

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

POLICE BENEVOLENT ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. ST-14-CV-227
	)	
DOMINO OIL COMPANY, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's motion to dismiss. For the following reasons, Defendant's motion will be granted in part and denied in part.

STANDARD

Fed. R. Civ. P. 12(b), made applicable to the Superior Court through SUPER CT. R. 7, provides that upon motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a "failure to state a claim upon which relief can be granted" to the claimant. When determining whether the allegations in a complaint are sufficiently pled, a court must engage in a three step inquiry:

First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim.".... Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth".... Finally, "where there are well pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief."¹

¹ *Santiago v. Warminster Tp.*, 629 F.3d 121, 130 (3d Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 881 (2009)).

A motion to dismiss a complaint should be denied if the factual allegations are “enough to raise a right to relief above the speculative level.”²

ANALYSIS

On January 1, 1998, Defendant entered into a twenty-five year lease with Plaintiff in order to operate a gas station on Plaintiff’s property.³ The lease agreement specifies a monthly rent for the use of the rental property and also states that Defendant agreed to pay Plaintiff a certain amount of money based on the number of gallons of gasoline Defendant sold.⁴

In the Complaint, Plaintiff asserts that “[s]ince 2003, Defendant has seized (sic) operations as a gas station, and abandoned all the facilities.”⁵ Because of the abandonment, Plaintiff contends it “has sustained losses of rent (as a percentage of gasoline sales) causing Defendant to be in default of their (sic) lease agreement.”⁶ Based on these factual allegations, Plaintiff asserts that Defendant is in breach of the lease agreement, is liable for damages due to the adverse environmental state of the property, and should be evicted from the premises.

Defendant moves to dismiss the Complaint on the grounds that, while Defendant has the option to operate a gas station on the premises, the lease agreement does not require

² *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008). See also *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

³ Lease Agreement, at page 1.

⁴ Lease Agreement, at pages 5 and 6. For instance, beginning in the eleventh year of the lease, the monthly rent was \$2,000.00 and Plaintiff was entitled to \$0.02 per gallon of all gas sold by Defendant over the first 20,000 gallons of gasoline sold per month. *Id.*, at page 6.

⁵ Complaint, at pages 2 and 3.

⁶ *Id.*, at page 3.

Defendant to sell gasoline over the entire course of the lease period. Defendant also asserts a statute of limitations defense.

Foremost, by demanding that Defendant be evicted from the premises in the Complaint, Plaintiff improperly attempts to combine a forcible entry and detainer (“FED”) action with a civil action raising tort and breach of contract claims.

“FED complaints are summary actions to determine rights of peaceable possession of real property... [and] the scope of an FED proceeding is very limited.”⁷ Generally, “the jurisdiction of the Court in FED cases is confined to determining the issue of peaceable possession and does not extend to (a) an adjudication of title or (b) the right to possession; nor can the justice adjudicate a right of possession that depends on an equitable interest in the premises [] or inquire into equitable rights and give relief to which the party might be entitled in equity.”⁸ Once a defendant in possession of the premises “raises a colorable defense requiring construction of an agreement between the property owner and the party in possession, an FED action will not lie.”⁹

Because Defendant continues to tender checks for base rent each month, and because the lease does not appear to require the sale of any minimum number of gallons of gas, Defendant occupies the premises under a colorable claim of right, defeating FED. It also appears Plaintiff accepted at least one rent check (dated 5/30/14 for June-2014 rent) after the Complaint was filed on April 22, 2014, thereby negating the notice to quit. And, Plaintiff would be equitably estopped from asserting Defendant breached the lease by

⁷ *V.I. Cmty. Hous., L.P. v. Rivera*, 2008 V.I. LEXIS 16, *4-5, 50 V.I. 179, 182-183 (V.I. Super. Ct. 2008).

⁸ *Id.*

⁹ *Id.*

failing to pay rent when Defendant tendered the rent monthly and Plaintiff refused to accept it. As a result, Plaintiff's FED action will be dismissed.

Turning to Plaintiff's contract claim, the Court concludes that, even assuming all the factual allegations in the Complaint are true, Plaintiff's breach of contract claim is time barred. 5 V.I.C. § 31 establishes a six year limitations period for bringing an action upon a contract. Based on Plaintiff's own factual assertions, the breach of contract occurred in 2003, but Plaintiff waited eleven years to file a Complaint on April 22, 2014. As a result, Plaintiff's contract claim will be dismissed pursuant to Fed. R. Civ. P. 12(b).

Notwithstanding, the Complaint raises an issue that Defendant's motion does not address, namely Plaintiff's allegations of environmental damage to the property. The Complaint states that "upon information, the gas storage tanks have been abandoned, and not maintained by Defendant ... [and] environmental contamination and hazards, upon information, exist at the leased premises because of Defendant's neglect and wasteful conduct." Because Defendant has not addressed these allegations, this claim survives Defendant's motion to dismiss.

An Order consistent with this Opinion shall follow.

Dated: June 17, 2015

ATTEST: Estrella George
Acting Clerk of Court

by: Donna D. Donovan
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS