

NOT FOR PUBLICATION

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

PATRICK TYSON,

Plaintiff,

SX-14-CV-105

v.

ACTION FOR DAMAGES

**DONALD SAMUEL A/K/A DONNELL SAMUEL, IN
HIS OFFICIAL CAPACITY AND GOVERNMENT OF
THE VIRGIN ISLANDS,**

Defendants.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court *sua sponte*. For the reasons stated below, the Complaint will be dismissed for lack of subject matter jurisdiction.

BACKGROUND

On May 13, 2008, Plaintiff Patrick Tyson (hereinafter “Tyson”) was a customer at Friday's Bar in Estate Glynn, St. Croix, Virgin Islands.¹ While at the bar, Tyson allegedly became embroiled in a verbal and physical altercation with another patron.² Subsequently, the patron was locked out of the premises and the proprietors called the police.³ Tyson alleges that after the altercation, Defendant Donald Samuel a/k/a Donnell Samuel (hereinafter “Samuel”) allegedly flashed his police badge, identified himself as a Virgin Islands police officer, and upon entering the bar, assaulted Tyson by hitting him in the face.⁴ Two officers allegedly stopped Samuel from assaulting Tyson and transported Tyson to the emergency room after handcuffing him and placing him in the police unit.⁵ Tyson was allegedly advised that he was being detained.⁶

¹ Compl. ¶ 8.

² Id. at ¶ 9.

³ Compl. at ¶10.

⁴ Id. at ¶¶ 11-12.

⁵ Id. at ¶ 14.

⁶ Id. at ¶ 15.

Nearly three years later, on May 11, 2011, Tyson filed Civil Number 2011-050 in the District Court of the Virgin Islands (hereinafter "District Court") against Samuel, in his official capacity only and the Government of the Virgin Islands (hereinafter "Government"). On March 19, 2014, the District Court granted the Government's motion and dismissed the case as barred by the statute of limitations.⁷ On April 16, 2014, Tyson filed the instant matter against Samuel, in his official capacity only and the Government alleging that the Government is subject to suit under 33 V.I.C. §3408 of the Virgin Islands Tort Claims Act (hereinafter "VITCA"). The Clerk entered default against Samuel and the Government on November 22, 2014.⁸ The Defendants filed an Answer on August 21, 2015. On September 14, 2015, Tyson moved this Court to strike the Government's Answer and Affirmative Defenses. The Government opposed Tyson's motion to strike on January 26, 2016, and moved to set aside the entry of default.

The questions presented are: (1) whether the entry of default against the Government and Samuel was proper and (2) whether the Court has subject matter jurisdiction over the matter.

JURISDICTION AND STANDARD OF REVIEW

It is well established that a court may consider the issue of subject matter jurisdiction *sua sponte*.⁹ "Prior to considering the merits of a matter before it, a court is obligated to examine whether it has subject matter jurisdiction over the dispute."¹⁰ "The plaintiff always bears the burden of convincing the court, by a preponderance of the evidence, that the court has jurisdiction."¹¹ If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.¹²

⁷ See *Tyson v. Samuel*, No. 2011-050, 2014 U.S. Dist. LEXIS 35913, at *1-2 (D.V.I. Mar. 19, 2014).

⁸ See Notice of Entry of Default dated November 22, 2014.

⁹ See *Drayton v. Drayton*, 65 V.I. 325, 332 (2016). Cf. *Virgin Islands Waste Management Auth. v. Bovoni Investments, LLC*, 61 V.I. 355, 363 (V.I. 2014); see also *Chavayez v. Buhler*, No. 2007-060, 2009 V.I. Supreme LEXIS 26, at *7 (V.I. June 25, 2009) (a court may consider the issue of subject matter jurisdiction *sua sponte*).

¹⁰ See *Brunn v. Dowdye*, 59 V.I. 899, 904 (2013) (citing *V.I. Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008)).

¹¹ See *Hypolite v. Francois*, 2013 V.I. LEXIS 27, *6 (V.I. Super. Ct. May 10, 2013). See also *James-St. Jules v. Thompson*, 2015 V.I. LEXIS 74, *7 (V.I. Super. Ct. June 25, 2015) (citing *Carpet Group Intern. v. Oriental Rug Importers Ass'n, Inc.*, 227 F.3d 62, 69 (3d Cir. 2000) (the burden of proving the existence of subject matter jurisdiction lies with the plaintiff)).

¹² See V.I. R. Civ. P. 12(h)(3).

The Government has, through the Virgin Islands Tort Claims Act, V.I. Code Ann. tit. 33, §§ 3401-3416 (1996), conditionally waived its immunity as to certain tort claims.¹³ Individuals who wish to recover on those tort claims must strictly comply with the provisions of the Act.¹⁴ Their failure to do so deprives the Court of subject-matter jurisdiction.¹⁵

DISCUSSION

I. No Judgment By Default Can Be Entered Against the Government

Title 33, Section 3411 of the Virgin Islands Code proscribes,

In no case shall any liability be implied against the Government of the United States Virgin Islands. No judgment shall be granted on any claim against the Government of the United States Virgin Islands except upon such legal evidence as would establish liability against an individual or corporation in a court of law, and *no judgment by default shall be entered against the Government.*

33 V.I.C. § 3411(a) (emphasis added). The language of the VITCA is specific and unambiguously prohibits any judgment by default against the Virgin Islands government.¹⁶ This Court lacks the authority to take any action that is prohibited by statute.¹⁷ In *Smith v. Turnbull*, the Supreme Court of the Virgin Islands (hereinafter “Supreme Court”) explained that “an official-capacity suit is really just another way of suing the government.”¹⁸ The Supreme Court reasoned that “a city official sued in his official capacity is generally in privity with the municipality.”¹⁹ Ergo, the provisions under Section 3411(a) that prohibit

¹³ See 33 V.I.C. §§3401-3416. See *Hypolite v. Francois*, 2013 V.I. LEXIS 27, *3-4 (V.I. Super. Ct. May 10, 2013).

¹⁴ *Id.*

¹⁵ See *Thomas v. Gov't of the V.I.*, 2015 V.I. LEXIS 46, *10 (V.I. Super. Ct. May 8, 2015) (“the Government's liability is specifically conditioned on a claimant's compliance with the provisions of the Tort Claims Act, 33 V.I.C. §3401 *et seq.* As such, noncompliance with the Act can nullify the Government's waiver of immunity and consent to be sued, and thus, deprive the Court of subject-matter jurisdiction over a claim.”). Cf. *Hobson v. Gov't of the V.I. Fire Div.*, 22 V.I. 87, 89 (1986) (Where plaintiff sought to bring suit against the Government and its officers in their official capacity, and failed to comply with the filing requirement of the Tort Claims Act, motion to dismiss was granted on grounds of lack of subject matter jurisdiction).

¹⁶ See *Durant v. Husband*, 28 F.3d 12, 15 (3d Cir. 1994).

¹⁷ See *Gerace v. Bentley*, 65 V.I. 289, 304 (2016) (collecting cases).

¹⁸ 54 V.I. 369, 376 (2010).

¹⁹ *Id.*

entry of default against the Government, also apply to government officials sued in their official capacity.

In the case at bar, the Clerk entered default against the Government and Samuel, in his official capacity. However, as mentioned *supra*, entry of default against the Government is expressly prohibited by statute. Therefore, the entry of default against the Government and Samuel was improper.

II. Tyson Has Not Complied With the Requirements of VITCA

Tyson's claim against the Government and Samuel is based on the VITCA. "The VITCA provides the mechanism by which persons may sue the Government in tort in the courts of the Virgin Islands."²⁰ The VITCA provides the rubric for the Government's waiver of immunity from tort suits; but it must be invoked through adhering to specific statutory procedures.²¹ "Legislative intent to limit the Government's waiver of tort litigation immunity is explicit."²²

The VITCA states that *no judgment shall be granted in favor of any claimant unless* such claimant shall have complied with the provisions of this section applicable to his claim:

a claim to recover damages for injuries to property or for personal injury caused by the tort of an officer or employee of the Government of the United States Virgin Islands while acting as such officer or employee, shall be filed within *ninety days after the accrual of such claim* unless the claimant shall within such time file a written notice of intention to file a claim therefor, in which event the claim shall be filed within two years after the accrual of such claim.

33 V.I.C. § 3409(c). For a plaintiff to take advantage of the Government's waiver of sovereign immunity, the plaintiff must file the suit within the time allotted by the Act. *See* 33 V.I.C. § 3409.²³

Under the VITCA, tort claims or written notices of intent to file a claim against the Government must be

²⁰ *See Fleming v. Cruz*, 62 V.I. 702, 718 (2015). *See Durant*, 28 F.3d at 14 (the VITCA outlines the procedure for limited waiver of the Virgin Islands' sovereign immunity conferred by the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541(b)).

²¹ *Id. See also In re Hartlage*, 54 V.I. 446, 449-51 (2010).

²² *Id. See Murrell v. People*, 54 V.I. 338, 347 (V.I. 2010) (holding that courts must adhere to legislative intent when interpreting a statute); *In re Petition of Mejia*, 58 V.I. at 141.

²³ *See Fleming*, 62 V.I. at 719.

filed within 90 days of the accrual of such claims. *See* 33 V.I.C. § 3409(c).²⁴ The VITCA allows the trial court to exercise discretion in permitting late filings; however, this discretion is only allowed on claims filed within two years after the accrual of the cause of action, if reasonable excuse for late filing is shown, if the late filing does not cause substantial prejudice to the Government, and if the late filing contains the Information required by 33 V.I.C. § 3410.²⁵

Tyson's cause of action accrued on May 13, 2008—approximately nine years prior to the filing of his Complaint.²⁶ Ergo, his filing is remarkably dilatory and beyond the deadlines prescribed in the statute for filing a claim. Tyson's filing is also beyond the two-year threshold for the court to exercise its discretion to allow a late filing. Because Tyson failed to meet the filing requirements under the VITCA, this case must be dismissed for lack of subject matter jurisdiction.²⁷

CONCLUSION

Based on the foregoing analysis, the case will be dismissed for lack of subject matter jurisdiction. Entry of default against the Government and Samuel was improper. Furthermore, because Tyson failed to comply with the VITCA's claim-filing requirements, this Court is deprived of subject matter jurisdiction over Tyson's claims. The Court will enter an Order consistent with this Memorandum Opinion.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See Tyson*, No. 2011-050, 2014 U.S. Dist. LEXIS 35913, at *5 n.2.

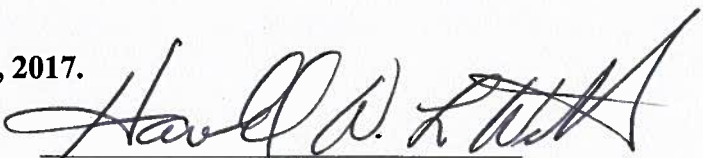
²⁷ *Fleming*, 62 V.I. at 718 n.13 (Virgin Islands trial courts have held on more than one occasion that the failure to comply with the claim-filing procedures of the VITCA deprives the trial court of subject matter jurisdiction to hear tort claims against the Government and its officials.) *E.g., Brewley v. Government*, 59 V.I. 100, 103 (V.I. Super. Ct. 2012); *Hobson v. Government*, 22 V.I. 87, 91 (Terr. Ct. 1986).

Although the Supreme Court has not yet determined whether the VITCA's filing requirements are jurisdictional, the high court has affirmed the trial courts' holding that dismissal was proper for failure to comply with the VITCA's claim-filing requirements. *See Fleming, supra.*

DATED this 24th day of May, 2017.

ATTEST:

Estrella George
Clerk of the Court


HAROLD W. L. WILLOCKS

Administrative Judge of the Superior Court

By:


Deputy Clerk

Dated:

5/25/17