

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

**The Dutch West Indian Trading Company d/b/a)
Geeks-R-Us,)**

Plaintiff,)

v.)

**Government of the Virgin Islands,)
Department of Planning and Natural Resources,)**

Defendant.)

CIVIL NO. SX-10-CV-441

**ACTION FOR BREACH OF CONTRACT,
FEDERAL CIVIL RIGHTS VIOLATIONS,
INFLECTION OF EMOTIONAL
DISTRESS & FRAUD**

APPEARANCES:

SCOT F. MCCHAIN, ESQ.
The McChain Nissman Law Group
Christiansted, St. Croix, VI 00820
Attorney for Plaintiff

RAYMOND T. JAMES, ESQ.
Virgin Islands Department of Justice
Christiansted, St. Croix, VI
Attorney for Defendant

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on Plaintiff's Request for Entry of Default filed on January 19, 2011. Defendant, Government of the Virgin Islands ("Government"), filed an opposition on February 10, 2011, along with a Memorandum of Law in Support of Defendant's Opposition to Plaintiff's Motion for Entry of Default. Plaintiff filed a reply on February 24, 2011. For the reasons stated below, the Court will deny Plaintiff's request for entry of default.

I. PROCEDURAL BACKGROUND

On October 5, 2010, Plaintiff commenced this civil action by filing a complaint alleging that the Government failed to compensate Plaintiff for certain work performed relating to system support and network coordination for the Department of Planning and Natural

Resources ("DPNR"). The complaint alleges causes of action for breach of contract, *in quantum meruit*, unjust enrichment, violation of 42 U.S.C. § 1983, and fraud.

On January 19, 2011, Plaintiff filed a Request for Entry of Default contending that the Government and DPNR were both served on October 7, 2010, but "did not file Answers in the time allotted by law." Pl.'s Request for Entry of Default at 1. Plaintiff also attached two affidavits of the process server indicating that the Government and DPNR were properly served. *See* Pl.'s Request for Entry of Default - Exhibit 1. The affidavits indicate that the persons served were "Roberte Cazaubon for Vincent Frazer, Esq." and "Jencen Guzman for Robert Mathes"¹ on behalf of the Government and DPNR, respectively.

The Government filed an Answer on May 5, 2011, and it appears that the parties have engaged in limited discovery.

II. DISCUSSION

A party's request for an entry of default is governed by Rule 47 of the Rules of the Superior Court. Rule 47 provides:

When a party against whom affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by law or these rules, or has failed to appear at the time fixed for trial, the clerk shall enter his default.

Super. Ct. R. 47. Under Rule 32, a defendant has 20 days after service of the summons and complaint to enter an appearance or file an answer. Super. Ct. R. 32. The procedure for issuing service of the summons and complaint is governed by Rule 27(b) of the Rules of the Superior Court.

¹ The parties recognize, and the Court takes judicial notice, that Robert Mathes served as the Commissioner of DPNR at the time Plaintiff filed the complaint and issued the summons.

Pursuant to Rule 27(b), “[t]he summons and process shall be served in the same manner as required to be served by Rule 4 of the Federal Rules of Civil Procedure, provided, however, that . . . all references to ‘United States or any officer or agency of the United States’ shall be read instead ‘Virgin Islands or any officer or agency of the Virgin Islands.’” Super. Ct. R. 27(b). Federal Rules of Civil Procedure 4 requires a plaintiff suing a “[a] state, a municipal corporation, or any other state-created governmental organization” to be served by delivering a copy of the summons and of the complaint to its chief executive officer.” Fed. R. Civ. P. 4(j)(2). DPNR is an executive department of the Government of the Virgin Islands. *See* 3 V.I.C. § 400. The chief executive officer of the Government of the Virgin Islands is the Governor of the Virgin Islands. 48 U.S.C. § 1591 (stating “[t]he executive power of the Virgin Islands shall be vested in an executive officer whose official title shall be the ‘Governor of the Virgin Islands.’”). Thus, pursuant to Rule 4(j)(2), a plaintiff suing a department of the Government of the Virgin Islands must serve a summons and the complaint on the Governor of the Virgin Islands. *See e.g., Jarvis v. Gov’t of the Virgin Islands*, 2009 WL 367737, at *3 (D.V.I. Feb. 12, 2009) (requiring that pursuant to Rule 4(j), a plaintiff must serve the summons and complaint on the Governor of the Virgin Islands when suing the Virgin Islands Bureau of Internal Revenue).

Similarly, Rule 4(i)(2) provides:

Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered mail to the agency, corporation, officer or employee.

Fed. R. Civ. P. 4(i)(2). Therefore, applying Superior Court Rule 27(b) and substituting any reference to "United States or any officer or agency of the United States" with "Virgin Islands or any officer or agency of the Virgin Islands," Rule 4(i)(2) requires a plaintiff suing an agency of the Virgin Islands to serve the Government of the Virgin Islands. Thus, both Rule 4(i)(2) and Rule 4(j)(2) require a plaintiff suing the Government of the Virgin Islands or an agency of the Government of the Virgin Islands to serve the summons and complaint on the Governor of the Virgin Islands.

In this case, the Plaintiff submitted evidence that it served a summons and the complaint on the Attorney General and DPNR. However, there is no evidence in the record that Plaintiff served the Governor with a summons and complaint. Thus, Plaintiff has not properly effectuated service in accordance with Superior Court Rule 27 and, by extension, Rule 4 of the Federal Rules of Civil Procedure.

Plaintiff contends that the Government was given fair notice of the initiation of the instant proceedings by the issuance of service of process on the Attorney General. Plaintiff correctly notes that the Attorney General is the entity vested with the authority to defend claims filed against the Government. *See* 3 V.I.C. § 114(a)(1) (providing the Attorney General with the power and duty "to appear for and represent the executive branch of the Government of the Virgin Islands before the courts in all civil proceedings in which said Government . . . is interested"). Despite the fact the Government may have been put on notice of the commencement of this case, a plaintiff is required to serve a defendant in accordance with the rules of procedure in order to be entitled to an entry of default. Plaintiff failed to do so.

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ORDER

THIS MATTER comes before the Court on Plaintiff's Request for Entry of Default filed on January 19, 2011. For the reasons stated in the accompanying Memorandum Opinion dated August 26, 2014, it is hereby

ORDERED that Plaintiff's Request for Entry of Default is **DENIED**; it is further

ORDERED that the parties shall meet and confer to consider the issues listed in Rule 26(f) of the Federal Rules of Civil Procedure no later than **September 5, 2014**; it is further

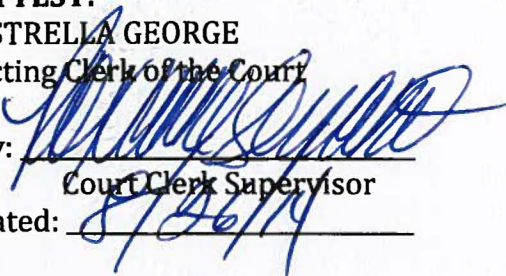
ORDERED that the parties shall submit, for the Court's consideration, a joint proposed discovery plan and proposed scheduling order which shall include the items listed in Rule 16(b)(3) of the Federal Rules of Civil Procedure no later than **September 12, 2014**; it is further

ORDERED that copies of this Order shall be provided to Attorney Scot F. McChain and Assistant Attorney General Raymond T. James.

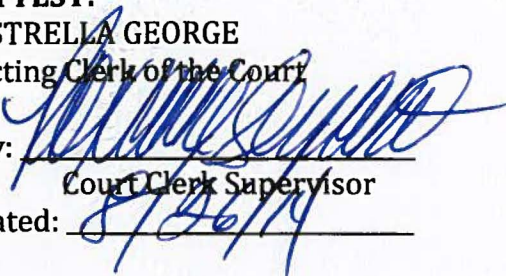
Date: August 26, 2014

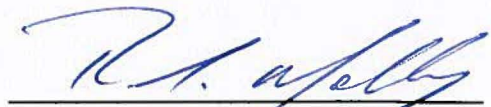
ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 

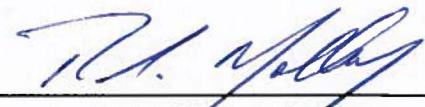

ROBERT A. MOLLOY

Judge of the Superior Court

III. CONCLUSION

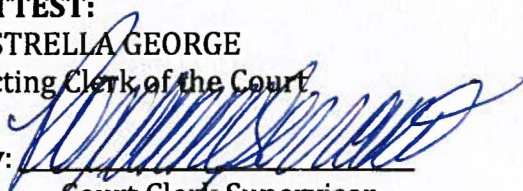
For the reasons stated above, the Court finds that the Plaintiff did not properly serve the Government in accordance with Rule 27 of the Rules of the Superior Court and Rule 4 of the Federal Rules of Civil Procedure. This case has sat dormant for several years and the Court will require the parties to take the appropriate action to move this case forward to resolution. The Court, therefore, will deny Plaintiff's request for entry of default and order the parties to meet and confer for the purpose of submitting a proposed scheduling order for the Court's consideration. An appropriate Order follows.

Date: August 26, 2014



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 8/26/14