEW

I. Subject Matter Jurisdiction

The Government of the Virgin Islands, on behalf of Beeston Hill moves to dismiss for lack of subject matter jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(1).¹ It is well established that subject matter jurisdiction can be raised at anytime. *See Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 187 (VI. 2009); *see also Mercer v. Bryan*, 53 V.I. 595, 601 (VI. 2010). Subject matter jurisdiction is a fundamental and nonwaivable requirement which must be fully considered by a court whenever a possible lack of jurisdiction is brought to its attention. *See Duvergee, Inc. v. Gov't of the Virgin Islands*, 1986 V.I. LEXIS 18, *13 (V.I. Terr. Ct. 1986).

“In reviewing a motion to dismiss for lack of subject matter jurisdiction, no presumptive truthfulness attaches to plaintiffs allegations and the existence of disputed issues of material fact will not preclude the trial court from evaluating for itself the merits of the jurisdictional claims.” *See Northshore Realty, Inc. v. First Bank*, 2014 V.I. LEXIS 65, *7 (V.I. Super. Ct. 2014) (citation and internal quotation marks omitted). Under Rule 12(b)(1), the court is “free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *See Martinez*, 51 V.I. at 189. “The plaintiff bears the burden of persuasion when subject matter jurisdiction is challenged.” *See Northshore Realty, Inc.*, 2014 V.I. LEXIS 65 at *8.

¹ A thorough review of local statutes and Supreme Court precedent reveals that Federal Rule of Civil Procedure 12(b)(1) governs motions to dismiss for lack of subject matter jurisdiction. *See Vanterpool v. Gov't of the Virgin Islands*, 63 V.I. 563, 576 (VI. 2015). *See also Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 188 (VI. 2009). Federal Rule of Civil Procedure 12(b)(1) applies in the Superior Court pursuant to Superior Court Rule 7.

II. Medical Malpractice Act

The Medical Malpractice Act sets out specific requirements before a medical malpractice claim can be filed in the Superior Court. A complainant must first file a proposed complaint with the Committee by mailing a copy by registered or certified mail to the Commissioner of Health. 27 V.I.C. § 166i(c). Then the Committee determines the type of medical expert needed to review the claim and arranges for the expert to review the medical records and legal papers submitted to the Committee. *See* 27 V.I.C. § 166i(d)(1).

It is only after this process has been completed or ninety days has elapsed since the claimant's proposed complaint was filed with the Committee that a complainant may commence an action in the Superior Court. *See* 27 V.I.C. § 166i(b).² The requirements of section 166i are non-waivable jurisdictional conditions that must be satisfied in order to vest the trial court with subject matter jurisdiction to hear an individual's medical malpractice claims.³

DISCUSSION

Beeston Hill asserts that it is a healthcare provider as defined in Section 166i. As a result, Beeston Hill moves to dismiss for lack of subject matter jurisdiction for failure to comply with the jurisdictional prerequisites of the Medical Malpractice Act codified at Title 27, Section 166i of the Virgin Islands Code. 27 V.I.C. §166i.⁴

Contrarily, Thomas contends that there is no claim for medical malpractice. Hence, the pre-filing requirements under Section 166i are inapplicable. Thomas bolsters her argument by asserting that filing a negligence action against a medical provider such as Beeston Hill does not automatically transform the complaint into a medical malpractice claim. Opp'n at 5. Thomas

² *Brady v. Cintron*, 55 V.I. 802, 814 (V.I. 2011).

³ *Id.* at 815.

⁴ Beeston Hill first raised this affirmative defense in its Answer. Affirmative Defenses ¶¶ 2-4.

further asserts that the complaint does not allege any claim of medical malpractice and the assessment of a medical expert is not necessary to determine whether the conduct of the agents and employees of Beeston Hill fell below the ordinary standard of care. *Id.* at 4. Accordingly, Thomas reasons that she was not required to file a claim with the Medical Malpractice Action Review Committee before filing her complaint in the Superior Court. *Id.* at 5. Moreover, Thomas argues that the Medical Malpractice Act does not govern this action because she does not allege any negligence in diagnosis or treatment by any servants, agents, or employees at Beeston Hill. *Id.* at 4.

In response, Beeston Hill argues that “the claim involves a licensed healthcare provider and alleges negligence during medical treatment” which is a medical malpractice claim within the meaning of Section 166. Reply at 3. The questions presented are (1) whether Beeston Hill is a “health care provider” within the meaning of the Medical Malpractice Act and (2) whether the case should be dismissed for lack of subject matter jurisdiction.

I. Beeston Hill is a “health care provider” pursuant to 27 V.I.C. § 166(c)

First the Court must determine whether Beeston Hill is a health care provider covered under the Medical Malpractice Act. In order to determine whether Beeston Hill is a healthcare provider under the medical malpractice act, the court will turn to the definitions articulated in Section 166 to determine the legislative intent.⁵

The starting point for interpreting a statute is a determination of whether the statute's language plainly and unambiguously expresses its meaning.⁶ The inquiry ends if the statutory

⁵ See *Brady*, 55 V.I. at 820-21.

⁶ See *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 344 (2007).

language is unambiguous and the statutory scheme is coherent and consistent.⁷ Under 27 V.I.C. § 166(c), a health care provider is defined to include:

a person, corporation, facility or institution *who must be licensed by this territory* to provide health care or professional medical services including a medical, osteopathic, chiropractic or naturopathic physician, hospital, dentist, registered or licensed practical nurse to include the Advanced Practice Registered Nurse, optometrist, podiatrist, physical therapist, psychologist, paramedical personnel, emergency medical technician, pharmacist and laboratory technician.

Beeston Hill is a rehabilitation facility licensed in the Virgin Islands to provide physical therapy services.⁸ Ergo, Beeston Hill is a "healthcare provider" within the meaning of Section 166(c).

Next the Court must determine whether Thomas' case is a medical malpractice action. Thomas insists that she filed a negligence claim—not a malpractice claim. In order to determine whether Thomas' claim is a malpractice claim, the court will interpret the plain meaning of the statute.

Under Title 27, Section 166(i) of the Virgin Islands Code, “ ‘Patient’ means a natural person who receives or should have received health care from a licensed health care provider, under a contract, express or implied.” 27 V.I.C. § 166(i). “ ‘Malpractice’ means any tort or breach of contract based on health care or professional services rendered, or which should have been rendered by a health care provider, to a patient.” 27 V.I.C. § 166(f). Under Section 166(f), the definition of malpractice encompasses any tort based on healthcare or professional services rendered.

⁷ See *Brady*, 55 V.I. at 821.

⁸ See *Ference v. V.I. Family Sports & Fitness Ctr.*, 45 V.I. 345, 352 (V.I. Terr. Ct. 2004) (finding that Defendant is a "health care provider" for purposes of the Malpractice Act where Defendant through its physician, physical therapists, physiologists, and athletic trainers, designs treatment plans for those patients that consist of varied physical therapies.)

After her accident, Thomas was a “patient” at Beeston Hill receiving treatment. Thomas was allegedly injured after falling off of a treatment table at Beeston Hill while receiving therapy. Her previous injuries were allegedly exacerbated after she fell off the treatment table at Beeston Hill. Based on the definitions articulated in the statute, Thomas’s claim sounds in medical practice as defined in Section 166(f) because she alleges that she was injured while receiving services from Beeston Hill who is a health care provider. The Court finds that as a healthcare provider, Beeston Hill is covered under the Medical Malpractice Act. Therefore, the jurisdictional prerequisites under the Medical Malpractice Act are applicable.

II. The Complaint should be dismissed for lack of subject matter jurisdiction.

“No action against a health care provider may be commenced in court before the claimant's proposed complaint has been filed with the Medical Malpractice Action Review Committee (hereinafter “Committee”).” 27 V.I.C. § 166i(b). It is evident that the Legislature intended that “the courts were not to be utilized until after the Committee had an opportunity to address the claim itself.” *See Ottley v. Estate of Bell*, 61 V.I. 480, 492 (2014). “The requirements of section 166i are non-waivable jurisdictional conditions that must be satisfied in order to vest the Superior Court with subject matter jurisdiction to hear an individual's medical malpractice claims.” *See Brady v. Cintron*, 55 V.I. 802, 820 (2011).

In the matter *sub judice*, Thomas did not file a complaint with the Committee before filing suit in the Superior Court. As mentioned *supra*, this is an action for medical malpractice. The jurisdictional requirements under Section 166i must be fulfilled in order for the Superior Court to have subject matter jurisdiction over the action. Thomas did not satisfy any of the jurisdictional prerequisites before filing her Complaint. Ergo, the matter must be dismissed for lack of subject matter jurisdiction.

CONCLUSION

Based on the foregoing analysis, Beeston Hill's Motion will be granted. Beeston Hill is a healthcare provider within the meaning of Section 166(c) and is covered under the Medical Malpractice Act. Thomas did not comply with the jurisdictional prerequisites under Section 166i before filing her Complaint. Therefore, the matter must be dismissed for lack of subject matter jurisdiction. The Court will issue an Order consistent with this Memorandum Opinion.

DATED this 21st day of March, 2017.

ATTEST:

Estrella George
Acting Clerk of the Court

By:

Miranda
Deputy Clerk II

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

Dated: 3/21/17