

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

SHOWAYNE MODESTE,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-15-CV-020
	)	
v.	)	ACTION FOR DAMAGES
	)	
CASINO CONTROL COMMISSION,	)	
	)	
Defendant.	)	

APPEARANCES:

SHOWAYNE SIDNEY MODESTE
Frederiksted, St. Croix, VI
Plaintiff, appearing Pro Se

XAVARIE BAXLEY-HULL
Dudley, Rich, Davis LLP
Dronningens Gade, St. Thomas, VI
Attorney for Defendant

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on Defendant's motion to dismiss Plaintiff's complaint filed on August 31, 2015. Plaintiff did not file an opposition but filed documents that could be reasonably construed as motion for entry of default and judgment by default on September 8, 2015, and filed the same documents again on November 9, 2015. For the reasons that follow, the Court will grant Defendant's motion to dismiss and deny Plaintiff's apparent motions for entry of default and judgment by default.

I. BACKGROUND

Plaintiff, appearing *pro se*, initiated this matter by filing a handwritten, single-page complaint on January 26, 2015. The complaint does not make any clear allegations or directly state a cause of action beyond "Civil/Damages," but states the following: "On or about August 15, 2012; I, Civilian Showayne Sidney Modeste filed an [sic] complaint at STX

Virgin Islands Casino Control commission against Divi Carina Bay Casino.” Compl. ¶ 1. It continues with numbered, disjointed sentences, beginning with: “1. March 01, 2014 fund’s [sic] totaling \$76,000 . . . to each employee, board of executive’s [sic] and none disposition to date.” *Id.* It continues with: “2. None correspondence via paper trail from 08/15/2012 filed complaint through December 30, 2014.” *Id.* The third enumerated sentence states: “3. 01-13-2015 I, Civilian Showayne S. Modeste accepted an [sic] ‘Hearing’ scheduled for January 13, 2015 for VICCC ‘to gather information.” *Id.* A second sentence enumerated as “3” continues to state: “I attended the ‘Hearing’ with sworn affidavit.” *Id.* The body of the complaint concludes with the following sentence: “Two Years One Hundred Thirty Six Days untill [sic] correspondence via ‘12/13/2014 NOTICE OF HEARING’ subpoena. *Id.* The final portion of the complaint states an intent to seek damages in the amount of ten thousand dollars, attorneys’ fees and costs, and any further relief. *Id.*

Defendant was served with process on August 6, 2015, and Defendant filed a motion to dismiss Plaintiff’s complaint for failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. Rules 12(b)(6) and (8) on August 31, 2015. Plaintiff did not file a response to the motion to dismiss but filed two sample orders, one for judgment by default and one for entry of default on September 8, 2015, and he filed near-identical sample orders on November 5, 2015.

II. DISCUSSION

A. Defendant’s Motion to Dismiss under Rule 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a defendant can move to dismiss a claim because the plaintiff has failed “to state a claim upon which relief can be granted.” Fed

R. Civ. P. 12(b)(6).¹ “The adequacy of the complaint is governed by the general rules of pleading set forth in Rule 8 of the Federal Rules of Civil Procedure.” *Brady v. Cintron*, 55 V.I. 802, 822 (V.I. 2011). Rule 8 requires that a pleading contains “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). However, the rule also requires that the complaint must have “enough factual matter (taken as true) to suggest the required element(s)” of the claim. *Robles v. HOVENSA, LLC*, 49 V.I. 491, 501 (V.I. 2008). The facts alleged in the pleadings, and any inferences drawn therefrom, must be viewed in the light most favorable to the plaintiff. *Benjamin v. AIG Ins. Co. of Puerto Rico*, 56 V.I. 558, 566 (V.I. 2012).

The Court must perform a three-step analysis to determine whether a complaint can survive a 12(b)(6) motion. *Brady*, 55 V.I. at 823. The Court must: 1) note the elements that must be pled to sufficiently state a claim; 2) identify allegations that are not entitled to the assumption of truth because they are no more than mere conclusions; and 3) assume the veracity of well-pleaded factual allegations and then determine whether they could plausibly establish entitlement of relief. *Id.* Allegations that are not entitled to an assumption of truth “can take the form of either legal conclusions couched as factual allegations or naked [factual] assertions devoid of further factual enhancement.” *Id.*; see also *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649-50 (V.I. 2011). If there are facts sufficient for the court to “draw a reasonable inference that the defendant is liable based on the elements . . . then the claim is plausible.” *Joseph*, 54 V.I. at 650. The Court will not assume that “labels and conclusions” or

¹ Federal Rule of Civil Procedure 12 is applicable to the practice and procedure of the Superior Court through Rule 7 of the Rules of the Superior Court.

“formulaic recitation[s] of the elements of a cause of action” are true. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (U.S. 2007).

If a complaint is subject to a Rule 12(b)(6) dismissal, the Court must permit a curative amendment unless such an amendment would be inequitable or futile. *Benjamin v. Bennerson*, 2012 V.I. LEXIS 7, *7 (V.I. Super. Ct. Feb. 13, 2012); *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008). Moreover, the Court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend. *Benjamin*, 2012 V.I. LEXIS at *7.

In its motion to dismiss, Defendant argues that “the averments in the Complaint do not set forth any grounds for the relief requested under Virgin Islands law or provide the Defendant with notice of the actual facts underlying the allegations.” Mot. to Dismiss Pl’s Compl. at 1. The motion to dismiss continues to state that “the Complaint is so lacking in detail that no reasonable inferences can be made” and that the Complaint is “unintelligible, making it impossible for Defendant to respond to any of the numbered allegations [and] none of the numbered allegations provide the defendant any notice as to what Plaintiff is alleging.” *Id.* at 3.

The Court agrees with Defendant that the complaint is unclear regarding the cause of action that it alleges beyond bearing caption “damages.” Even construing the complaint in the light most favorable to Plaintiff, the Court finds that it is impossible to discern with any certainty what course of events transpired, let alone whether the facts satisfy the elements of a cause of action. The only facts that the complaint alleges with any clarity are that Plaintiff filed a complaint against Defendant in 2014 and that Plaintiff subsequently attended a

hearing; these facts, without more, do not establish that Plaintiff would be entitled to relief. Accordingly, as Plaintiff's complaint fails to state a claim upon which relief may be granted, the Court will grant Defendant's motion to dismiss.

B. Plaintiff's Motion for Entry and Motion for Judgment by Default

Entry of default is governed by Sup. Ct. R. 47, which provides that: "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." As per Sup. Ct. R. 48, a judgment by default may subsequently be entered by the clerk or the Court, upon request by the plaintiff.

In Plaintiff's sample orders entitled "Entry by Default," he states that Defendant was served and has not answered, appeared, nor otherwise pleaded within the time required by law. In his sample orders entitled "Judgment by Default," he reiterates that the defendant has not appeared in the action after due noticed and that a judgment be entered against defendant in sum of \$110,000. The record indicates otherwise. After having been served on August 6, 2015, Defendant filed an appearance and filed the presently-considered motion to dismiss on August 31, 2015. Accordingly, as Defendant has both appeared and filed an appropriate pre-answer dismissal motion in this matter, Plaintiff is not entitled to entry of default against Defendant. As an entry of default is a necessary prerequisite to a judgment by default, Plaintiff is likewise not entitled to a judgment by default.

III. CONCLUSION

Because Plaintiff's complaint fails to allege any facts to state a claim upon which relief may be granted, the Court will grant Defendant's motion to dismiss. Additionally, because

Defendant has appeared and filed a responsive pleading in this matter, the Court will also deny Plaintiff's motions for entry of default and judgment by default. An appropriate Order follows.

Dated: November 20, 2015



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 11/23/15

