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

WALTER G. GARDINER, INDIVIDUALLY AND AS A MEMBER OF HEALTHQUEST, LLC, D/B/A VIRGIN ISLANDS KIDNEY CENTER AND THE CARIBBEAN KIDNEY CENTER,	SX-12-CV-084
Plaintiffs,	ACTION FOR DAMAGES
vs.	**JURY TRIAL DEMANDED**
ST. CROIX DISTRICT GOVERNING BOARD OF DIRECTORS INDIVIDUALLY AND COLLECTIVELY IN THEIR OFFICIAL CAPACITY, GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, A CORPORATION OF THE VIRGIN ISLANDS, JEFF NELSON, CEO, CFO, COO, AND DR. COLERIDGE T. FRANKLIN, JR. AND JOHN DOES 1-10,	2019 VI SUPER U59
Defendants.	

Appearances:

Scot McChain, Esq.
ILP & McChain Miller Nissman Law Group, LLC
St. Croix, USVI
For Plaintiff

Chivonne A.S. Thomas, Esq.
Hamilton, Miller & Birthisel
St. Croix, USVI
For Defendant

MEMORANDUM OPINION

WILLOCKS, Administrative Judge

¶1 **THIS MATTER** is before the Court on the Motion to Dismiss (hereinafter "Motion") of Defendants St. Croix District Government Board of Directors, Governor Juan F. Luis Hospital and Medical Center, Jeff Nelson, Dr. Franklin, JR, and John Does 1-10 (hereinafter collectively

"Defendants"), filed on April 30, 2012. In response, the Plaintiffs Walter G. Gardiner, individually and as a member of HealthQuest, LLC, Virgin Islands Kidney Center, and Caribbean Kidney Center (hereinafter collectively "Plaintiffs"), filed a Motion in Opposition (hereinafter "Opposition"), on June 18, 2012.

BACKGROUND

¶2 Plaintiff Walter G. Gardiner's (hereinafter "Dr. Gardiner"), is a medical doctor and founder of HealthQuest, LLC d/b/a/ the Caribbean Kidney Center, also now known as the Virgin Islands Kidney Center. (*Id.*) Dr. Gardiner was also previously employed by Governor Juan F. Luis Hospital (hereinafter "JFL"). (Compl. ¶ 3.) As an employee of JFL, Dr. Gardiner was subject to the Medical Staff Bylaws (hereinafter "Bylaws"). (Opp'n 11). According to the Bylaws "[a] practitioner against whom an adverse recommendation or action has been taken shall be given special notice." (Ex. A 44.) Moreover, "[a] practitioner shall have thirty (30) calendar days following the receipt of the notice to file a written request for a hearing." (*Id.*)

¶3 On February 23, 2012, a nurse at JFL asked Dr. Gardiner for a written order so that she may comply with his directions. (Compl. ¶ 10.) As a result, Dr. Gardiner became upset and slammed a binder containing medical charts on the countertop of the nurse's workstation. (Compl. ¶ 11.) Following the incident, Dr. Franklin, chairman of the Medical Executive Committee (hereinafter "MEC"), contacted Dr. Gardiner to discuss the incident and informed him that the matter would be discussed at the St. Croix District Governing Board meeting. (Mot. 2.) Subsequently, at the board meeting, Dr. Franklin read a letter detailing the incident that took place on February 23, 2012. (*Id.*) The Motion states that Dr. Gardiner attended the meeting and was given an opportunity to speak in order to address the incident. (*Id.*)

¶4 On February 29, 2012, the Defendants terminated Dr. Gardiner's employment as a Staff Physician II as well as his hospital privileges at JFL. (Compl. ¶¶ 2, 3.) On March 9, 2012, the Plaintiffs filed the proceeding Complaint. In the Complaint, the Plaintiffs allege that the Defendants termination of Dr. Gardiner's privileges at JFL was improper and have prevented him from offering a full range of hemodialysis service. (Compl. ¶ 6.) Moreover, because Dr. Gardiner is incapable of treating his hemodialysis patients without access to the hospital he is being forced to refer his patients to JFL physicians. (*Id.*) The Plaintiffs' Complaint asserts seven claims including: 1) Wrongful Termination; 2) Violation of the Virgin Islands' Antitrust Statute; 3) Tortious Interference with Prospective Economic Advantage; 4) Breach of Implied Covenant of Good Faith and Fair Dealing; 5) Defamation; 6) Unfair Competition and; 7) Violation of the Virgin Islands Criminally Influenced and Corrupt Practice Act.

LEGAL STANDARD

¶5 Under Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure, a party may seek to dismiss a claim due to "failure to state a claim upon which relief can be granted."[1] In ruling on a 12(b)(6) motion, a court determines whether the claim has been adequately stated in the pleadings.[2] The court must accept all well-pleaded allegations as true and view them in a light most favorable to the pleader.[3] According, to the Supreme Court of the Virgin Islands the court must:

> [f]irst, take note of the elements a plaintiff must plead to state a claim in order for the court to be aware of each item the plaintiff must sufficiently plead. Secondly, the court must identify allegations that are mere conclusions and not entitled to the assumption of the truth. Finally, the court must "assume the veracity of well-pleaded factual allegations and then determine whether they are plausible to entitle

[1] *Smith v. Law Office of Kari A. Bentz P.C.*, No. ST-17-CV-116, 2017 V.I. LEXIS 111, at *3-4 (V.I. S. Ct. 2017).
[2] *Id.*
[3] *Id.*

relief. However, since the Supreme Court adopted the Virgin Islands Rules of Civil Procedure the plausibility requirement is now omitted.[4]

DISCUSSION

Count I: Wrongful Termination of Hospital Staff Privileges

¶6 The Defendants argue that the Plaintiffs have not presented facts that plausibly show that the Defendants denied Dr. Gardiner his right to procedural due process. (Mot. 5.) In addition, the Defendants assert that the Supreme Court has found due process to be flexible and require such procedural protection as the situation demands. (*Id.*) Moreover, Article VII of the Bylaws provides for a fair hearing following an adverse action or recommendation and that there are situations in which a post-deprivation hearing is appropriate. (*Id.*)

¶7 The Plaintiffs allege that the Court can draw a reasonable inference from the Complaint that Dr. Gardiner's due process rights were violated because he was terminated without a hearing. (Mot. 3.) In addition, the Plaintiffs claim that the three cases the Defendants cite in support of a post-deprivation were all decided by summary judgment once discovery had occurred rather than during an earlier stage when a 12(b)(6) motion is appropriate. (*Id.*) Therefore, this case should proceed in order to properly determine whether Dr. Gardiner's due process rights were violated. (*Id.*)

¶8 Rule 8 of the Virgin Islands Rules of Civil Procedure states "that the Virgin Islands is a notice pleading jurisdiction, therefore an approach that dismisses a case based on failure to allege specific facts that if established would plausibly entitle the pleader to relief is not applicable."[5]

---

[4] *Smith v. Law Office of Kari A. Bentz P.C.*, No. ST-17-CV-116, 2017 V.I. LEXIS 111, at *3-4 (V.I. S. Ct. 2017). *see also Mills-Williams v. Mapp*, 67 V.I. Supreme LEXIS 35 at **11 (V.I. 2017).
[5] V.I.R. Civ. Pro. 8.

Rather, a complaint need only present a short, plain statement of the cause of action and the basis for the claim for relief.[6]

¶9 Here, the Complaint states that the Defendants violated Dr. Gardiner Fourteenth Amendment right to due process by terminating his hospital privileges without having an opportunity to address the allegations against him first. As such, the Plaintiffs have sufficiently informed the Defendants of the claims against them in a manner that makes them more than just conclusory. Therefore, given that the Virgin Islands is a notice pleading jurisdiction, the Complaint has sufficiently met the requirements of Rule 8. Thus, the Court must deny the Defendants' Motion to Dismiss for failure to state a claim in regard to Count I of the Plaintiffs' Complaint.

Count II: Violation of Virgin Islands Antitrust Statute

¶10 To succeed on a claim under Title 11 of the Virgin Islands Code §1518, a plaintiff must show that the defendant "[b]y contract, combination, or conspiracy with one or more other persons unreasonable restrain trade or commerce."[7]

¶11 The Defendants contend that the accusation that they, on behalf of a single corporate entity, acted to unreasonably restrain trade must fail as a matter of law because unilateral conduct under the Sherman Act does not violate antitrust law. (Mot. 8-9.) Moreover, since courts in the Virgin Islands have held that 11 V.I.C §1518 must be applied in a manner consistent with the Sherman Act and other federal antitrust laws, the claim must be dismissed. (Mot. 7.) In addition, the Defendants also assert that as an instrumentality of the Government of the Virgin Islands, JFL is immune from antitrust claims. (Mot. 9.)

---

[6] *Id.*
[7] 11 V.I.C. § 1503(2).

¶12 In response, the Plaintiffs' contend that the Complaint clearly states what actions were taken by the Defendants and other outsiders identified as John Does 1-10. (Mot. 8.) Therefore, the conduct by the Defendants was not unilateral. (*Id.*) The Plaintiffs' claim that the issue as to whether JFL is a semi-autonomous corporation of the government and thus immune to antitrust actions has yet to be determined, therefore it is an issue that is not appropriate for determination under a 12(b)(6) motion. (Mot. 9.)

¶13 The Complaint states that JFL conspired with outsiders who were interested in investing or purchasing the hospital and thus had an interest in ensuring that JFL maintains a monopoly. (Opp'n. 8.) The Plaintiffs also acknowledge that while the John Doe Defendants are unknown through discovery they can be identified. (*Id.*)

¶14 The hospital as a government entity is funded by the Government of the Virgin Islands and cannot accept gifts, grants, or loans on its own behalf.[8] Rather the Legislature has vested the Virgin Islands Government Hospitals and Health Facilities Corporation Board of Directors with the power to secure funds from private individuals and then disburse the funds to the local District Boards.[9] In addition, legislative approval is required in order to sell the property to private investors.[10] Therefore, even in a light most favorable to the Plaintiff, it is unlike that the Defendants engaged in conduct that would violate §1508.

¶15 Moreover, while the question of whether JFL is exempt from antitrust actions is an issue of first impression, the Court finds consistent with previous case law that the Legislature did not intend to subject JFL to lawsuits. From inception JFL, formerly St. Croix Hospital, has been owned

---

[8] 19 V.I.C. § 245(b).
[9] 19 V.I.C. § 262.
[10] 19 V.I.C. § 247(d).

by the Government.[11] Later, the Legislature enacted the Virgin Islands Government Hospitals and Health Facilities Corporation Act (hereinafter "Corporation Act").[12] Under the Corporation Act, the Virgin Islands Health Facilities Corporation (hereinafter "VIHHFC"), was established as a public corporation to manage JFL and other health care facilities.[13] In addition, the VIHHFC was given power to "sue and be sued" in its own name.[14] However, the Corporation Act did not vest JFL with that same power, as JFL has consistently been referenced as a government-owned hospital that is a facility of the Government and therefore generally not subject to suits. Furthermore, if the Legislature had intended for JFL to be subject to suits then it could have recognized the hospital as a public corporation, as actions may be brought against any public corporation in the Virgin Islands within the scope of its authority. Additionally, the Legislature could have vested the hospital with the power to "sue and be sued" as the Legislature has with other government entities.[15] Moreover, case law also indicates that JFL is not its own entity that is capable of being sued as the hospital has always been named alongside the Government, the VIHHFC or the individual doctors when subject to lawsuits.[16]

¶16 Accordingly, JFL as a facility of the Government is immune from antitrust claims. Thus, the Defendants' Motion to Dismiss regarding Count II of the Plaintiffs' Complaint shall be granted. Moreover, since the individual Defendants cannot engage in an antitrust violation on behalf of the hospital, Count II of the Plaintiffs' Complaint is dismissed.

---

[11] *Juan F. Luis Hosp. & Med. Ctr., & Gov't of the V.I. ex rel. Governor Juan F. Luis Hosp. & Med. Ctr. V. Titan Med. Group, LLC*, No. 2015-0074, 2018 V.I. Supreme LEXIS 33, at *11 (V.I. 2018).
[12] 1994 V.I. ALS 6012.
[13] *Id.*
[14] *Id. see also Cyprian v. Butcher*, 2010 V.I. LEXIS 30, at *4 (V.I. S. Ct. 2010) ("the clause to "sue and be sued" when applied to a governmental entity "must be liberally construed" such that it encompasses "the natural and appropriate incidents of legal proceedings").
[15] *Id.*
[16] *Id.*

Count III: Tortious Interference with Prospective Economic Advantage

¶17 To prevail on interference with prospective business relations claim, a plaintiff must demonstrate:

> (1) the existence of a professional or business relation that is reasonably certain to produce an economic benefit for the plaintiff; (2) intentional interference with that relationship by the defendant; (3) that was accomplished through improper means or for an improper purpose; and (4) that the defendant's interference damaged the plaintiff.[17]

¶18 The Defendants allege that the Plaintiffs have not presented any facts demonstrating that the Defendants intentionally or improperly interfered with Plaintiffs' prospective patients. (Mot. 11.) However, the Plaintiffs contend that the facts in the Complaint are sufficient because it states that "due to the Defendants terminating Dr. Gardiner's hospital privileges, he will no longer be able to provide full service to his patients." (Opp'n 10.) Moreover, "revoking Dr. Gardiner's hospital privileges following the incident that took place on February 23, 2012, was inherently improper and therefore intentional." (*Id.*)

¶19 The Plaintiffs' Complaint alleges that by wrongfully terminating Dr. Gardiner's hospital privileges the Defendants interfered with his existing and future business prospects. (Compl. 15.) However, the Complaint fails to identify any business relationship between Dr. Gardiner and a third party that the Defendants knew of and in which they improperly interfered with. (*Id.*) Therefore, in accordance with Rule 8 of the V.I.R. of Civ. Pro. the Complaint lacks the necessary facts required to presume the claim as being true.[18] Thus, the Court must grant the Defendants'

---

[17] *Donastorg v. Daily News Publishing Co.*, Inc., No. ST-2002-CV-117, 2015 2015 V.I. Lexis 105, at * 145 (V.I. S. Ct. 2015).
[18] V.I.R. Civ. Pro. 8(a)(2).

Motion in regard to the Plaintiffs' tortious interference with prospective business relationships and as a result, Count III of the Plaintiffs' Complaint is dismissed.

Count IV: Breach of Implied Covenant of Good Faith and Fair Dealing

¶20 An implied covenant of good faith and fair dealing is a common law principle that's generally included in every contract.[19] Moreover, the covenant is not explicitly bargained for by the parties but rather implied covenant that "neither party will do anything which will injure the right of the other to receive the benefits of the agreement."[20] As such, this Court in *Merchant Commercial Bank v. Oceanside Village, Inc.*, determined that the soundest rule for the Virgin Islands for breach of implied covenant of good faith and fair dealing requires that a party "take action that deprives another party of the benefits for which it had bargained."[21] Thus, to successfully bring a claim for breach of implied covenant of good faith and fair dealing the plaintiff must set forth a plausible breach of said covenant.[22]

¶21 The Defendants assert that the Plaintiffs have failed to cite any facts that plausibly establish that the Defendants breached the covenant of good faith and fair dealing. (Mot. 12.) Moreover, the Defendants contend that the Bylaws provide for a hearing after an adverse action at the request of the affected party, thus the Plaintiffs have not stated any facts that plausibly establish that the Defendants conspired to deny him his right to due process. (*Id.*)

---

[19] *Merchants Commercial Bank v. Oceanside Village, Inc.*, No. ST-2011-CV-653, 2015 V.I. LEXIS 146, at **40 (V.I. S. Ct. 2015).
[20] *Id.*
[21] *Merchants Commercial Bank v. Oceanside Village, Inc.*, No. ST-2011-CV-653, 2015 V.I. LEXIS 146, at **40 (V.I. S. Ct. 2015).
[22] *Id.*

¶22 The Plaintiffs assert that "the facts in the Complaint present a plausible argument that Defendants acted with bad motives or intentions to deny him the benefit of the bargain initially intended by the parties." (Opp'n. 11.)

¶23 Here, the Plaintiffs have not pleaded facts when assumed to be true would establish that the Defendants breaching the implied covenant of good faith and fair dealing by denying Dr. Gardiner due process under the Hospital's bylaws. Rather, the Complaint states that "Dr. Gardiner was entitled to a fair proceeding and due process under the Hospital's [b]ylaws, which constitute a contract between the parties" and that the "covenant was breached when the Defendants denied Dr. Gardiner due process." (Compl. 16.) However, the Bylaws state that "[a] practitioner shall have thirty (30) calendar days following his receipt of notice pursuant to Section 1.3 to file a written request for a hearing" and "[a] practitioner who fails to request a hearing within thirty (30) days waives any right to such a hearing or to an appellate review." (Def. Ex. A, Art. VII § 1.4.) Therefore, Dr. Gardiner was not denied his right to due process under the Bylaws but rather failed to request a hearing as he was entitled to do so under the Bylaws. Thus, Defendants' Motion to Dismiss Count IV of the Plaintiffs' Complaint shall be granted and Count IV of the Plaintiffs' Complaint will be dismissed.

Count V: Defamation Against Dr. Franklin

¶24 In order to prevail on a claim for defamation the plaintiff must show that:

> (1) the existence of a false and defamatory statement concerning another; (2) the existence of an unprivileged publication of a false and defamatory statement to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) "either the actionability of the statement irrespective of special harm or the existence of special harm caused by the publication."[23]

[23] *Donastorg v. Daily News Publishing Co.*, Inc., No. ST-2002-CV-117, 2015 V.I. Lexis 105, at * 20-21 (V.I. S. Ct. 2015).

¶25 The Defendants argue that the Plaintiffs have failed to allege which statements in the letter ready by Dr. Franklin were false and defamatory. (Mot. 13.) Moreover, because Dr. Franklin is chairman of the board and the letter was read at a MEC meeting, the statement is conditionally privileged. (*Id.*)

¶26 In response, the Plaintiff argues that the Complaint specifically identifies the false and defamatory statements made by Dr. Franklin in previous sections of the Complaint. (Opp'n. 11-12.) Therefore, by incorporating all the proceeding paragraphs, the Plaintiffs have sufficiently identified which statements in Dr. Franklin's letter were defamatory. (*Id.*) In addition, the Plaintiffs claim that the statements made by Dr. Franklin are not conditionally privileged because Title 19 of the Virgin Islands Code § 248(h), only protects members of a peer review committee "for acts to be done with due diligence in the furtherance of the purpose for which the committee was established." (*Id.*)

¶27 According to the Plaintiffs by incorporating the paragraphs prior to Count V they have sufficiently alleged a claim for defamation. (Opp'n. 11-12.) Paragraph eighty-six of the Complaint states that "at the board meeting a letter was read from Dr. Franklin outlining the incident." (Compl. 11.) Subsequently, paragraphs 125 and 126 of the Complaint state that "Dr. Franklin made defamatory statements about Dr. Gardiner to a third party" and "these statements as alleged above were false and injuries to Dr. Gardiner." (Compl. 16.) Given these allegations, the Complaint satisfies prong two and three of the defamation claim by stating that Dr. Franklin read the letter at the board meeting and that as a result, "Dr. Gardiner has suffered a loss of reputation, customer good will [sic], and loss of patient confidence." (Compl. 16.) However, the Complaint does not satisfy prong one and three because it fails to identify which statements in Dr. Franklin's letter outlining the incident were false and defamatory or how Dr. Franklin reading the letter at the MEC meeting constituted at least negligence.[24] Therefore, in considering the Complaint as a whole the Plaintiff has failed to satisfy all the prongs necessary to assert a claim for defamation.[25]

§28 Further, the Court finds that the letter read by Dr. Franklin is conditionally privileged. This Court has stated that a statement can avoid liability for publication if the conditional privilege applies and the privilege is not abused.[26] Moreover, a statement is conditionally privileged "if the circumstances induce a correct or reasonable belief that (a) there is information that affects a sufficiently important interest of the publisher, and (b) the recipient's knowledge of the defamatory matter will be of service in the lawful protection of the interest."[27]

§29 Here, the statement was conditionally privileged because Dr. Franklin was the chairman of the MEC, which is tasked with maintaining the professionalism of JFL. Dr. Franklin read the letter at a MEC board meeting where Dr. Gardiner's conduct was being reviewed. As the chairman of the MEC, the letter affected an important interest of JFL. In addition, it was also necessary for Dr. Franklin to read the letter to the other board members in order for them to review Dr. Gardiner's conduct as a JFL employee. Therefore, the letter read by Dr. Franklin at the MEC meeting was conditionally privileged. Thus, the Court must dismiss Count V of the Plaintiffs' Complaint.

---

[24] *Donastorg v. Daily News Publishing Co.*, 2015 V.I. Lexis at * 20-21; *see also* Complaint at 16.
[25] *Id.*
[26] Reynolds v. Rohn, No. SX-13-CV-188, 2015 V.I. LEXIS 103 at *28 (V.I. Super 2015)
[27] *Rohn*, No. SX-13-CV-188, 2015 V.I. LEXIS 103 at *28; *see also* 19 V.I.C. § 248(h)(stating "[t]here shall be no civil liability for any member of a per review committee, ethics committee, or quality assurance committee, . . . for any acts done with due diligence in the furtherance of the purpose for which the peer review committee, ethics committee, or quality assurance committee was established.")

Count VI: Unfair Competition

¶30 The laws of the Virgin Islands prohibit unfair competition under Title 11 § 1503, also known as the Virgin Islands Anti-Monopoly Law.[28] Moreover, §1503 states in relevant part that:

> "every person shall be deemed to have committed a violation of this chapter who shall . . . [l]ease or make a sale or contract for . . . services . . .where the effect of such lease, sale or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."[29]

¶31 The Defendants claim that the Plaintiffs have failed to allege any facts that the Defendants were engaged in unfair competition, and that the Plaintiffs are merely restating their antitrust claim under a different name. (Mot. 13.) Nevertheless, the Defendants assert that as an instrumentality of the Government, the Defendants are immune from antitrust actions. (Mot. 16.)

¶32 The Plaintiffs argue that although unfair competition is prohibited under the Virgin Islands Anti-Monopoly Act and the Defendants are a semi-autonomous corporate entity of the Virgin Islands Government the unfair competition claim is still valid due to the Defendants unfairly restricting the Plaintiff from serving his clients at JFL. (Opp'n 13.)

¶33 The Defendants are correct in their assertion that unfair competition is prohibited under §1503 of the Virgin Islands Antimonopoly Law.[30] Therefore the Plaintiffs' are merely restating their antitrust claim because unfair competition is a subset of the antitrust law. Thus, for the reasons described above, the Court will grant the Defendants' Motion to Dismiss for failure to state a claim for unfair competition and Count IV of the Plaintiffs' Complaint will be dismissed.

---

[28] *Virgin Islands Port Authority v. Virgin Islands Taxi Ass'n.*, 979 F. Supp. 344, 349 (D.V.I. 1997).
[29] 11 V.I.C. § 1503(4).
[30] *Id.*

Count VII: Criminally Influenced and Corrupt Practice Act

¶34 Title 14 Virgin Islands Code § 605 states that:

> "[i]t is unlawful for any person employed by, or associated with, any enterprise, as that term is defined herein, to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity. It is unlawful for any person, through a pattern of criminal activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property. It is also unlawful for any person who has received any proceeds derived, directly or indirectly, any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise. Finally, it is unlawful for any person to conspire or attempt to violate, either directly or through another or others, the provisions of section 605 . . . .[31]

¶35 Moreover, criminal activity under Title 14 of the Virgin Islands Code § 605 "means to engage in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in the crimes, offenses, violations or the prohibited conduct as described by the laws within the jurisdiction including any federal criminal law . . . ."[32]

¶36 The Defendants argue that the Plaintiffs only claim under the Virgin Islands Criminally Influenced and Corrupt Organization Act was the alleged improper termination of Dr. Gardiner's hospital privileges. (Mot. 17.) Aside from this accusation, the Plaintiffs have not stated any conduct on behalf of the Defendants that were illegal or conspiratorial in nature. (*Id.*) Therefore, the Plaintiffs have failed to allege any facts that suggest criminal activity or establish an intent on behalf of the Defendants to destroy the Plaintiffs' business. (*Id.*) In addition, the Defendants also allege that the Plaintiffs' intra-conspiracy claim cannot stand where a corporation is acting in concert with its officers and employees. (*Id.*)

---

[31] 14 V.I.C. § 607.
[32] *Id.* at 605.

¶37 In response, the Plaintiffs claim that the Complaint details the use of "email communication, cellphone communication, landlines, facsimile transmission, and the U.S. mail" to construct unwarranted disciplinary actions against Dr. Gardiner. (Opp'n 13.) Additionally, the Plaintiffs allege that due to the involvement of the John Doe Defendants the conspiracy included separate outside actors. (*Id.*) Thus, the conspiracy did not just entail JFL. (*Id.*)

¶38 Here, the Plaintiffs have alleged that the Defendants are in violation of § 605 and therefore they are entitled to relief under §607. However, to be in violation of § 605 the Defendants must be engaged in a pattern of criminal activity.[33] Count VII of the Plaintiffs' Complaint only consists of conclusory statements that the Defendants were engaged in a pattern of racketeering activity that affects interstate and foreign commerce. This statement lacks any further factual advancement and the Plaintiffs fail to state what actions by the Defendants constituted a pattern of racketeering. Consequently, the Court needs not address the issue of inter-corporation conspiracy and will grant Defendants' Motion to Dismiss for failure to state a claim under the Criminal Conspiracy and Corrupt Practices Act.

CONCLUSION

¶39 After careful consideration of the above, the Court must grant Defendants Motion to Dismiss in regard to Counts II, III, IV, V, VI, and VII of the Plaintiffs' Complaint. However, Count I of the Plaintiffs' Complaint still remain. An Order consistent with the Memorandum Opinion shall follow.

[33] 14 V.I.C. § 605.

DONE and so ORDERED this 30th day of July, 2019.

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

ATTEST:
Estrella George
Clerk of the Court

By: ______________________
Court Clerk Supervisor

Dated: 7/31/19