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

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DORCHESTER INSURANCE COMPANY, LTD., as subrogee of Shree Investments, Inc. d/b/a Beverly's,	CIVIL NO. ST-10-CV-92
Plaintiff,	
v.	ACTION FOR BREACH OF CONTRACT, NEGLIGENCE AND DAMAGES
ALERT #1 INTERNATIONAL, INC.,	JURY TRIAL DEMANDED
Defendant.	

MEMORANDUM OPINION

Defendant Alert # 1 International, Inc. has filed a Motion to Dismiss, asking this Court to dismiss Counts III and VI from the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.[1,2] Specifically, Count III is a claim for breach of contract and Count VI is a claim for breach of warranty of fitness for a particular purpose. For the reasons stated herein, the Court will deny without prejudice the Motion to Dismiss.

FACTS

Plaintiff Dorchester Insurance Company, Ltd., as subrogee of Shree Investments, Inc. d/b/a Beverly's is a retail jewelry store and as such, is known in the security and alarm industry as high-risk, high burglary exposure due to the high value of merchandise that is kept on the premises.[3] In 2001, Beverly's purchased and/or leased security alarm equipment from Alert #1 and contracted with Alert # 1 to install, program, service, test, maintain the equipment, and provide continuous monitoring of Beverly's' premises.[4] Alert # 1 knew at all times the type of business Beverly's conducted and Beverly's relied upon Alert # 1's recommendations regarding the commercial security alarm system. From 2001 through February 2008, Alert # 1 serviced, tested, maintained, and centrally monitored the security system and equipment.[5]

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[1] The Federal Rules of Civil Procedure apply to matters before this Court whenever they are not inconsistent with the Superior Court Rules. SUPER. CT. R. 7.

[2] Plaintiff Dorchester Insurance Company, Ltd., as subrogee of Shree Investments, Inc. d/b/a Beverly's is represented by W. Mark Hillsman, Esq., of the Law Offices of Norman P. Jones, P.C. Defendant Alert #1 International, Inc. is represented by William E. Crabill, Esq. and Ryan C. Meade, Esq., of Quintairos, Prieto, Wood & Boyer, P.A.

[3] (Compl. ¶ 8.)

[4] (Comp. ¶ 7.)

[5] (*Id.* ¶ 10.)

On February 26, 2008, an unknown person(s) burglarized Beverly's' store and stole significant amounts of jewelry. Although the security alarm system was "armed" at the time of the burglary, the system did not detect the intruder(s), did not activate, and did not contact Alert #1's central station. Having failed to notify Alert #1's central station, the police were not notified that a burglary was in process.[6]

Subsequently, an investigation revealed a multitude of defects and irregularities in the alarm system's overall design, programming, installation, and monitoring. Prior to this investigation, Alert # 1 had not disclosed the defects, and Beverly's had no knowledge of the same.

DISCUSSION

I. MOTION TO DISMISS STANDARD

To survive a 12(b)(6) motion to dismiss, the Plaintiff must plead sufficient facts to show that her claim for relief is plausible on its face.[7] For a claim to be facially plausible, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[8] "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."[9] "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."[10] In evaluating the sufficiency of the complaint, the Court must undertake a three-step analysis. "First, the court must 'tak[e] note of the elements a plaintiff must plead to state a claim.'"[11] "Second, the court separates conclusions from well-pled factual allegations."[12] "Finally, assuming the truth of the well-pled facts, the court determines 'whether they plausibly give rise to an entitlement for relief.'"[13]

II. BEVERLY'S' CLAIM FOR BREACH OF CONTRACT, COUNT III OF ITS COMPLAINT

In Count III's claim for breach of contract, Beverly's asserts that Alert #1 sold Beverly's a grossly defective security alarm system, failed to inform Beverly's of the security alarm system's defects, irregularities, and that the system failed to detect the burglary. Beverly's further alleges that the alarm system provided inadequate protection of its retail jewelry store.

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[6] (*Id.* ¶ 11.)
[7] *Bell Atl. v. Twombly*, 550 U.S. 544, 557 (2007); *see also Williams v. Gov't of the Virgin Islands*, No. ST-07-CV-187, 2011 WL 3856987, at *1 (V.I. Super. Jan. 21, 2011); *see also Jones v. L.S. Holdings, Inc.*, 53 V.I. 48, 53 (Super. Ct. 2010).
[8] *L.S. Holdings, Inc.*, 53 V.I. at 53 (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009)).
[9] *Smith v. V.I. Hous. Auth.*, No. 09-CV-00011, 2011 WL 797373, at *1 (D.V.I. Feb. 28, 2011) (quoting *Iqbal*, 129 S. Ct. at 1950)).
[10] *Iqbal*, 129 S.Ct. 1937, 1949 (2009).
[11] *Williams*, 2011 WL 3856987, at *1 (quoting *Iqbal*, 129 S. Ct. at 1947).
[12] *Id.*
[13] *Id.* (quoting *Iqbal*, 129 S. Ct. at 1950).

In the Motion to Dismiss, Alert #1 claims that the claim for breach of contract is precluded by the parties' liquidated damages clause in the contract. Particularly, the liquidated damages clause of the contract precludes the claim for breach of contract. Alert #1 further states that the contract has specific language, stating that "[T]he Company [Alert #1] is not assuming responsibility for any losses which may occur even if due to the Company's [Alert #1's] negligent performance or failure to perform any obligation under the agreement." [14] In addition, the contract states that because of the difficulty in ascertaining actual future damages, at the time of contracting, if there is liability on Alert #1's part, that such liability is limited to "an amount equal to one-half the annual service charge provided in any agreement between the Installer and the Subscriber or $250, whichever is greater."[15] Thus, Alert # 1 contends that the sum stated is the complete and exclusive remedy.

Furthermore, Alert #1 states that Beverly's had an option to increase the agreed upon amount in liquidated damages. Beverly's, however, did not pursue this option. Thus, Alert #1 asks that the liquidated damages clause of the parties' contract should be enforced and Beverly's breach of contract claim be dismissed.

In contrast, Beverly's points out, *inter alia*, that the agreement that Alert #1 has attached to its Motion to Dismiss, purporting to show the terms of their agreement, is an unsigned contract not binding on the parties in this case, and Beverly's disputes the attached agreement's authenticity.

For a breach of contract claim, a plaintiff must show: (1) an agreement, (2) a duty created by that agreement, (3) a breach of that duty, and (4) damages.[16] There is no doubt that there was an agreement between the parties, but the Court is persuaded by Beverly's' argument pertaining to the agreement attached to the Motion Dismiss. To decide the Motion to Dismiss, the Court must examine the terms of the parties' executed agreement, which is crucial to Beverly's' claims in its Complaint as well as to Alert #1's arguments in its Motion to Dismiss. A written contract is the express manifestation of the parties' intention. Generally, courts decide claims for breach of contract by construing the four corners of the parties' executed agreement.[17] Since the Court does not have the parties' executed agreement for its consideration, the Court is unable to address Alert # 1's arguments related to liquidated damages.[18]

Moreover, Beverly's' Complaint alleges facts sufficient to support its claim for breach of

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[14] Def.'s Mot. Dismiss, Ex. B, Terms of Alarm Monitoring System, ¶ 11.

[15] *Id.*

[16] *Arlington Funding Servs., Inc. v. Geigel,* 51 V.I. 118, 134–35 (2009).

[17] *See, e.g.,* RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. b (stating that "[w]hen the parties have adopted a writing as a final expression of their agreement, interpretation is directed to the meaning of that writing in the light of the circumstances."). The rules of the common law, as expressed in the restatements of the law shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary. V.I. CODE ANN. tit. 1, § 4 (1995).

[18] The finding of an agreement is a prerequisite to the governing principles of liquidates damages. *See* RESTATEMENT (SECOND) OF CONTRACTS, § 356.

contract. In particular, Beverly's' facts show that the parties had an agreement (indeed the parties do not disagree on this point), the agreement created a duty in Alert # 1 to provide security monitoring services, that Alert # 1 breached this duty by providing defective monitoring equipment, and that Beverly's suffered damages stemming from its jewelry store being burglarized coupled with Alert # 1's unawareness that a burglary was in progress. The Court will, therefore, deny without prejudice the Motion to Dismiss.

III. BEVERLY'S' COUNT VI CLAIM FOR BREACH OF WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

Alert # 1 contends that the contract disclaims all warranties, express or implied, and thus, the contract precludes Beverly's' claim for breach of warranty of fitness for a particular purpose. Specifically, Alert # 1 asserts that the contract states that it "does not make any representation or warranty, including any implied warranty of merchantability or fitness, that the system installed . . . may not be compromised, or that the services will in all cases provide the protection for which it is intended."[19]

Again, Beverly's states that that the agreement that Alert #1 has attached to its Motion to Dismiss, purporting to show the terms of their agreement, is an unsigned contract not binding on the parties in this case, and Beverly's disputes the attached agreement's authenticity.

To state a claim for breach of implied warranty of fitness for a particular purpose, a plaintiff must allege that: 1. The seller must have reason to know the buyer's particular purpose; 2. The seller must have reason to know that the buyer is relying on the seller's skill or judgment to furnish appropriate goods; 3. The buyer must, in fact, rely upon the seller's skill and judgment.[20]

Persuaded by Beverly's' argument pertaining to the agreement attached to the Motion to Dismiss, the Court finds that it must examine the terms of the parties' executed agreement in order to properly decide the Motion to Dismiss. Further, the agreement is crucial to Beverly's' claims in its Complaint as well as to Alert #1's arguments in its Motion to Dismiss and thus far, Beverly's disputes the attached agreement. A written contract is the express manifestation of the parties' intention and, particularly in this matter, the parties' contract will show their intent regarding warranties and the alleged disclaimers thereof. The Court, however, does not have the parties' executed agreement for its consideration and thus, is unable to address Alert # 1's arguments related to the claim for breach of warranty of fitness for a particular purpose.[21]

The Court finds that Beverly's has pled facts sufficient to support its claim for breach of warranty of fitness for a particular purpose. Specifically, Beverly's' facts show that Alert # 1, in

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[19] Def.'s Mot. Dismiss, Ex. B, Terms of Alarm Monitoring System, ¶ 11.

[20] *Gumbs v. Int'l Harvester, Inc.*, 718 F.2d 88, 92 (3d Cir. 1983); *Armstrong Ford, Inc. v. Gov't of the V.I.*, 21 V.I. 212 (Terr. Ct. 1984); 11A V.I.C. § 2-315.

[21] The finding of an agreement is a prerequisite to the governing principles of liquidates damages. *See* RESTATEMENT (SECOND) OF CONTRACTS, § 356.

the business of security monitoring equipment, sold security alarm equipment to Beverly's, a jewelry retailer. Through a reading of the Complaint, one can infer from the facts that Alert # 1 had knowledge that Beverly's would rely on it for security equipment installation and monitoring because of the high value of Beverly's' merchandise. Further, the facts show that Beverly's relied on Alert #1's expertise in securing Beverly's' premises.

CONCLUSION

The Court finds that Beverly's has pled sufficient facts to supports its claims for breach of contract and breach of warranty of fitness for a particular purpose. Thus, Beverly's' Complaint survives Alert # 1's Motion to Dismiss and the Court will deny the Motion to Dismiss.

DATED: May 9, 2012

JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court
BY:
LORI BOYNES-TYSON
Court Clerk Supervisor 5/10/12