IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

DREAM ENGINEERING & TRUCKING, LLC **Plaintiff**)		CASE NO. ST-16-CV-0000729
)		ACTION FOR: DAMAGES - CIVIL
)		
vs)		
MAJESTIC CONSTRUCTION, INC., JAMES STURGESS CHERYL STURGESS)		

Defendant

NOTICE OF ENTRY OF MEMORANDUM OPINION AND ORDER

TO: JUDGES,MAGISTRATES
TAMARA CHALRES,ESTRELLA GEORGE,
RUPERT ROSS,LAW CLERKS
INFORMATION TECHNOLOGY
TEELUCK PERSAD,ESQ
CAROL ANN RICH,ESQ
SAMUEL A.WALKER,ESQ

Please take notice that on April 23, 2019 a(n) MEMORANDUM OPINION AND ORDER dated April 15, 2019 was entered by the Clerk in the above-entitled matter.

Dated: April 23, 2019

Estrella H. George
Clerk of the Court

THector

TASHIKA HECTOR
COURT CLERK II

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

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JAMES JONES, NAOMI G. EDWARDS, formerly d/b/a DREAM ENGINEERING & TRUCKING, LLC and PRECISE TRUCKING, LLC,	
Plaintiffs,	**CASE NO. ST-16-CV-729**
-vs-	**ACTION FOR BREACH OF CONTRACT**
MAJESTIC CONSTRUCTION, INC., JAMES STURGESS, AND CHERYL STURGESS,	
Defendants.	
MAJESTIC CONSTRUCTION, INC.,	
Counter-Plaintiff,	**ACTION FOR ACCOUNTING**
-vs-	
JAMES JONES, NAOMI G. EDWARDS and PRECISE TRUCKING, LLC,	
Counter-Defendants.	

Cite as: 2019 VI Super 57U

MEMORANDUM OPINION AND ORDER

¶1 Before the Court are Defendants James Sturgess and Cheryl Sturgess' Motion to Dismiss By Defendants James and Cheryl Sturgess, which was filed on March 10, 2017, and Defendants Majestic Construction, Inc., James Sturgess, and Cheryl Sturgess' Motion to Dismiss, which was filed on February 10, 2017. Plaintiffs James Jones, Naomi G. Edwards, formerly d/b/a Dream Engineering & Trucking and Precise Trucking, LLC, filed an opposition to the March 10 Motion to Dismiss, and the Sturgesses filed a reply. The matter being fully briefed, the Court will deny both motions.

I. BACKGROUND

¶2 Starting in 2005, Jones and Edwards, operating under the trade name Dream Engineering & Trucking, orally agreed to provide transportation services to Majestic Construction, LLC, in exchange for compensation. Between 2005 and 2009, Dream Engineering & Trucking provided and billed for these services. Sometime in 2009, Jones established Precise Trucking, LLC, and continued to perform these services for Majestic.

¶3 According to the First Amended Complaint, Majestic slowly and inconsistently payed Dream Engineering and eventually defaulted on its obligations to Jones and Edwards, despite acknowledging its duty to do so. On September 15, 2009, Dream Engineering and Majestic entered into an agreement where Majestic agreed to sell its 1976 Bertram 26' boat hull at $49,000.00 to offset the outstanding balance owed.[1] A few months later, on December 23, 2009, Jones and Majestic entered into a contract where Jones agreed to purchase Majestic's 1989 MR6 Mack Truck for $19,500.00 to offset the outstanding balance owed to Dream Engineering.[2] Also, on March 25, 2011, Jones and Majestic agreed to lease around one acre of land owned by Majestic for a rent of $1.00 per month to help offset the outstanding balance owed to Dream Engineering.[3] As of April 2015, however, Majestic stopped paying Dream Engineering and the lease agreement between Jones and Majestic was terminated.

¶4 In the First Amended Complaint, Jones and Edwards assert four causes of action against Majestic for the outstanding balance owed by Majestic to Dream Engineering in the amount of $239,812.94 and seek to pierce the corporate veil as to the Sturgesses (Count V).

II. LEGAL STANDARD

¶5 Before turning to the merits of the motion, the Court must first determine whether the Federal Rules of Civil Procedure or the Virgin Islands Rules of Civil Procedure apply. Under Rule 1-1(c)(2)(B), the Virgin Islands Rules apply in all previously-pending matters unless the Court makes an express finding that applying them would be infeasible or work an injustice.

¶6 Here, the Court finds that the Virgin Islands Rules should apply. Although the motion was filed prior to the March 31, 2017, the date on which the rules became effective, it was filed a mere 21 days before that date. Because this case was in the early stages of litigation at the time that the motion was filed, applying the Virgin Islands Rules would not be unequitable or produce an outcome unforeseeable to the parties. Rule 1-1(c)(2) makes clear that applying the Virgin Islands Rules should be the rule rather than the exception, and nothing here suggests that the Court should stray from that rule.

¶7 With that in mind, the Court now turns to legal standard applicable here. Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure allows a party to challenge a pleading for "failure to state a claim upon which relief can be granted."[4] To survive a 12(b)(6) motion, the plaintiff must provide "a short and plain statement of the claim showing that the pleader is entitled to relief,"[5] and "[t]he facts alleged in the pleadings, and any inferences drawn therefrom, must be viewed in the light most favorable to the plaintiff."[6] Since Virgin Islands Rule 8(a)(2) explicitly states that the Virgin Islands is a notice pleading jurisdiction, a plaintiff merely needs to provide a basic legal and factual basis for her claim so as to put a defendant on fair notice of the claims brought against

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[1] First Am. Compl. ¶ 18. The First Amended Complaint is not clear as to whether Majestic was selling the boat hull to Dream Engineering in exchange for a credit against its outstanding balance.
[2] First Am. Compl. ¶ 19.
[3] First Am. Compl. ¶ 20.
[4] V.I.R. CIV. P. 12(b)(6).
[5] V.I.R. CIV. P. 8(a)(2).
[6] *Adams v. North West Company (International), Inc.*, 63 V.I. 427, 438 (Super. Ct. 2015) (citing *Benjamin v. AIG Ins. Co. of Puerto Rico*, 56 V.I. 558, 566 (V.I. 2012)).

him.[7] In fact, "[t]he complaint need not identify the particular legal theories that will be relied upon, but it must describe the essence of the claim and allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief."[8] This standard is reinforced by the policy that litigants should not be expected to win their cases on the pleadings but rather be given their day in court,[9] and the standard is necessarily a more liberal and forgiving approach that is different from the *Twombley* plausibility standard.[10] Essentially, Rule 8(a)(2) allows the Court to proceed with the discovery process and address pleadings based on the merits of each asserted claim,[11] and "[p]leadings . . . must be fatally defective before they may be rejected as insufficient."[12]

III. ANALYSIS

¶8 The only cause of action germane to the March 10 Motion to Dismiss is Count V, which seeks to pierce the corporate veil of Majestic. The Sturgesses essentially argue that Jones and Edwards were required to meet the heightened pleading requirements of Rule 9(b) of the Virgin Islands Rules because the alter ego theory for piercing the corporate veil incorporates elements of fraud, and Jones and Edwards failed to plead the circumstances of fraud with particularity.[13] Jones and Edwards argue that the First Amended Complaint provides sufficient factual allegations to meet the pleading standard and that it is unnecessary to plead fraud in this instance.[14]

¶9 First, the Court must determine whether Count V must meet the pleading standard required under Rule 8 or the heightened pleading standard under Rule 9(b). Once determined, the Court will then decide whether Count V of the First Amended Complaint satisfies the necessary pleading standard.

A. Count V does not have to meet the heightened pleading requirement under Rule 9(b).

¶10 In the Virgin Islands, the law may disregard the corporate separateness "only in those circumstances where the shareholder has exercised such domination and control over the

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[7] *See Bank of Nova Scotia v. Flavius*, Super. Civ. No. SX-16-CV-125, 2018 WL 745958, at *6 (Super. Ct. Feb. 2, 2018).

[8] *Howe v. MMG Ins. Co.*, 95 A.3d 79, 81-82 (Me. 2014) (internal quotation marks omitted).

[9] *See Carrillo v. Boise Tire Co., Inc.*, 274 P.3d 1256, 1267 (Idaho 2012) ("The Idaho Rules of Civil Procedure set forth a system of notice pleading intended to free litigants from what were once rigid pleading requirements.").

[10] *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604-05 (Minn. 2014) ("After all, Minnesota is a notice-pleading state and 'does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it.'"); *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011) ("Tennessee follows a liberal notice pleading standard, . . . which recognizes that the primary purpose of pleadings is to provide notice of the issues presented to the opposing party and court."); *McCurry v. Chevy Chase Bank, FSB*, 233 P.3d 861, 864 (Wash. 2010) (en banc) ("Under CR 12(b)(6) a plaintiff states a claim upon which relief can be granted if it is *possible* that facts could be established to support the allegations in the complaint.") (emphasis in original).

[11] *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) ("The liberal notice pleading of [Federal] Rule [of Civil Procedure] 8(a) . . . was adopted to focus litigation on the merits of a claim.").

[12] *Corwin v. British American Tobacco PLC*, 796 S.E.2d 324, 333 (N.C. Ct. App. 2016).

[13] Mem. of Law in Support of Mot. to Dismiss 5-6.

[14] Pl.'s Opp'n to Defs. Sturgess' Mot. to Dismiss 6-8.

corporation that the corporation has become an alter ego of the shareholder, and where the shareholder has utilized the corporate form to perpetuate the fraud or injustice at issue in the litigation."[15] Hence, a party can satisfy the second prong by showing that the shareholders used the corporate form to commit a fraud or that they used such to commit some other injustice, but the prong does not require both.[16]

¶11 It must follow, then, that simply asserting an alter ego theory of piercing the corporate veil does not, in and of itself, require the plaintiff to show fraud. Indeed, "pierce the corporate veil claims are evaluated applying the notice pleading standard of [Virgin Islands] Rule 8(a), unless fraud is a necessary element of the claim."[17] Here, it is not apparent that Jones and Edwards are basing their alter ego assertions on claims of fraud, thereby requiring them to prove and plead certain elements of fraud. Simply using the word, "defraud," does not trigger the requirements of Rule 9(b).

¶12 In fact, the Sturgesses have failed to provide any persuasive support that Jones and Edwards intended fraud to be the basis of their alter ego claims. They instead argue that "[a]n allegation that a corporation is the alter ego of a person 'is akin to and has elements of fraud," and that Jones and Edwards must plead and prove each element of fraud.[18] But these assertions are not completely accurate. In *Kaplan v. First Options*, relied upon by the Sturgesses for the assertion that an alter ego theory has elements of fraud, the Third Circuit discussed fraud in the context of First Option's alter ego claim because it found that an element of fraud was at the core of the alter ego argument.[19] It noted that, "if First Options is to rely on a fraud theory, it must swallow the bitter with the sweet," thereby requiring that First Options prove its alter ego theory by clear and convincing evidence.[20] In other words, the Third Circuit determined that, if an alter ego claim is based on a fraud theory, then it will require that certain elements of fraud be proven by clear and convincing evidence as if the plaintiff was alleging fraud independently. This conclusion, however, touches on the evidentiary burden put on parties attempting to pierce the corporate veil based on fraud rather than the pleading requirements of a pierce the corporate veil claim generally.[21]

¶13 Therefore, the Court finds that Rule 8(a), not Rule 9(b), governs Jones and Edwards' claim seeking to pierce the corporate veil.

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[15] *Donastorg v. Daily News Publishing Co., Inc.*, 63 V.I. 196, 333 (V.I. Super. Ct. 2015).
[16] *See Rolls-Royce Motor Cars v. Schudroff*, 929 F. Supp. 117, 122 (S.D.N.Y. 1996) ("[A] veil-piercing claimant can prevail without proving fraud if the claimant can identify some non-fraudulent 'wrong' attributable to the defendant's complete domination of a subsidiary entity.").
[17] *Laborers Combined Funds v. Ruscitto*, 848 F. Supp. 598, 600 (W.D. Penn. 1994).
[18] Mem. of Law in Support of Mot. to Dismiss 5, 7.
[19] *Kaplan v. First Options*, 19 F.3d 1503, 1522 (3d Cir. 1994) ("We have said that MKI's argument that pre-workout events are immaterial to this dispute may lose some force on the alter ego theory. We think this is so because of the element of fraud that lies at its core.").
[20] *Id.*
[21] *See Trs. of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 194 (3d Cir. 2003) ("[O]ur test does not require proof of actual fraud as a prerequisite for piercing the corporate veil[.]"); *Matheson v. V.I. Cmty. Bank, Corp.*, 297 F. Supp. 2d 819, 830-31, 833 (D.V.I. App. Div. 2003) ("[On summary judgment,] [b]ecause a finding of derivate liability is akin to fraud, it must be shown by clear and convincing evidence.").

B. Count V puts the Sturgesses on reasonable notice of the cause of action brought against them.

¶14 Because Rule 8(a) governs Count V, Jones and Edwards need only provide a basic legal and factual basis for their claim so as to put the Sturgesses on fair notice of the claims brought against them.[22]

¶15 To succeed on a claim to pierce the corporate veil, a party must show "circumstances where the shareholder has exercised such domination and control over the corporation that the corporation has become an alter ego of the shareholder, and where the shareholder has utilized the corporate form to perpetuate the fraud or injustice at issue in the litigation."[23] To determine whether to pierce the corporate veil, Virgin Islands courts use the factors outlined in *Matheson v. Virgin Islands Community Bank Corp.*:

> (1) Whether the corporation suffers from gross undercapitalization;
> (2) a failure to observe corporate formalities;
> (3) the non-payment of dividends;
> (4) the insolvency of the debtor corporation;
> (5) the siphoning of funds from the debtor corporation from the dominant stockholder;
> (6) the presence of nonfunctioning officers;
> (7) the absence of corporate records; and
> (8) whether the corporation is merely a facade for the operation of the dominant stockholder.[24]

¶16 Here, Count V provides enough information to survive a Rule 12(b)(6) motion. Jones and Edwards assert several allegations that touch on the factors stated above:

> 48. Defendants James and Cheryl Sturgess failed to follow the formalities of operating a corporation in that they failed to hold consistent required meetings of the shareholders and directors, and to keep formal minutes of all meetings.
> ----
> 50. Defendants James and Cheryl Sturgess intentionally failed to capitalize Majestic sufficiently to meet its business expenses, and incurred business expenses, including its obligations to Plaintiffs, fully knowing that Majestic would not be able to meet such obligations.
> 51. Defendants James and Cheryl Sturgess siphoned funds from Majestic by paying themselves and otherwise taking funds from Majestic without first paying Majestic's obligations, including its obligations to Plaintiff.
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[22] *See Bank of Nova Scotia v. Flavius*, Super. Civ. No. SX-16-CV-125, 2018 WL 745958, at *6 (Super. Ct. Feb. 2, 2018).
[23] *Donastorg v. Daily News Publishing Co., Inc.*, 63 V.I. 196, 333 (V.I. Super. Ct. 2015).
[24] 297 F. Supp. 2d at 822-23.

> 53. Defendants James and Cheryl Sturgess used Majestic's funds and bank accounts and financial opportunities as their personal funds, personal bank and for personal financial gain, over the gain of Majestic and the payment of Majestic's creditors, including Plaintiff.
> 54. Defendants James and Cheryl Sturgess comingled their personal funds with Majestic's funds.[25]

These paragraphs, along with the remaining paragraphs supporting Count V, provide a basic legal and factual basis for a cause of action to pierce the corporate veil and put the Sturgesses on reasonable notice of the claim brought against them. Therefore, Count V satisfies Rule 8(a), and the Court will deny the Sturgesses' motion.

IV. CONCLUSION

¶17 Because the Sturgesses have failed to show that Jones and Edwards' cause of action to pierce the corporate veil is based on a theory of fraud, the Court will deny their Motion to Dismiss. Further, the Court will deny the Motion to Dismiss filed by all Defendants because the basis for the motion – that Dream Engineering, being then the sole plaintiff, did not exist and therefore did not have standing to sue – is no longer at issue given the addition of proper plaintiffs in the First Amended Complaint. Accordingly, it is hereby

ORDERED that Defendants James Sturgess and Cheryl Sturgess' Motion to Dismiss By Defendants James and Cheryl Sturgess is **DENIED**; and it is further

ORDERED that Defendants Majestic Construction, Inc., James Sturgess, and Cheryl Sturgess' Motion to Dismiss is **DENIED**; and it is further

ORDERED that, **on or before May 6, 2019**, Defendants James and Cheryl Sturgess **SHALL** respond to the First Amended Complaint; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record.

DATE: 4/15/2019

Denise M. Francois
DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court
By: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor 4/16/2019

CERTIFIED TRUE COPY
Date: 4/23/19
ESTRELLA H. GEORGE
Clerk of the Court
By:
Title: Court Clerk II

[25] First. Am. Compl. ¶¶ 48, 50-51, 53-54.