IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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VIRGIN ISLANDS TELEPHONE CORPORATION d/b/a VIYA,	
Plaintiff,	**CASE NO.: ST-17-CV-279**
-vs-	**ACTION FOR DECLARATORY JUDGMENT**
IRA MILLS, TAX ASSESSOR, GOVERNMENT OF THE VIRGIN ISLANDS,	
Defendants.	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Government of the Virgin Islands' Motion to Dismiss Plaintiff's Complaint and Memorandum of Law in Support of Motion to Dismiss for Lack of Jurisdiction and for Failure to Join an Indispensable Party or in the Alternative to Strike Demand for Jury Trial, which was filed on July 28, 2017. Plaintiff Virgin Islands Telephone Corporation d/b/a VIYA ("Vitelco") filed Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint on August 17, 2017. Being fully briefed, the Court will deny the Government's motion to dismiss in part and grant it in part.

I. BACKGROUND

Plaintiff Vitelco leases 25 Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, V.I. (hereinafter "the Property") from Harthman Leasing I, LLP.[1] According to its lease, Vitelco is responsible for the payment of any property taxes assessed against the property.[2] In 2013, the Virgin Islands Economic Development Commission granted, among other things, a Real Property Tax Exemption for several parcels of property, including the property at issue here.[3]

However, Vitelco paid, under protest, a tax bill from the Office of the Tax Assessor in the amount of $108,664.55 for 2013 and previous years.[4] Despite informing Defendant Ira Mills, the Tax Assessor, that the assessed properties were subject to 100% tax exemption for all property taxes, the Office of the Lieutenant General has allegedly refused to consider that the properties are not subject to tax assessment.[5] In response to this inaction, on June 23, 2017, Vitelco filed a complaint against Ira Mills, in his official capacity, and the Government of the Virgin Islands.

[1] Compl. ¶ 7.
[2] Compl. ¶ 10.
[3] Compl. ¶ 11.
[4] Compl. ¶ 9.
[5] Compl. ¶¶ 13, 15.

II. LEGAL STANDARDS

The Government has filed a motion to dismiss, as well as a motion to strike, under Rules 12(b)(1), 12(b)(5), 12(b)(7), and 12(f) of the Virgin Islands Rules of Civil Procedure.

A. Rule 12(b)(1).

When analyzing a motion to dismiss under Virgin Islands Rule of Civil Procedure 12(b)(1), the Court must first determine whether the movant's challenge is a facial or factual challenge. A facial challenge simply challenges the pleadings themselves and "asserts that it is insufficient to invoke the subject matter jurisdiction of the court based on a jurisdictional defect."[6] Facial challenges require that a court consider the allegations within the complaint in the light most favorable to the plaintiff.[7] Conversely, factual attacks concern a court's actual ability to hear the case based on "facts, or the lack thereof, as developed in the record."[8] Factual attacks allow courts to "weigh the evidence and satisfy itself as to the existence of its power to hear the case."[9]

B. Rule 12(b)(5).

Rule 12(b)(5) allows for the dismissal of a pleading for insufficient service of process as required by Rule 4 of the Virgin Islands Rules.[10] When the Government of the Virgin Islands is a named defendant in any proceeding, Rule 4(i) requires the plaintiff to serve "a summons and a copy of the complaint on the Governor and upon the Attorney General of the Virgin Islands," and "[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time."[11] However, where the plaintiff shows good cause for failing to serve a defendant, the Court must extend the time for service for an appropriate period, and even where good cause cannot be shown, the Court "must at least consider whether any other factors warrant a discretionary extension."[12] It is ultimately the plaintiff's burden to show that service was proper.[13]

C. Rule 12(b)(7).

A party may move for dismissal under Rule 12(b)(7) for "failure to join a party under Rule 19." Rule 19(a) governs whether or not a party is necessary to a suit:

> (1) A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

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[6] *James-St. Jules v. Thompson*, 2015 WL 13187393, at *2 (Super. Ct. June 25, 2015) (internal quotations omitted).
[7] *Id.* (noting that a facial attack is analyzed under the same standard as a Rule 12(b)(6) motion to dismiss).
[8] *Christopher v. Gov. Juan F. Luis Hospital & Medical Center*, 2016 WL 6069496, at *4-5 (Super. Ct. Oct. 12, 2016).
[9] *Gov. Juan F. Luis Hospital & Medical Center*, 2016 WL 6069496, at *5; *see also Mortensen v. First Federal Sav. and Loan Ass'n*, 549 F.2d 884, 891 (1977).
[10] V.I.R. Civ. P. 12(b)(5).
[11] V.I.R. Civ. P. 4(i), 4(m).
[12] *Ross v. Hodge*, 58 V.I. 292, 310-11 (V.I. 2013); *Flemming v. Culusvi, Inc.*, 2017 WL 933236, at *1 (V.I. Super. Ct. Mar. 7, 2017). *See also* V.I.R. Civ. P. 4(m).
[13] *Flemming*, 2017 WL 933236, at *1.

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.[14]

If the Court determines that a party is necessary, it must then determine whether or not that party is indispensable pursuant to Rule 19(b):

> (b) If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
> (2) the extent to which any prejudice could be lessened or avoided by:
> (A) protective provisions in the judgment;
> (B) shaping the relief; or
> (C) other measures;
> (3) whether a judgment rendered in the person's absence would be adequate; and
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.[15]

Ultimately, the burden is on the moving party to show that a party is both necessary and indispensable.[16]

D. Rule 12(f).

Rule 12(f) of the Virgin Islands Rules of Civil Procedure permits the Court, on motion or *sua sponte*, to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."[17] Granting a motion to strike is strongly disfavored absent a strong reason for such.[18] For instance, a motion to strike should be granted where "the allegations have no possible relation to the controversy and may cause prejudice to one of the parties."[19] Also, a court should consider the liberal pleading standards of Rule 8 of the Virgin Islands Rules of Civil

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[14] V.I.R. Civ. P. 19(a)(1).
[15] V.I.R. Civ. P. 19(b).
[16] *Titan Medical Group, LLC v. Governor Juan F. Luis Hospital and Medical Center*, 2015 WL 12712085, at *2 (V.I. Super. Ct. July 14, 2015).
[17] V.I.R. Civ. P. 12(f).
[18] *See Aoki v. Benihana, Inc.*, 839 F. Supp. 2d 759, 764 (D. Del. 2012) (quoting *Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893 (2d Cir. 1976)).
[19] *U.S. v. Sea Winds of Marco, Inc.*, 893 F. Supp. 1051, 1056 (M.D. Fl. 1995).

Procedure and the lack of a developed factual record at the early stages of litigation.[20] Ultimately, "[a] decision to grant or deny a motion to strike a pleading is vested in the trial court's discretion."[21]

III. DISCUSSION

A. Improper Service of Process.

The Government argues that Vitelco has failed to properly serve the Governor and Attorney General of the Virgin Islands. Vitelco simply rebuts that it served the Office of the Governor on August 17, 2017 and that a Return of Service was filed with the Superior Court.

Based on the Court's records, service on the Attorney General was inadequate because two separate and conflicting returns of service, apparently signed by Attorney Dwayne Henry,[22] were filed with the summons: one representing that the Attorney General was served on July 7, 2017, and one representing that the Attorney General could not be located in the Virgin Islands, and hence could not be served.[23] However, despite the inadequacies in Vitelco's return of service on the Attorney General, the Court has the option to "order that service be made within a specified time,"[24] and does not believe dismissal is appropriate. Therefore, the Court will require that Vitelco properly serve the Attorney General within 30 days of the date of this Memorandum Opinion and Order.

B. Exhaustion of Administrative Remedies.

According to the Government, V.I. Code Ann. tit. 33, § 2451, *et seq.*, establishes the primary avenue for challenging incorrect property tax assessments and that Vitelco is required to exhaust its administrative remedies with the Board of Tax Review before seeking redress from Superior Court. Vitelco summarily asserts that the word "may" in § 2451(a) evinces a permissive, not mandatory, alternative to filing a complaint with Superior Court.

The doctrine of exhaustion "provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."[25] Exhaustion's effect on a court's subject-matter jurisdiction depends on whether exhaustion is statutorily mandated or judicially prudent.[26] If a statute explicitly requires exhaustion prior to

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[20] *See Simmons v. Nationwide Mut. Fire Ins. Co.*, 788 F. Supp. 2d 404, 407 (W.D. Penn. 2011).
[21] *Id.* (quoting *Snare & Triest v. Friedman*, 169 F. 1, 6 (3d Cir. 1909).
[22] While the Court expresses no opinion on the issue of whether Vitelco's counsel of record is "not a party" under Rule 4(c)(2) under the Virgin Islands Rules of Civil Procedure, the Court notes that "allowing for service of a summons and complaint by a party's attorney [may be] inappropriate or undesirable in certain respects." *See Jugolinija v. Blue Heaven Mills, Inc.*, 115 F.R.D. 13, 15 (S.D. Ga. 1986).
[23] The Court notes that the summons issued to Ira Mills suffered from the same failure. However, no one has challenged the service of process upon Mills.
[24] V.I.R. Civ. P. 4(m).
[25] *Woodford v. Ngo*, 548 U.S. 81 (2006) (internal quotations omitted) (internal citations omitted).
[26] *See Pate v. Gov't of the Virgin Islands*, 2014 WL 7188999, at *5 (Super. Ct. Dec. 11, 2014).

seeking judicial relief, a litigant must pursue her administrative remedies before invoking a court's subject-matter jurisdiction.[27] Where a statute is either permissive or silent on exhaustion, a court, while retaining subject-matter jurisdiction, may judicially require that a litigant first exhaust her administrative remedies.[28] Of course, when the application of the doctrine of exhaustion is within a court's judicial discretion, it should always consider the legislative intent behind the relevant statutory scheme.[29] Even where exhaustion might otherwise be required, a court might otherwise excuse exhaustion "when the challenged agency action constitutes a clear and unambiguous violation of statutory or constitutional rights, when reliance on administrative procedures is clearly and demonstrably inadequate to prevent irreparable injury, and when exhaustion is futile."[30]

Therefore, to determine whether or not exhaustion applies, the Court must first decide if the applicable statute explicitly requires it. Courts interpreting statutes must give effect to the plain language of the text where it is clear and unambiguous.[31] However, where the language is ambiguous or a literal reading of the text would produce absurd results, a searching examination of the Legislature's intent is required.[32]

Persons who believe that the Tax Assessor has incorrectly assessed the value of their property have the opportunity to seek redress from the Board of Tax Review under V.I. Code Ann. tit. 33, § 2451: "Any person aggrieved by the action of the Tax Assessor in relation to the valuation of his property may make written complaint thereof to the Board of Tax Review[.]"[33] The Board of Tax Review must hold a hearing within 120 days of the filing of any complaint and not later than 120 days after the last permissible date for filing a complaint.[34] Further, the Board (1) must notify the complainant to appear at the hearing, (2) determine any questions related to the liability of the property to assessment or to the amount thereof, and (3) order the assessment books or schedules to be corrected in accordance with its decision, as well as record its determination.[35] Once the Board reaches a decision, that decision is final "unless the taxpayer, within 30 days after receipt from the Board of the notice provided in section 2454 of this title, petitions the Superior

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[27] *See Bangura v. Hansen*, 434 F.3d 487, 493 (6th Cir. 2006) (noting that where a statute requires exhaustion, "federal courts do not have subject matter jurisdiction to review the plaintiff's claim until [she] has exhausted [her] administrative remedies."); *Heywood v. Cruzan Motors, Inc.*, 792 F.2d 367, 370 (3d Cir. 1986) ("Where exhaustion is required by statute . . . courts have no choice but to apply the doctrine.").
[28] *See Bangura*, 434 F.3d at 494 ("[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.") (internal quotation marks omitted); *Diaz v. Pueblo Intern., Inc.*, 23 V.I. 346, 348 (Super. Ct. 1988) (recognizing the court's discretion to apply exhaustion where a statute does not expressly require it).
[29] *See Coit Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561, 579-80 (1989); *Darby v. Cisneros*, 509 U.S. 137, 144-45 (1993).
[30] *LaVallee Northside Civic Ass'n v. Virgin Islands Coastal Zone Management Com'n*, 866 F.2d 616, 620-21 (3d Cir. 1989).
[31] *First Am. Dev. Group/Carib, LLC v. WestLB AG*, 55 V.I. 594, 602 (V.I. 2011).
[32] *Id.* (citing *Gilbert v. People of the Virgin Islands*, 52 V.I. 350, 356 (V.I. 2009)).
[33] V.I. Code Ann. tit. 33, § 2451(a).
[34] § 2452.
[35] § 2452(1)-(3).

Court of the Virgin Islands for a review," in which "[t]he Superior Court may modify, reverse or affirm the decision of the Board[.]"[36]

Even assuming that the language of §2451, coupled with the statutory scheme as a whole, mandates exhaustion, the Court finds exhaustion unnecessary here. Section 2451(a) provides a taxpayer an avenue for relief where she is "aggrieved by the action of the Tax Assessor *in relation to the valuation* of [her] property."[37] In this action, however, Vitelco is not arguing that Mills incorrectly assessed the value of its property. Rather, Vitelco argues that its property is exempt from any assessment of property taxes at all.[38] Hence, regardless of whether exhaustion is mandatory or prudential, Vitelco's suit does not fall within the confines of § 2451. Therefore, the Court retains jurisdiction over Vitelco's claim under V.I. Code Ann. tit. 5, § 80 and will deny the Government's motion to dismiss under Rule 12(b)(1).

C. Failure to Join a Required Party.

The Government argues that the Virgin Islands Economic Development Authority ("VIEDA") is a necessary party to this suit because a decision on the validity of the Economic Development Certificate would affect VIEDA's authority over those certificates. Vitelco essentially asserts that no controversy exists with VIEDA, that a disposition of this matter would not cause VIEDA harm nor require it to provide relief, and that the issue here is not the validity of the Certificate itself but the Government's failure to recognize the effect of it.

The Government has failed to show that VIEDA is a necessary party to this litigation. First, VIEDA's absence from this suit would in no way prevent the Court from granting complete relief amongst the parties. In terms of whether Vitelco is determined to be entitled to a full refund of the property taxes allegedly overpaid, VIEDA's absence would have no bearing on such a judgment. VIEDA is not responsible for the assessment of property taxes, the collection of property taxes, or the refunding of overpaid property taxes.

Further, whatever interest VIEDA might have in this suit, the Government has not shown that moving forward without VIEDA would "impair or impede [its] ability to protect that interest," nor would this suit's disposition leave VIEDA "subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of [its] interest." For instance, the Government asserts that a court order regarding Vitelco's Certificate would impair or impede VIEDA's ability to "revoke, suspend or modify economic development certificates," but the Government does not elaborate on *how* or *in what way* VIEDA's ability would be impacted. Indeed, based on the pleadings now before it, the Court cannot conceive of any potential relief that would inhibit the EDC's or VIEDA's ability to issue economic development certificates to future beneficiaries nor their ability to revoke, suspend, or modify those certificates. Further, though this litigation essentially revolves around the alleged violation of Vitelco's Certificate, nothing in the

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[36] § 2453(d).
[37] § 2451(a) (emphasis added).
[38] Compl. ¶¶ 11, 13, 15-16; *see* Pl.'s Opp'n to Defs.' Mot. to Dismiss 2.

statutory scheme suggests that the Legislature intended for economic development certificates to escape judicial interpretation, especially in circumstances where the Government fails to uphold the terms. In fact, VIEDA's responsibilities include, in part, the determination of whether certain businesses are deserving of economic development tax benefits, and whether those businesses are able to retain those benefits, but VIEDA does not have the authority to ensure that the Government abides by approved certificates.[39]

Again, it is the movant's burden to bear, and the Government has provided the Court with no evidence supporting the assertion that VIEDA is a necessary party to this litigation.[40] Therefore, the Court will deny the Government's motion to dismiss under Rule 12(b)(7).

D. Motion to Strike Demand for Jury Trial.

The Government argues, in sum, that Vitelco has no right to a trial by jury in this instance because, as is required under Seventh Amendment analysis, this suit is not one which could have been brought under English common law and, even if it was, the Legislature has not expressly provided for a right to a jury trial in this particular situation. Vitelco's opposition is silent on this issue.

As a threshold matter, the Court recognizes that the Seventh Amendment of the U.S. Constitution applies to the Virgin Islands solely by way of statute. The Revised Organic Act of 1954, being the functional constitution of the Virgin Islands, delineates the degree to which the federal Bill of Rights applies to the territory:

> The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: . . . the first to ninth amendments inclusive[.][41]

The plain language of § 3 thereby "expresses the congressional intention to make the federal Constitution applicable to the Virgin Islands to the fullest extent possible consistent with its status

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[39] *See* V.I. Code Ann. tit. 29, § 705 (listing the powers and duties of the Economic Development Commission); § 1103 (listing same for the Economic Development Authority).

[40] *See Estes v. Shell Oil Co.*, 234 F.2d 847, 849 n.5 (5th Cir. 1956) (noting that outside evidence has been "traditionally proper with respect to grounds numbered (1) through (5) and number (7) as set forth in Rule 12(b)."); *Swartz v. Beach*, 229 F. Supp. 2d 1239, 1250-51 (D. Wy. 2002) ("The movant can satisfy this burden [under Rule 12(b)(7)] by providing the district court with extra-pleading evidence, such as affidavits of persons having knowledge of the absent parties' interests.").

[41] Revised Organic Act of 1954, § 3; 48 U.S.C. § 1561. Before the passage of the Revised Organic Act of 1954, the Legislature, through V.I. Code Ann. tit. 5, § 321, statutorily protected a litigant's right to trial by jury in civil actions: "The right of trial by jury as declared by the Seventh Amendment to the Constitution of the United States shall apply in civil actions in the District Court of the Virgin Islands, except as otherwise provided by law." *See also Samuel v. United Corporation*, 64 V.I. 512, 521-22 (V.I. 2016) (noting the replacement of "District Court" with "Superior Court" in § 321).

as a territory."[42] Therefore, whether or not Vitelco is due a right to a jury trial in this instance is determined by the governing standards of the Seventh Amendment.[43]

The Seventh Amendment provides that, "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved[.]"[44] To determine which issues "shall be preserved," courts must inquiry into whether those causes of action were either "tried at law at the time of the founding or [are] at least analogous to one,"[45] since "18th-century cases tried in courts of equity [did] not require a jury trial."[46] "This analysis applies not only to common-law forms of action, but also to causes of action created by congressional enactment."[47] Further, the fact that a litigant's cause of action is legal in nature "is a necessary but not sufficient condition" under the Seventh Amendment since this inquiry also necessitates a determination of whether the "defendant [was] suable at common law in 1791."[48]

Here, Vitelco has named Ira Mills, in his official capacity, and the Government of the Virgin Islands as defendants and seeks declaratory relief. Where a litigant seeks declaratory relief, and such relief does not fit neatly into either the legal or equitable category of cases, courts consider how a "case might have come to the court absent declaratory judgment procedures."[49] For example, if this case, without the declaratory judgment avenue, could have been brought before the Court on a theory of breach of contract seeking monetary relief, then Vitelco would be entitled to have its case tried before a jury.[50]

However, in this instance, even assuming that Vitelco's suit could be brought as one that was historically tried before a jury, it is not entitled to a jury trial here. The Government of the Virgin Islands is a named defendant. The right to a jury trial simply does not attach to actions against the government[51] unless, where the government has waived its sovereign immunity, a

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[42] *Melendez v. Virgin Islands*, 56 V.I. 244, 251 n.5 (V.I. 2012) (quoting *In re Brown*, 439 F.2d 47, 50-51 (3d Cir. 1971).

[43] *See Guam v. Guerrero*, 290 F.3d 1210, 1213-14 (9th Cir. 2002) ("Guam is a federal instrumentality, enjoying only those rights conferred to it by Congress, and its 'Bill of Rights' is a federal statute. Not even a sovereign State may interpret a federal statute or constitutional provision in a way contrary to the interpretation given it by the U.S. Supreme Court.").

[44] U.S. Const. amend. VII.

[45] *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 376 (1996).

[46] *Tull v. U.S.*, 481 U.S. 412, 417 (1987).

[47] *Id.*

[48] *In re Air Crash Disaster Near Roselawn, Ind. on Oct. 31, 1994*, 96 F.3d 932, 945 (7th Cir. 1996).

[49] *Fischer Imaging Corp. v. General Elec. Co.*, 187 F.3d 1165, 1171 (10th Cir. 1999); *see also AstenJohnson, Inc. v. Columbia Cas. Co.*, 562 F.3d 213, 223-24 (3d Cir. 2009) (quoting *Owens-Illinois, Inc. v. Lake Shore Land Co.*, 610 F.2d 1185, 1189-90 (3d Cir. 1979)) ("A workable formula that has been developed [in the declaratory judgment context] is to determine in what kind of suit the claim would have come to court if there were no declaratory judgment remedy.").

[50] *See Burlington Northern R. Co. v. Nebraska Public Power Dist.*, 931 F. Supp. 1470, 1481-82 (D. Neb. 1996) (noting that "a breach of contract action claiming damages was tried to a jury[.]").

[51] *See Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) (recognizing that the Seventh Amendment does not apply to the federal government). This concept applies with equal force to the Government of the Virgin Islands. *See Collins v. Government of the Virgin Islands*, 366 F.2d 279, 282 (3d Cir. 1966) ("The question as to whether Government [of the Virgin Islands] having waived[] immunity is entitled to a jury trial is free of the impact of the Seventh Amendment to

statute specifically provides for such.[52] Even if the Government has waived immunity for suits similar to the one before the Court, no statute in the relevant statutory scheme specifically and unequivocally provides for the right to a jury trial against the Government.[53] Therefore, no jury trial can be had in this matter.

Further, the same conclusion applies to any claims against Mills in his official capacity. Since the Seventh Amendment does not apply to actions against the government, it must follow that the same rule applies to actions against government officials, sued in their official capacity, where the action is, in reality, one against the government itself.[54]

The Court will grant the Government's Rule 12(f) motion and strike Vitelco's demand for a jury trial.

IV. CONCLUSION

As to Defendant Government of the Virgin Islands' motion to dismiss pursuant to Rule 12(b)(1), 12(b)(5), and 12(b)(7), the Court will deny the motion. As to the Government's Rule 12(f) motion to strike Vitelco's demand for a jury trial, the Court will grant the motion.

Accordingly, it is hereby

ORDERED that Defendant Government of the Virgin Islands' Motion to Dismiss Plaintiff's Complaint and Memorandum of Law in Support of motion to Dismiss for Lack of Jurisdiction and for Failure to Join an Indispensable Party or in the Alternative to Strike Demand for Jury Trial is **GRANTED IN PART** and **DENIED IN PART**; and it is further

ORDERED that Paragraph 19, which states, "A jury trial is demanded," is hereby **STRICKEN** from the complaint; and it is further

ORDERED that, **on or before July 9, 2018**, Defendant Ira Mills, Tax Assessor, **SHALL** respond to the complaint; and it is further

ORDERED that, **on or before July 23, 2018**, Plaintiff Virgin Islands Telephone Corporation d/b/a VIYA **SHALL** serve a summons and complaint, in compliance with Rule 4(i)

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the Constitution since it is clear that a suit against the sovereign was not a suit at common law within the meaning of the Seventh Amendment.").

[52] *Christensen v. United States*, 733 F. Supp. 844, 854 (D.N.J. 1990) ("[A] statute [must] specifically provide[] for trial by jury [in suits against the government].").

[53] *See In re Young*, 869 F.2d 158, 159 (2d Cir. 1989) (per curiam) (determining that the Postal Reorganization Act, though waiving sovereign immunity, did not "affirmatively and unambiguously" grant a right to a jury trial against the postal service).

[54] *Cf. Hall v. Louisiana*, 974 F. Supp. 2d 944, 952 (M.D. La. 2013) ("[W]hen the state itself is named as the defendant, a suit against state officials that is in fact a suit against a state is barred regardless of whether it seeks damages or injunctive relief.").

of the Virgin Islands Rules of Civil Procedure, upon Attorney Claude Walker, Attorney General of the Virgin Islands; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Dwayne Henry, Assistant Attorney General Hugh A. Greentree (V.I. Department of Justice), and Ira Mills, No. 1131 King Street, Christiansted, V.I. 00802.

Dated: June 22, 2018.

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

ATTEST:
Estrella H. George
Clerk of the Court

By:
Lori Boynes-Tyson
Chief Deputy Clerk 6/25/18