

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX**

ELTON LEWIS

Plaintiff,

v.

GOVERNMENT OF THE VIRGIN ISLANDS

Defendant.

)
) **CIVIL NO. 214/2000**
)

) **ACTION FOR BREACH
OF INDEMNIFICATION
AGREEMENT**
)

) **NOT FOR PUBLICATION**
)
)

Mark L. Milligan, Esq.
1232 King Street
P.O. Box 3031
Christiansted, St. Croix
U.S. Virgin Islands 00820-3031
(Attorney for Plaintiff)

Richard Schrader, Jr., Esq.
Office of the Attorney General
6040 Castle Coakley
Christiansted, St. Croix
U.S. Virgin Islands 00820
(Attorney for Defendant)

CABRET, P.J.

MEMORANDUM OPINION

(September 7 , 2000)

Plaintiff Elton Lewis ("Lewis") was sued for civil rights violations which allegedly occurred during the scope of his employment with the Virgin Islands Police Department. Lewis filed this action, claiming the government of the Virgin Islands ("Government") has breached both its statutory duty and a contractual agreement to indemnify him for legal expenses incurred in defending the civil suit against him. The Government moves to dismiss this action, pursuant to the

Federal Rule of Civil Procedure 12(b)(6), arguing that its duty to indemnify police officers for on-the-job liability does not ripen until there has been a final judgment in the civil case, as required by statute. Lewis opposes the motion to dismiss, contending his complaint adequately states both a statutory and contractual claim. The Government has not responded to Lewis' contractual claim. For the reasons set forth herein, the Court will grant the Government's motion to dismiss Lewis' statutory claim. However, the contract claim is preserved.

I. FACTS AND PROCEDURAL POSTURE

Lewis was employed with the Government as Chief of Police for the St. Croix District. During his term as Chief of Police, Lewis was named as a defendant in a civil rights action, along with the Government and other officers of the Police Department, for allegedly violating the civil rights of a subordinate officer. In a letter dated September 24, 1996, Lewis notified the Government of the civil rights action against him and requested legal representation from the Attorney General's Office. Lewis claims that the Attorney General's Office notified him on or about November 12, 1996 that it could not represent all named defendants and advised him to secure independent counsel at the Government's expense. Further, Lewis asserts that he attended a meeting with former Attorney General Julio A. Brady on February 25, 1998, during which the Government agreed to indemnify Lewis for his legal fees pursuant to Title 10, section 101 of the Virgin Islands Code. Lewis further claims the alleged indemnification agreement was affirmed in two subsequent written communications between the parties. Lewis maintains that he "detrimentally

relied on the express representations by Defendant that it would fully indemnify (him), in a timely manner, for all legal and professional cost [sic] and fees, upon presentment to Defendant of the firms' periodic invoices for services rendered in the above referenced civil action"¹ Lewis has accumulated \$16,547.60 in legal expenses. However, the Government argues that the action should be dismissed because its statutory duty to indemnify does not ripen until there has been a final determination by the trial court in the civil case against Lewis and a finding that there was no willful or wanton conduct in his role as a police officer, as required by statute. The underlying civil rights case remains pending.

II. STANDARD OF REVIEW

In reviewing a motion to dismiss, the Court must determine whether the complaint states facts sufficient to show the existence of a cognizable claim and to adequately notify Defendant of the cause of action alleged. *See Conley v. Gibson*, 78 S. Ct. 99, 103, 355 U.S. 41, 2 L. Ed 2d 80 (1957). While sufficient facts must be pleaded, Rule 12 (b) (6) of the Federal Rules of Civil Procedure must be read with the liberal pleading requirements of Rule 8(a). *See Hans Lollik Corp. v. Gov't of the Virgin Islands*, 17 V.I. 220, 230 (Terr. Ct. 1981). Thus, the claimant need not "set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a short, plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id* (internal quotation marks omitted). All allegations of

¹ Complaint ¶ 9.

the plaintiff are taken as true, and plaintiff is given the benefit of all inferences that may be drawn therefrom. *See Pennsylvania v. Pepsico, Inc.*, 836 F. 2d 173, 175-179 (3d Cir. 1988); *Quinones v. United States*, 496 F. 2d 1269, 1271, 1273 (3d Cir. 1974). In reviewing a motion to dismiss, "the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *Espinosa v. Government of the Virgin Islands*, 20 V.I. 78, 83 (Terr. Ct. 1983). A motion to dismiss should, therefore, be denied unless it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Quinones*, 496 F. 2d at 1273.

III. DISCUSSION

Plaintiff argues that the government has a statutory duty to indemnify him for acts done during the scope of his employment as a police officer, based on agency principles in the Restatements as well as under a local statute. Plaintiff also argues that the government has breached an oral contract to indemnify him.

A. The Statutory Claim

Plaintiff's reliance on the Restatement (Second) of Agency on the issue of indemnification of police officers is misplaced. The Restatements are applicable only where there is no applicable local law, statutory or case law, on the issue. V.I. Code Ann. tit. 1, § 4; *Virgin Islands Distributor, Inc. v. Durkee Foods*, 19 V.I. 85, 92 (D.V.I. 1982); *Moore v. A.H. Riise Gift Shops*, 659 F. Supp. 1417, 1423 (D.V.I. 1987). Here, there is a local statute addressing the specific issue of

indemnification for police officers; therefore, the Restatement is inapplicable in determining the Government's statutory duty. The applicable local statute provides:

Subject to the limitation of this chapter and notwithstanding any other provision of law to the contrary, the Government of the United States Virgin Islands shall indemnify and pay on the behalf of any police officer . . . sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law or settlement for damages awarded for infringement of any person's civil rights or for physical damages to person or property *if* the employee at the time of the occurrence, accident, physical injury or damages complained of was acting under color of law and within the scope of his employment, or while acting as a police officer *and if the occurrence, accident, physical injury or damage was not the result of any willful or wanton act of such employee and the Court makes a finding to that effect.*

V.I. Code Ann. tit. 10, § 101 (1998) (*emphasis added*).

The statute clearly preconditions the Government's duty to indemnify law enforcement officials on a final determination by the trial court in the underlying action and a finding that the liability was not the cause of the employee's willful or wanton conduct. There being no final disposition of the underlying civil case, the cause of action has not accrued. Therefore, the statutory claim based on Title 10, Section 101 of the Virgin Islands Code does not state a claim for which relief may be granted at this juncture and must therefore be dismissed.

B. The Contract and Estoppel Claims

Lewis also raises a contract claim based on alleged oral promises. Lewis alleges there was an oral indemnification agreement by the Attorney General, memorialized in later writings, to pay legal expenses for his defense as invoices were submitted.

Moreover, Lewis claims he detrimentally relied on these promises when he hired an attorney to represent him.

The promissory estoppel doctrine protects a promisee who, in the absence of an otherwise binding contract, detrimentally relies on a promise. The Restatement (Second) of Contracts provides:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise

Restatement (Second) of Contracts §90 (1) (1982). Thus, a promisor may be estopped from denying an obligation or his representation once another person has detrimentally relied on such representations.

The Government, in its Motion to Dismiss, did not address Lewis' contract claim. Based on the foregoing, the complaint alleges facts which, if proven, are sufficient to establish a claim for breach of contract or detrimental reliance for which relief is available. Therefore, the contract claim will be preserved.

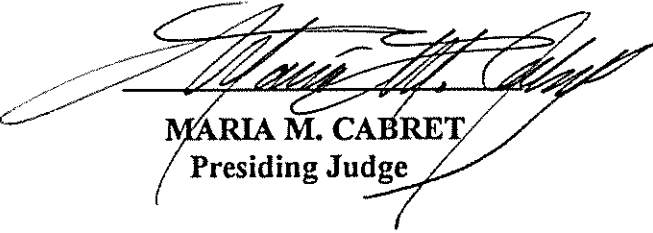
CONCLUSION

For the reasons set forth above, the Court concludes that Lewis' complaint fails to state a claim for which relief is available under the local statute at this juncture, but properly states a claim based on breach of contract and promissory estoppel. Therefore, the motion to dismiss is granted without prejudice as to the statutory claim. However, the contract claim, which was not addressed

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in the motion to dismiss, is preserved.

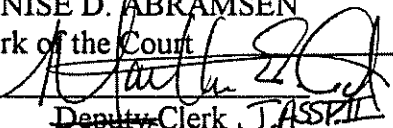
DATED: September 7, 2000.



MARIA M. CABRET
Presiding Judge

ATTEST:

DENISE D. ABRAMSEN
Clerk of the Court

By: 

Deputy Clerk J. ASPILL

Dated: 9/6/00