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

INLAND NORTHWEST HEALTH SERVICES, Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, VIRGIN ISLANDS GOVERNMENT HOSPITAL AND HEALTH FACILITIES CORPORATION by and through THE ST. CROIX BOARD OF THE JUAN F. LUIS HOSPITAL and THE GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, Defendants.	)	CIVIL NO. SX-16-CV-24 ACTION FORBREACH OF CONTRACT, QUANTUM MERUIT, UNJUST ENRICHMENT, FRAUD AND NEGLIGENT MISREPRESENTATION, AND INJUNCTIVE RELIEF

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendants' Joint Motion to Stay Proceedings (Motion), filed March 18, 2016, and Plaintiff Inland Northwest Health Services' (INHS) Opposition thereto (Opposition), filed April 13, 2016. For the reasons that follow, the Court denies Defendants' Motion.

Plaintiff is a non-profit corporation incorporated in and with a principal place of business in Spokane, Washington. Complaint ¶ 1. This action stems from an April 19, 2011 arrangement, including written agreement (Agreement), for Defendants' purchase of billing management services from Plaintiff. *Id.* ¶ 10. Plaintiff states that Section 6.1 of the Agreement provides that the Agreement shall be construed in accordance with the laws of the Virgin Islands. *Id.* ¶ 11. Plaintiff alleges that it provided services from October 2011 to April 2013 and sent Defendants invoices from 2012 to 2013. *Id.* ¶¶ 12-13. Plaintiff further alleges that Defendants did not dispute the invoices or the amount due. *Id.* ¶ 14. Plaintiff alleges that despite repeated attempts to collect the unpaid balance, Defendants have not paid for the services provided by Plaintiff. *Id.* ¶¶ 15-25. Plaintiff alleges counts of unjust enrichment; quantum meruit; breach of the duty of good faith and fair dealing; fraud; and negligent misrepresentation. *Id.* ¶¶ 26-54. Plaintiff seeks injunctive relief for the return of its software, spreadsheet, information systems, and protocol documents; and monetary judgment against Defendants for the full amount due plus interest. *Id.* ¶¶ 55-59. Defendant Governor Juan F. Luis Hospital and Medical Center (JFL) filed an Answer on March 1, 2016. The remaining Defendants filed their Answer March 16, 2016, followed by this Motion filed on behalf of all Defendants on March 18, 2016.

Defendants argue that Plaintiff "cannot proceed with the instant action as a non-registered entity that regularly transacted business in the United States Virgin Islands and never filed its outstanding franchise taxes in the United States Virgin Islands." Motion ¶ 7. Defendants propose that all proceedings be stayed to give Plaintiff a reasonable amount of time to come into full compliance with 13 V.I.C. § 533(a).[1] Motion, at 3.

Plaintiff states that "[t]his is a simple action to collect a long-standing debt that Defendants have conceded that they owe." Opposition, at 1 (citing Complaint ¶¶ 17-18). Plaintiff argues that section 533(a) does not bar prosecution of this action by INHS. By its terms, that section bars from commencing or maintaining an action in Virgin Islands courts only a corporation that has "not paid its annual franchise tax last due." However, INHS does not owe any franchise tax pursuant to the provisions of 13 V.I.C. § 531(a), as it is a foreign corporation neither qualified to do business nor

[1] "No corporation may commence or maintain any action in any court if it has not paid its annual franchise tax last due. A certificate of the payment of such annual franchise tax, or any duplicate of such certificate under the seal of the Lieutenant Governor, shall be prima facie evidence of such payment. The Lieutenant Governor shall issue such certificate upon request. Notwithstanding the foregoing provisions, before a pending case may be dismissed, a corporation shall be given a reasonable time to provide proof that arrangements have been made to pay any delinquent franchise taxes once the matter is brought to the court's attention, as it is the purpose of this statute to collect the franchise tax and not simply to dismiss a case. If the proper proof is presented to the court that such arrangements to pay any delinquent franchise taxes have been made with the Lieutenant Governor's Office, a pending case shall be allowed to proceed without being dismissed." 13 V.I.C. § 533(a).

doing business in the Virgin Islands.[2] Opposition, at 4. Plaintiff notes that because 13 V.I.C. § 533(a) is a penal statute, it must be narrowly construed. *United States v. Standard Oil Co.,* 383 U.S. 224, 234 (1966).

Section 531(a) requires the payment of franchise tax by every Virgin Islands corporation and by every foreign corporation qualified to do business or doing business in the Virgin Islands. A foreign corporation qualifies to do business in the Virgin Islands by complying with the prerequisites of 13 V.I.C. § 401(a).[3] It is undisputed that INHS has not registered as a foreign corporation, has filed no annual reports[4] and paid no franchise taxes. Motion, ¶ 2. By virtue of its failure to file corporate certifications and documentation according to the provisions of section 401(a), INHS is not "qualified to do business in the Virgin Islands."

The facts herein substantially mirror those of *Standex Co. v. John*, 27 V.I. 157 (V.I. Terr. Ct. 1992). Standex Company, a New York corporation "doing business in the Virgin Islands," brought an action for debt against Centerline Bakery and Deli and its owners wherein it sought payment for various bakery ingredients and materials sold and delivered to Centerline. 27 V.I. at 157-58. Centerline's motion to dismiss was based on the undisputed facts that Standex had not registered to do business in the Virgin Islands and had paid no franchise tax, which Centerline argued mandated

[2] "Every corporation incorporated under the laws of the United States Virgin Islands and every foreign corporation qualified to do or doing business in the United States Virgin Islands shall pay to the Lieutenant Governor for the use of the Government of the United States Virgin Islands, a franchise tax of $1.50 for each thousand dollars of capital stock used in conducting business in the United States Virgin Islands…." 13 V.I.C. § 531(a).

[3] "No corporation created by the laws of any foreign country or any state of the United States, or the laws of the United States, shall do any business in the United States Virgin Islands through or by branch offices, agents or representatives located in the United States Virgin Islands until it shall have filed in the office of the Lieutenant Governor a certified copy of its charter or certificate of incorporation, a certificate signed by its president or vice president and under its corporate seal, attested by its secretary or assistant secretary, stating the name of its authorized agent in the United States Virgin Islands upon whom service of legal process against it may be made, and a sworn statement of the assets, liabilities and capital stock (both authorized and paid up) of the corporation at the close of its last fiscal year…." 13 V.I.C. § 401(a).

[4] "Every foreign corporation which has qualified to do business in the United States Virgin Islands shall file annually in the office of the Lieutenant Governor, not later than April 15, a report authenticated by the signature of the president or the vice-president and of the treasurer or the assistant treasurer…." 13 V.I.C. § 373.

dismissal as Standex was barred from commencing or maintaining an action pursuant to 13 V.I.C. § 533(a). *Id.* at 158. The *Standex* court concluded that "a non-qualified foreign corporation may not be barred from maintaining an action in the Virgin Islands," and denied the motion to dismiss. *Id.* at 159-61.

However, subsequent to the decision in *Standex,* section 531(a) was amended to clarify that payment of franchise taxes was required not only by corporations qualified to do business in the Virgin Islands, but also by corporations "doing business" in the Virgin Islands.[5]

INHS contends that at no time was it "doing business" in the Territory according to the statutory language of section 533(a). Opposition, at 6. Defendants recite the allegations of Plaintiff's Complaint to state that Plaintiff "regularly conducts business in the Virgin Islands." Motion ¶ 1, citing Complaint ¶ 6. Contrary to its Complaint's allegations, INHS now contends that it "did not 'do business' in the Territory, for franchise tax purposes, because its activity was limited to only the one contract at issue in this action." Opposition, at 7.[6] Other than quoting the language in Plaintiff's Complaint, Defendants offer no proof or argument to challenge INHS' statement that its business activity in the Virgin Islands "was limited to only the one contract at issue."

Title 13 V.I.C. § 530(b) states: "For the purposes of this chapter only, a foreign corporation shall be deemed to be doing business in the United States Virgin Islands if it maintains an office in the United States Virgin Islands." INHS is incorporated in Washington with its principal place of business is in Spokane, Washington. Complaint ¶ 1. There is no suggestion in the record that Plaintiff

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[5] In 1994, by Act No. 6064 amending the first sentence of 13 V.I.C. § 531(a), the words "or doing" were added to following the words "qualified to do" and before the words "business in the United States Virgin Islands."

[6] No evidentiary hearing has been held on Defendants' Motion. The factual averments of counsel are accepted in light of counsel's obligations of candor and fairness under VISCR 211.3.3 and 211.3.4. The Court accepts the statement of ¶ 6 of the Complaint that INHS "regularly conducts business in the Virgin Islands" as describing its "continuous contact with JFL's staff and JFL's operational systems for months" (Opposition, at 7) in the context of its Agreement with Defendants which "was the sole engagement that IHNS had in the Territory." *Id.*

maintained an office in the Virgin Islands. INHS states that at all relevant times "INHS' personnel, systems, equipment, offices and infrastructure were located in Washington State." Opposition, at 7.

"The 'doing business' statutes are intended to regulate a foreign corporation's conduct within a state when those activities constitute a *substantial* part of its ordinary or customary business." *Am. Fid. Fire Ins. Co. v. Construcciones Werl*, 12 V.I. 325, 367 (D.V.I. 1975) (citing 35 Am.Jur.2d, Foreign Corporations § 317) (emphasis in original). In *American Fidelity,* the District Court denied a motion to dismiss for failure to comply with the same franchise tax provisions of the Code addressed here. The court noted that:

> [M]ost states refuse to permit actions on local transactions to be brought in their courts by foreign corporations which do business in their territory without having complied with their statutory requirements. However, most states do allow foreign corporations to perform certain acts within their territory without qualifying to do business-provided that the quantum of activity is neither large nor frequent.

Id. at 366-67.

The District Court denied a similarly based motion to dismiss by the defendant in a mortgage foreclosure action a quarter century later in *M&T Mortgage Corp. v. White,* 41 V.I. 269 (D.V.I. 1999). The court noted that the plaintiff had "no local representatives, offices, or agents located in the Virgin Islands" and that it serviced only 34 mortgages in the Virgin Islands out of thousands of mortgages serviced nationwide. 41 V.I. at 270. "With no evidence before the court to the contrary, it does not appear that M&T Mortgage's servicing of such a small number of mortgages could possibly be construed as 'doing business' in the Virgin Islands" for purposes of the Corporation Franchise Tax Act. *Id.* at 271.

Here, Defendants simply cite the language of Plaintiff's Complaint without amplification to argue that INHS regularly does business in the Virgin Islands, that it is required under the CFTA to pay franchise tax, and that its failure to do so prevents INHS from commencing or maintaining this action until such franchise taxes are paid. Defendants have filed no reply to Plaintiff's Opposition and have not disputed Plaintiff's claims of it business activities, as follows:

> INHS did not maintain any offices in the U.S. Virgin Islands, it did not maintain personnel in the Virgin Islands, it had no agents or representatives located in the Virgin Islands, it had no equipment or vehicles owned, registered or leased in the Virgin Islands, it never registered with the office of the Lieutenant Governor and had no independent contractors in the Territory. Additionally, INHS' contract with JFL was only one of many contracts that INHS maintains across the country. Engage, which is the INHS division that worked with JFL, is but one division of INHS. Engage provides infrastructure, hardware integration, professional technology services, web hosting and Meditech solutions. However, INHS has several other divisions that provide a plethora of other health-related services including but not limited to: health training for professionals throughout the Inland Northwest region; accredited outpatient and inpatient physical rehabilitation services: community medical trainings, screenings, assessments, community involvement and education services. Within several of those programs exist several sub-programs that provide additional services. In sum, INHS' contract with Defendants was not a "substantial part" of its operations…
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> Opposition, at 8-9.

Based upon the record, the Court finds that INHS was not doing business in the Virgin Islands according to the meaning of the CFTA. As INHS was neither a foreign corporation qualified to do business nor doing business in the Territory, it was not obligated to pay franchise tax pursuant to the provisions of 13 V.I.C. § 531(a). Because INHS was not so obligated, it is not barred from commencing or maintaining this action pursuant to 13 V.I.C. § 533(a).

On the basis of the foregoing, it is hereby

ORDERED that Defendants' Joint Motion to Stay Proceedings is DENIED.

June 22, 2016

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: ______________________
Court Clerk Supervisor
6/23/16