

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

LAMONT JOSEPH,	)	CIVIL NO. ST-13-CV-491
	)	
Plaintiff,	)	ACTION FOR WRONGFUL
	)	DISCHARGE AND
	)	INTENTIONAL INFLICTION
	)	OF EMOTIONAL DISTRESS
v.	)	
	)	
SUGAR BAY CLUB & RESORT, CORP.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on the Defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted under FRCP 12(b)(6).¹ For the reasons stated below, the Court will grant the Motion and dismiss the Complaint.

BACKGROUND

Plaintiff Lamont Joseph brings this action against Defendant Sugar Bay for violation of the Virgin Islands Wrongful Discharge Act ("WDA") and for intentional infliction of emotional distress. Joseph was terminated from his employment with the Defendant's security department on or about July 16, 2013. Joseph claims he was unlawfully terminated and the Defendant's claimed reasons for terminating Joseph were not true and did not constitute justifiable reason or just cause to terminate him. The Complaint does not allege Defendant's reasons for terminating Joseph.

STANDARD

Rule 8 of the Federal Rules of Civil Procedure² requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief."³ All material allegations in the complaint are taken as true, and the Court must construe all facts in a light most favorable to the non-moving party.⁴ However, a plaintiff is obliged to provide "more than labels and conclusions."⁵ To survive a motion to dismiss under Rule 12(b)(6) of the Federal

¹ Ryan W. Greene, Esquire, is counsel for the Plaintiff. Helen Kim, Esquire, is counsel for the Defendant.

² See SUPER. CT. R. 7 ("The practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith . . . the Federal Rules of Civil Procedure . . .").

³ FED. R. CIV. P. 8(a)(2).

⁴ *L'Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 206-170, 2010 WL 924259, at *1 (D.V.I. Mar. 11, 2010) (citing *Christopher v. Harbury*, 536 U.S. 403, 406 (2002)).

⁵ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Rules of Civil Procedure, “a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim for relief that is plausible on its face.’”⁶ 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.”⁷ In making the plausibility determination,

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.⁸

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.⁹

DISCUSSION

The Defendant argues that the Plaintiff has not identified specific factual allegations showing his entitlement to relief but instead as simply recited the elements on each cause of action. Further, the Defendant argues that the claim for punitive damages should be dismissed because the Plaintiff merely recites the standard for granting punitive damages.

In opposition, the Plaintiff argues that “Defendant’s motion should be denied as it merely nitpicks Plaintiff’s complaint for allegedly not stating enough facts to state plausible claims for relief.” The Plaintiff does not address the Defendant’s argument on punitive damages. The Plaintiff also argues that the Motion will be mooted by a forthcoming proposed amended complaint that “shall be filed on the morning of December 6, 2013.” At the time the Opposition was filed, the statutory time to amend as a matter of course had elapsed, and so the Plaintiff must move the Court for leave to amend. Presently, no motion for leave to amend has been filed.

I. Claim for Violation of the Virgin Islands Wrongful Discharge Act

Virgin Islands Code, Title 24, Section 76, known as the Wrongful Discharge Act, codifies the grounds for which an employer may discharge an employee. In interpreting the Code, Virgin Islands Courts have determined that to succeed on a WDA claim, a plaintiff must

⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

⁷ *Id.* at 679.

⁸ *Brady v. Cintron*, 55 V.I. 802, 822-23 (2011) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649-50 (2011)).

⁹ *Id.*

prove that: “(1) he was an employee; (2) of a covered employer; (3) he was discharged; and (4) the discharge was wrongful.”¹⁰ An employee is defined as “any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.”¹¹ A labor dispute “includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment”¹² A covered employer “includes any person acting in the interest of an employer directly or indirectly that has employed five (5) or more employees for each working day in each of the twenty (20) or more calendar weeks in the two (2) year period preceding a discharge”¹³

The Court finds that the Plaintiff has failed to state a WDA claim that is plausible on its face. In its current form, the Complaint appears to recite the elements of this cause of action with very little supporting facts. Essentially, the only relevant facts that this Complaint alleges are: (1) the Plaintiff was employed by the Defendant, and (2) the Defendant terminated the Plaintiff on or about July 16, 2013. Even assuming the veracity of these two facts, the Complaint still fails to state a claim. The Plaintiff also states that he was terminated wrongfully; however, this is a naked assertion as contemplated by the Supreme Court because there are no supporting factual allegations. The Complaint gives no facts whatsoever about the context of the discharge; the Court cannot assume the veracity of facts when there are none. The Complaint also fails to allege that the Defendant is a covered employer. Without pleading some facts as to these elements, the Plaintiff’s Complaint fails to state a claim for violation of the Wrongful Discharge Act.

II. Claim for Intentional Infliction of Emotional Distress

No local statute addresses intentional infliction of emotional distress, and the Supreme Court of the Virgin Islands has yet to adopt a rule that reflects the local common law regarding intentional infliction of emotional distress. However, Courts of the Virgin Islands have consistently recognized that a party may recover damages for the tort of intentional infliction of emotional distress.¹⁴ Following the Restatement (Second) of Torts, Courts have explained that an intentional infliction of emotional distress tort is committed when, “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another”¹⁵ However, this does not end the discussion on the proper formulation of a claim for intentional infliction of emotional distress in the Virgin Islands.

¹⁰ *Rajbahadoorsingh v. Chase Manhattan Bank, NA.*, 168 F. Supp. 2d 496, 504–05 (D.V.I. 2001).

¹¹ 24 V.I.C. § 62.

¹² *Id.*

¹³ *Id.*

¹⁴ *Thomas Hyll Funeral Home, Inc. v. Bradford*, 233 F. Supp. 2d 704, 714 (D.V.I. 2002).

¹⁵ *Codrington v. Virgin Islands Port Auth.*, 911 F. Supp. 907, 915 (D.V.I. 1996) (quoting RESTATEMENT (SECOND) OF TORTS § 46 (1965)).

In *Banks v. Int'l Rental & Leasing Corp.*, the Supreme Court of the Virgin Islands held that, while the Restatements may be persuasive authority in determining the common law, they “no longer constitute binding legal authority in this jurisdiction” pursuant to 1 V.I.C. § 4.¹⁶ As such, when considering the application of the Restatements (or in this case, following persuasive precedent that applied the Restatement) in the absence of binding precedent, the Superior Court must conduct a “*Banks* analysis” by examining 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.”¹⁷

Applying a *Banks* analysis, the Court finds that Restatement (Second) of Torts § 46 reflects the common law of this jurisdiction. First, the general rule of this section has been adopted by virtually every Virgin Islands court to address intentional infliction of emotional distress.¹⁸ Second, a review of the case citations listed in the Restatement (Second) of Torts § 46 suggests that a majority of jurisdictions have adopted a similar rule to section 46.¹⁹ Finally, considering the longstanding application of this construction of Intentional Infliction of Emotional Distress in Virgin Islands courts, the Court finds that the Restatement (Second) of Torts § 46 represents the soundest rule for the Virgin Islands, and is in accord with local public policy.

Having established that the persuasive precedent from Virgin Islands courts is proper in light of *Banks*, the Court may proceed to the elements of the claim. To recover damages for this tort, Plaintiff must show that the Defendant's conduct was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.”²⁰ As this Court has previous explained, this already high standard is very difficult to meet in an employment discrimination case.²¹ When there is no physical injury, the conduct is expected to be sufficiently extreme and outrageous to guarantee that the claim is genuine.²² “Whether Defendants’ conduct is so extreme as to permit recovery is initially a question of law for the Court.”²³ In most cases, continuous

¹⁶ 55 V.I. 967 (V.I. 2011).

¹⁷ *Matthew v. Herman*, 56 V.I. 674, 680-81 (V.I. 2012).

¹⁸ See, e.g., *Webster v. CBI Acquisitions*, Civ. No. 2011-558, 2012 WL 832044 (Super. Ct. March 5, 2012); *Thomas Hyll Funeral Home, Inc. v. Bradford*, 233 F. Supp. 2d 704, 714 (D.V.I. 2002); *Codrington v. Virgin Islands Port Auth.*, 911 F. Supp. 907, 915 (D.V.I. 1996).

¹⁹ RESTATEMENT (SECOND) OF TORTS § 46 (collecting cases).

²⁰ *Mann v. The Leather Shop Inc.*, 960 F. Supp. 925, 930 (D.V.I. 1997).

²¹ *Hodge v. Virgin Islands Daily News*, 52 V.I. 186, 198 (Super. Ct. 2009); Cf. *Alvarez v. Pueblo*, 24 V.I. 141, 147 (Terr. Ct. 1989) (holding an employer's exercise of such discretion in dismissing an employee “does not rise to the level of conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society”).

²² *Fraser v. Kmart Corp.*, Civil No. 2005-0129, 2009 WL 1124953 at *11 (D.V.I. April 24, 2009); see also *Eddy v. Virgin Islands Water & Power Authority*, 369 F.3d 227, 232 (3d Cir. 2004) (holding that plaintiff must “prove that he suffered severe distress that is not unreasonable, exaggerated, or unjustified”).

²³ *Webster v. CBI Acquisitions*, Civ. No. 2011-558, 2012 WL 832044 at *5 (Super. Ct. March 5, 2012) (internal quotations omitted).

malicious actions must exist before an employer may be held liable, and courts will generally consider the pattern and duration of distress as well as employee susceptibility.²⁴

Returning to the motion to dismiss standard, the Plaintiff has failed to allege any facts that tend to show intent to cause emotional distress or, alternatively, reckless behavior. The Complaint simply restates that the Plaintiff's discharge was outrageous. There is no allegation of physical injury to the Plaintiff, and so the conduct must be extreme and outrageous to guarantee a genuine claim. However, there is no factual background to inform the Court what about the discharge was outrageous. Further, Joseph has provided no evidence of continued malicious actions on the part of the Defendant. Finally, there is nothing in the Complaint to indicate Joseph is particularly susceptible to emotional distress. The Complaint states nothing about the Defendant's conduct other than that the Defendant terminated the Plaintiff. The Complaint states legal conclusions as to the elements of this claim instead of alleging the specific facts necessary to survive a 12(b)(6) motion. For this reason, this claim, too, must be dismissed.

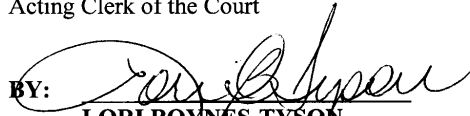
CONCLUSION

After taking note of the elements of both claims, the Court identifies the allegations that the Plaintiff was wrongfully discharged and that such discharge was so outrageous in character, as to go beyond all possible bounds of decency as no more than legal conclusions that are not entitled to an assumption of truth. Accordingly, the Plaintiff has failed to allege facts as to key elements of both the violation of the WDA claim and the intentional infliction of emotional distress claim. The Court will grant the Motion to Dismiss. A separate Order will follow.

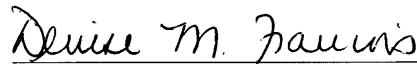
DATED: March 17, 2014

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


LORI BOYNES-TYSON

3/17/14



DENISE M. FRANCOIS

Judge of the Superior Court
of the Virgin Islands

²⁴ *Fraser*, 2009 WL 1124953 at *11; see *Matczak v. Frankford Candy & Chocolate Co.*, 136 F.3d 933, 940 (3d Cir. 1997).

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ORDER

AND NOW, for the reasons stated in this Court's Memorandum Opinion of the same date, it is hereby

ORDERED that the Defendant's Motion to Dismiss is **GRANTED**; and it is further

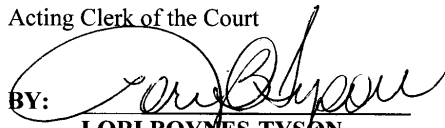
ORDERED that this matter is **DISMISSED**; and it is further

ORDERED that copies of the Memorandum Opinion and this Order shall be directed to counsel of record.¹

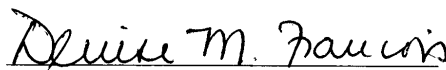
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