

DIVISION OF ST. THOMAS AND ST. JOHN

Defendant.

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) **CASE NO. ST-11-CV-24**

Pending before the Court are (1) Defendant's motion to dismiss the Complaint;¹ (2) Plaintiff's motion for injunctive relief;² and (3) Plaintiff's motion to disqualify.^{3 4} For the following reasons, Defendant's motion to dismiss will be granted in part, Plaintiff's motion to disqualify will be denied as moot, and the Court will reserve its ruling on Plaintiff's motion for injunctive relief.

Plaintiff was elected as an at-large senator for the 26th,⁵ 28th,⁶ and 29th ⁷ Legislatures of the Virgin Islands. During the 26th Legislature, Plaintiff purportedly expended \$19,153.65 of his own funds for the purposes of maintaining his offices and

⁷ Plaintiff was elected on or about November 2, 2010.

was not reimbursed by the Legislature. During the 28th Legislature, Plaintiff purportedly expended \$11,723.36 that was also not reimbursed. Plaintiff asserts he expended an additional amount of \$9,513.91 in 2010 and \$5,310.64 during a period of forced administrative leave. On January 14, 2011, Plaintiff filed a Complaint seeking a total reimbursement of \$45,701.47 exclusive of interest and costs.

ANALYSIS

Defendant moves to dismiss on the ground that this matter presents a non-judicial political question.

Fed. R. Civ. P. 12(b), made applicable to the Superior Court through SUPER CT. R. 7, provides that upon motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a “failure to state a claim upon which relief can be granted” to the claimant. When determining whether the allegations in a complaint are sufficiently pled, a court must engage in a three step inquiry:

First, the court must “tak[e] note of the elements a plaintiff must plead to state a claim.”.... Second, the court should identify allegations that, “because they are no more than conclusions, are not entitled to the assumption of truth”.... 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 for relief.”⁸

A motion to dismiss a complaint should be denied if the factual allegations are “enough to raise a right to relief above the speculative level.”⁹

⁸ *Santiago v. Warminster Tp.*, 629 F.3d 121, 130 (3d Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 881 (2009)).

⁹ *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008). See also *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Under the political question doctrine, “certain cases present questions that are non-justiciable.”¹⁰ A matter is non-justiciable when “a concern over the separation of powers between coordinate branches of government is so inextricably intertwined to the case at hand that a judicial forum would be an inappropriate place for resolution of that issue.”¹¹ Courts decline to interfere with the internal workings of the legislative branch when a matter concerns a legislature’s violation of its own internal rules.¹² On the other hand, when a legislative body violates some external source of law, such as a constitutional or statutory provision, the matter is justiciable.¹³

Plaintiff asserts that Defendant has violated an external source of law, namely 2 V.I.C. § 76. Under the statute, a member of the Legislature “shall receive a base allotment of 2% of the total budget of the Legislative Branch for the operation of the member’s senatorial office.”¹⁴ A member elected “at-large” shall receive an “allotment not to exceed 5% of the total budget of the Legislative Branch to provide for staffing of the member’s office in both districts” in addition to the member’s base allotment.¹⁵

While 2 V.I.C. § 76(a) entitles a senator to receive 2% of the total budget of the Legislative Branch in a given year, 2 V.I.C. § 76(d) operates as a cap for the 5% allotment and suggests that the Legislature has the discretion to determine whether a senator shall receive the full amount of the allotment in a given year. As a result, Plaintiff states a claim upon which relief can be granted under 2 V.I.C. § 76(a), but presents a non-

¹⁰ *Goodwin v. U.S. Federal Election Com’n*, 2012 WL 4009903, at *6 (D.V.I. 2012).

¹¹ *Id.*, (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

¹² *Brown v. Hansen*, 973 F.2d 1118, 1122 (3d Cir. 1992).

¹³ *Id.*

¹⁴ 2 V.I.C. § 76(a).

¹⁵ 2 V.I.C. § 76(d).

judicial political question under 2 V.I.C. § 76(d). Accordingly, Defendant's motion to dismiss will be granted in part and denied in part.

The Court will also give Plaintiff leave to amend his Complaint in light of this Opinion and will consider Plaintiff's motion for injunctive relief after amended pleadings have been filed. In addition, the Court will deny Plaintiff's motion to disqualify Senator Russell as moot as Senator Russell is no longer Defendant's counsel. An Order consistent with this Opinion shall follow.

Dated: September 28, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori Tyson

Court Clerk Supervisor

10/2/2012


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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

CRAIG W. BARSHINGER,

Plaintiff,

vs.

LEGISLATURE OF THE VIRGIN ISLANDS,

Defendant.

CASE NO. ST-11-CV-24

ORDER

The Court having issued a Memorandum Opinion on this date, it is
ORDERED that Defendant's motion to dismiss is GRANTED with respect to
Plaintiff's claims under 2 V.I.C. § 76(d); and it is

ORDERED that Defendant's motion to dismiss is DENIED with respect to
Plaintiff's claims under 2 V.I.C. § 76(a); and it is

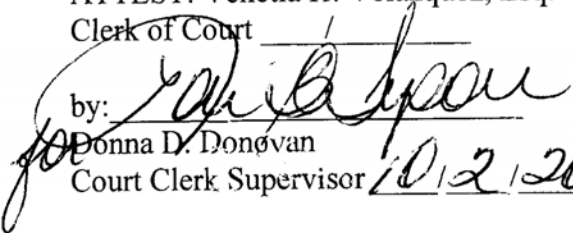
ORDERED that Plaintiff is given leave to amend the pleadings by
November 16, 2012; and it is

ORDERED that Plaintiff's motion to disqualify is DENIED as moot; and it is

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

Dated: September 28, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor 10/2/2012


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS