

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

VIRGIN ISLANDS WATER AND POWER AUTHORITY,	)	
	)	CASE NO. ST-14-CV-558
	)	
Plaintiff,	)	ACTION FOR
vs.	)	DAMAGES PURSUANT
	)	TO 14 VIC § 2103
SOUND SOLUTIONS, LLC, EUGENE IRISH,	)	
a/k/a “DJ DOCTA,” PATRICE J. MARTIN, and	)	
FRANKLIN J. BENJAMIN a/k/a “UBBA,”	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants’ Motion to Dismiss (filed on January 26, 2015) and Plaintiff V.I. Water and Power Authority’s (“WAPA”) Motion for Extension of Time (filed on March 18, 2015) to respond to the Motion to Dismiss.

I. Background

Defendants Franklin J. Benjamin, Eugene Irish, and Patrice J. Martin are managing members of Defendant Sound Solutions, LLC, which “own[s], sell[s], and lease[s] professional audio, video, staging, roofing and lighting products to venues, musicians, and organizations in the” Virgin Islands. Complaint at 3, Virgin Islands Water and Power Authority v. Sound Solutions, LLC, Case No. ST-14-CV-558 (V.I. Super. Ct. Dec. 8, 2014). On May 5, 2011, Defendants leased two industrial generators to musical groups for the St. Thomas Carnival J’ouvert. *Id.* After the festivities, Defendants moved the generators to a vacant lot near Mandela Circle and left them

there on flatbed trailers. *Id.* A passer-by recognized the generators as having been reported stolen and called the police. *Id.* The police seized the generators and asked WAPA to assist with transporting the generators from the scene since WAPA, unlike the police, had the technical capability and experience necessary to move such large generators; WAPA agreed and assisted the police.¹ *Id.* at 4. Mere days later, the People of the Virgin Islands charged Defendant Benjamin with two counts of possession of stolen property in violation of V.I. Code Ann. tit. 14 § 2101 in *People v. Franklin J. Benjamin*, Case No. ST-11-CR-241 (V.I. Super. Ct. filed May 6, 2011). *Id.* Over three years later, Benjamin pleaded guilty to one count of possession of stolen property and was sentenced to probation on a suspended one-year term of incarceration. *Id.* The Complaint does not allege that any other Defendants were charged or convicted.

Meanwhile, more than two years before Benjamin pleaded guilty, Defendants Sound Solutions and Eugene Irish filed suit against WAPA (and the police) in *Sound Solutions v. Government of the Virgin Islands*, Case No. ST-12-CV-88 (V.I. Super. Ct. filed Feb. 29, 2012) (hereinafter “*Sound Solutions I*”). Complaint, Sound Solutions, LLC v. Virgin Islands Water and Power Authority, Case No. ST-12-CV-88 (V.I. Super. Ct. Feb. 29, 2012). Sound Solutions and Irish alleged that not only had the police and WAPA seized the generators but they had also taken a speaker. *Id.* at 3. That suit

¹ WAPA was not the owner of the generators or the speaker; it was only assisting VIPD after the allegedly stolen property was discovered.

prayed for compensation both for the generators and the speaker that went missing. *Id.* That civil case is still pending before the Honorable Michael C. Dunston on the Superior Court although WAPA obtained partial summary judgment on September 19, 2014 on Sound Solutions' claim with respect to the speaker, which was dismissed. The claim for the generators remains pending. *Sound Solutions v. Government of the Virgin Islands*, Case No. ST-12-CV-88, 2014 V.I. LEXIS 74 (V.I. Super. Ct. Sep. 19, 2014). A few months later, WAPA filed the present law suit.

II. Procedural Posture

In this suit, WAPA has brought two counts against Sound Solutions, Irish, Benjamin, and Martin: for civil liability under 14 V.I.C § 2103 and gross negligence. As discussed below, WAPA's Complaint is thin on factual content and heavy on legal conclusions when presenting these two counts, but the key underlying factual allegation for each count amounts to this: that Defendants filed suit in *Sound Solutions I* knowing full well that the generators were stolen property and that they therefore had no right to recover for them. WAPA further claims it should be able to recover damages for Defendants' wrongfully filing and continuing the case after partial summary judgment was granted. Defendants moved to dismiss this case on January 26, 2015 and filed a motion on February 6, 2105 to transfer this case to the chambers of Judge Dunston, who is presiding over *Sounds Solutions I*. WAPA timely

opposed the motion to transfer but missed the deadline to oppose the motion to dismiss (which fell on February 16, 2015).

III. Motion For Extension of Time

On March 18, 2015, nearly two months after Defendants moved to dismiss, WAPA moved for an extension of time to respond to Defendants' motion. Since WAPA's motion comes after its time to respond has expired, the Court will grant the extra time if it finds "excusable neglect." Super. Ct. R. 10(a)(2). WAPA admits its untimeliness and justifies it by blaming Defendants' "incohesive filings" and "conflicting pleadings [that] created a procedural conundrum in which the direction this matter would move was not altogether clear to the Authority who reserved responding to the pending Motion to Dismiss so as not to cause additional confusion or create unnecessary work to this Court's docket." Plaintiff's Motion for Extension of Time at 3, Virgin Islands Water and Power Authority v. Sound Solutions, LLC, Case No. ST-14-CV-558 (V.I. Super. Ct. Mar. 18, 2015). Moreover, WAPA asserts "conflicting pleadings left the Authority in the unenviable position of not knowing exactly how best to proceed in this matter." Memorandum of Law in Support of Plaintiff's Motion for Extension of Time at 2, Virgin Islands Water and Power Authority v. Sound Solutions, LLC, Case No. ST-14-CV-558 (V.I. Super. Ct. Mar. 18, 2015).

WAPA finally asked for an extension of time “[a]fter receiving a recent ruling from the Sounds Solutions I court [that] clarify[ied] that matter[']s procedural posture.” Plaintiff’s Motion for Extension of Time at 3, Virgin Islands Water and Power Authority v. Sound Solutions, LLC, Case No. ST-14-CV-558 (V.I. Super. Ct. Mar. 18, 2015). WAPA also claims to need discovery in order to respond to Defendants’ motion on account of Defendants’ having attached evidentiary materials to their motion that were not part of the pleadings. *Id.* at 2.

None of this is “excusable” under Rule 10 or otherwise. WAPA has cited no precedent in which any court has allowed extensions of time for a party’s alleged confusion over another litigant’s strategy.² Nor has the Court ever heard of a case where a party decided on its own that it could just “reserve[] responding” without leave of the Court and then claim it was actually doing the Court a favor.³ If WAPA truly believed that there was a procedural problem that prevented it from responding, it should have alerted the Court before the deadline. WAPA has identified no problem

² The Court is frankly confused by WAPA’s confusion. The alleged conflict in Defendants’ filings that mystified WAPA comes from Defendants asking both that the Court dismiss the case and that the Court transfer the case to the chambers of the same judge that is presiding over *Sound Solutions I*, the predicate case behind the instant action. WAPA alleges that the time for dispositive motions in the other case has passed and that Defendants, in asking to transfer, are thereby nullifying their own motion to dismiss. Whether dispositive motions are out of order in another case has no bearing on this case, even if it were transferred to the same judge. Defendants have expressly not moved for consolidation. Even more confusing is why WAPA would argue that another party’s allegedly self-defeating motions would allow WAPA to ignore deadlines.

³ The Court can say unreservedly that timely filings are *always* the best way to reduce “confusion” and avoid “unnecessary work” for the Court.

it could not have brought to the Court's attention before the original deadline expired.⁴ Therefore, the Court will deny the Motion for Extension of Time.

IV. Motion to Dismiss

On a motion to dismiss, the Court must conduct its analysis under the assumption that all facts (as opposed to mere legal conclusions) pleaded by the non-movant are true. *See, e.g., Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011). Therefore, the facts recounted above and herein discussed are derived from WAPA's Complaint unless otherwise indicated.

Defendants' Motion to Dismiss offers an assortment of objections to WAPA's Complaint. Many of these arguments incorporate evidence outside the pleadings which might compel the Court to act under Fed. R. Civ. P. 12(d) either to exclude the outside matters or convert the motion to dismiss into a motion for summary judgment under Fed. R. Civ. P. 56. However, the Court need not make this decision, because, as explained below, it finds that the facts as alleged in the Complaint alone are sufficient to decide the Motion without reference to additional exhibits. The Court addresses each count of the Complaint in turn without reference to Defendants' extraneous evidentiary attachments.

⁴ WAPA makes a vague reference to a ruling from Judge Dunston in the other case "clarify[ing] that matter[']s procedural posture" and allowing it to finally ask for an extension of time here. WAPA does not explain further, but this Court could discern nothing in the Court docket between the time Defendant moved to dismiss and when WAPA moved for an extension of time that clarified the matter as it appears that Judge Dunston only entered orders setting trial dates, setting a deadline for the plaintiffs (in that case) to oppose a motion for summary judgment, and then extending that deadline.

A. Count I - Claim for Civil Liability Under Section 2103

Chapter 105 of Title Fourteen of the Virgin Islands Code, under which Defendant Benjamin pleaded guilty in *People v. Benjamin*, criminalizes the knowing possession, purchase, receipt, sale, or concealment of stolen property, or the withholding of such property from its owner.⁵ V.I. Code Ann. tit. 14 § 2101. In that same chapter, Section 2103 allows “[a]ny person who has been injured by a violation of [Chapter 105 to] bring a civil action in which he shall be entitled to recover three times the amount of actual damages, if any, sustained by him.” Stated another way, this section allows for a civil recovery in the event that a plaintiff can demonstrate 1.) a violation of Chapter 105; 2.) an injury; and 3.) an adequate causal relationship between the two. V.I. Code Ann. tit. 14 § 2103.

Concerning the first element, WAPA has alleged a violation of Chapter 105 in that Benjamin pleaded guilty to possession of stolen generators under Section 2101 and that the other Defendants acted in concert with Benjamin to commit the crime.⁶

⁵ The relevant criminal provision states in full: “Any person who buys, receives or possesses any property which has been obtained in any unlawful manner, knowing or having cause to believe the property to have been so unlawfully obtained, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing or having cause to believe the property to be so stolen or illegally obtained shall (a) if the property received, bought or possessed shall be of the value of one hundred dollars or upward, be imprisoned for not more than 10 years or be fined not more than \$7,000, or both; or (b) if the property received, bought, or possessed shall be of a value of less than one hundred dollars, be fined not more than \$2,000 or imprisoned not more than one year, or both.” V.I. Code Ann. tit. 14 § 2101.

⁶ The Court will not address here whether WAPA’s attempts to pin the crime on the other three defendants too despite Benjamin apparently being the only one convicted (or charged) passes 12(b)(6) muster since the question can be disposed on other grounds.

Concerning the second element, WAPA's alleged injury is less clear: aside from vague, conclusory allegations that WAPA "has suffered actual and consequential damages," the only concrete damages to WAPA the Court can identify in the Complaint are "its costs including, but not limited to, its attorney fees incurred" from WAPA having to defend itself in *Sound Solutions I*.⁷

WAPA's pleading fails with the third element: the causal connection between the possession of stolen property and the litigation costs is too tenuous to sustain a suit under Section 2103. The first two elements are causally linked only insofar as it would be impossible for Defendants Sound Solutions and Irish to have brought suit in *Sound Solutions I* "but for" Defendant Benjamin's having possession of the stolen generators in the first place and starting the long chain of independent, contingent events⁸ that led to the police seizing the generators with the assistance of WAPA. After all, if the generators had not been seized (and had the speaker not gone missing), there would be nothing for which to sue. But to say that the illegal possession itself, rather than the *Sound Solutions I* lawsuit, "injured" WAPA stretches the plain meaning of Section 2103 well past the breaking point.⁹ WAPA

⁷ As WAPA does not claim to be the owner of the generators, it has alleged no damages relating to an interest in that stolen property.

⁸ Including, but not limited to, Defendants' decision to rent the generators for use in J'ouvert, to park the vehicle where they did, the passerby's noticing the generators and calling the police, the police's investigation and decision to call WAPA, WAPA's removal of the generators at the request of VIPD, and Sound Solutions' decision to sue WAPA.

⁹ It is self-evident that a civil liability provision in the criminal code is designed to protect the *victims* of the crime. Had WAPA alleged it was the owner of the generators, it could have sued Defendants for "withholding" or "concealing" them. Or, if Defendants had sold the stolen generators to WAPA (assuming WAPA was an innocent purchaser), then WAPA might similarly claim to be injured by a Section 2101 violation. But as it stands, the crime and WAPA's litigation costs are related only insofar as they grow out of the same plotline.

must allege facts demonstrating not only that the illegal possession was technically a “but-for” cause, but also that it was a “substantial factor in bringing about” the litigation costs. *Molloy v. Independence Blue Cross*, 56 V.I. 155, 180 n.6 (V.I. 2012) (citing *Sealey-Christian v. Sunny Isle Shopping Ctr., Inc.*, 52 V.I. 410, 432 (V.I. 2009) (finding that causation for a tort requires the Plaintiff to show that the tort was both the “but-for” cause of the injury and “a substantial factor in bringing about the result.”).¹⁰ WAPA’s complaint is devoid of any alleged fact pointing to some causal substantiality. Therefore, this count of the Complaint will be dismissed with prejudice for failure to state a claim upon which relief may be granted.

B. Count II - Claim for Gross Negligence

WAPA also brings a count of gross negligence.¹¹ Again the only injury WAPA alleges is the cost of defending the *Sound Solutions I* lawsuit. Unlike the Section 2103 claim, the main problem here is not that WAPA has chosen an inapt cause of action, because the alleged breach of duty appears to be the negligent filing (and perhaps continuation) of the *Sound Solutions I* lawsuit, which, unlike the illegal possession of stolen generators, has a plain causal relationship with the legal costs in that case.

¹⁰ The Court acknowledges that *Molloy* and *Sealey-Christian* do not interpret Section 2103 specifically, but is nonetheless satisfied that the rules governing causation for common law torts are the most appropriate to apply to an erstwhile common law tort whose damages rules have been statutorily modified, as in this case.

¹¹ Despite the nature of the factual allegations, WAPA has not framed this as a cause of action for wrongful civil proceedings or abuse of process, but merely alleges gross negligence.

Rather, this cause of action fails on another ground: it is not ripe.¹² Ripeness in the Virgin Islands courts¹³ is “a non-jurisdictional, judicially-created doctrine” “under which courts will defer from ruling on a claim when ongoing . . . litigation precludes an informed determination of the issues.” *Simon v. Joseph*, 59 V.I. 611, 629 (V.I. 2013).

In the Virgin Islands, unlike most American jurisdictions, the prevailing party in a lawsuit may be awarded costs and attorney fees at the conclusion of the case under V.I. Code Ann. tit. 5 § 541 at the discretion of the judge. *See, e.g., El Fenix de Puerto Rico, Inc. v. Dallas*, 30 V.I. 339, 241 (D.V.I. App. Div. 1994) (citing *Bedford v. Pueblo Supermarkets of St. Thomas, Inc.*, 18 V.I. 275, 278 (D.V.I. 1981)). Here, WAPA asks the Court for costs and attorney fees stemming from *Sound Solutions I*, which is still ongoing. WAPA, if it wins that case, will have the opportunity under Section 541 to ask the judge to whom that case is assigned to award costs and reasonable attorney fees. Therefore, despite its formal billing as an independent cause of action, WAPA’s suit here is, in effect, nothing more than taking a question that properly belongs in the hands of the *Sound Solutions I* judge at a later time, and attempting place it in the hands of this Court in the present. Not only that, but by asking this Court to rule on whether Defendants’ filings in *Sound Solutions I* were grossly

¹² Although Defendants’ Motion to Dismiss touched on similar themes, it did not raise ripeness expressly. Nonetheless, the Court is within its rights to address the issue *sua sponte*. *Simon v. Joseph*, 59 V.I. 611, 629 (V.I. 2013).

¹³ Unlike the Federal courts, where ripeness doctrine is jurisdictional. *Id.*

negligent, WAPA would force this Court to assess and rule on whether Defendants' entire case in *Sound Solutions I* is meritorious before such a determination has been made in that case itself. The potential for direct conflict and confusion is tremendous.

Further, there is a substantial possibility that the final disposition in *Sound Solutions I* would moot this cause of action here, or at least substantially alter the appropriate remedy, if WAPA is awarded costs and fees. It would be improper to allow this case to proceed when the relevant facts are so unstable. Therefore, as a matter of comity, of judicial efficiency, and in the interests of avoiding potentially conflicting rulings and "inconsistent adjudications of essentially the same factual and legal issues," *id.* at 630, the Court concludes that it should not allow this matter to proceed as it is not ripe.¹⁴

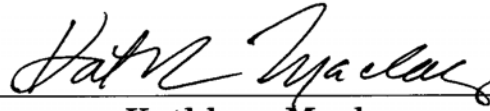
V. Conclusion

WAPA's Motion to extend will be denied because WAPA did not demonstrate "excusable neglect." Count I of the Complaint will be dismissed with prejudice for failure to state a claim upon which relief can be granted because WAPA has not alleged an injury caused by Defendants' possession of stolen property. Count II will be dismissed without prejudice as unripe because the question of costs and fees in

¹⁴ The Court withholds any opinion, as unnecessary to the decision here, on a number of potentially complicating issues that may arise if WAPA re-files after *Sound Solutions I* has finished, namely whether a future cause of action would be estopped by any ruling in *Sound Solutions I* on costs and whether Section 541 legislatively preempts and precludes common law remedies in this area.

Sound Solutions I is live, unresolved, and may yet be decided there. An appropriate order will accompany this opinion.

DATED: May 27, 2015



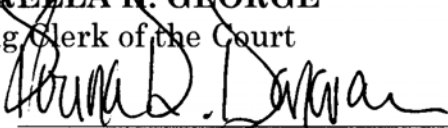
Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE

Acting Clerk of the Court

BY:



DONNA D. DONOVAN

Court Clerk Supervisor 5/27/2015