IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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DOUGLAS HARBISON and HARBISON AUTO SALES, LLC,	**CASE NO. ST-2016-CV-0000146**
Plaintiffs,	**ACTION FOR DECLARATORY ORDER AND DAMAGES**
vs.	**JURY TRIAL DEMANDED**
AUTO DEPOT, LLC, NAEL SALEM, and SUAD SALEM,	
Defendants.	

MEMORANDUM OPINION AND ORDER

Pending before the Court are the following:

(1) Defendants' Motion to Dismiss, filed on April 22, 2016;
(2) Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss, filed on June 29, 2016; and
(3) Defendants' Reply in Support of Motion to Dismiss, filed on July 19, 2016.[1]

Having considered the premises, the Court will deny Defendants' Motion to Dismiss because Plaintiffs' Complaint sufficiently pleads claims for slander of title (Count I), fraudulent misrepresentation (Count II), and a violation under the Virgin Islands Criminally Influenced and Corrupt Organizations Act ("V.I. CICO") (Count III). Accordingly, the Court will deny Defendants' Motion to Dismiss.

BACKGROUND

Plaintiff Harbison Auto Sales, LLC ("Harbison") is a limited liability company doing business in St. Thomas, U.S. Virgin Islands[2] and Plaintiff Douglas Harbison is an adult resident of the U.S. Virgin Islands and a managing member of Harbison Auto Sales, LLC (collectively, the "Plaintiffs").[3] Defendant Auto Depot, LLC ("Auto Depot") is a limited liability company formed under the laws of the U.S. Virgin Islands with its principal place of business in St. Thomas, U.S. Virgin Islands.[4] Defendants Suad[5] Salem and Nael Salem are adult residents of St. Thomas, U.S. Virgin Islands and are the managing members, agents, and representatives of Auto Depot.[6]

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[1] Plaintiffs are represented by A.J. Weiss and Associates (A. Jeffrey Weiss, of counsel). Defendants Auto Depot, LLC and Nael Salem are represented by Kevin F. D'Amour, P.C. (Gaylin Vogel, of counsel).
[2] Compl. ¶ 2.
[3] Compl. ¶ 2.
[4] Compl. ¶ 3(a).
[5] The Complaint uses the name "Suad" Salem as the name of the Defendant in the caption. However, other pleadings use the name "Saud" Salem.
[6] Compl. ¶ 3(b).

Throughout 2015, Plaintiffs provided financing for automobile sales contracts for Defendants,[7] which amounted to approximately an aggregate total of Five Hundred Thousand Dollars ($500,000.00).[8] Plaintiffs allege that Defendants were fraudulently misrepresenting the terms of the sales contracts by intentionally inflating the down payments in order to induce Plaintiffs to provide financing on at least fifteen (15) contracts, which in some cases turned out to be one hundred percent (100%) financing.[9] However, Plaintiffs believed that it was only providing eighty percent (80%) financing on these contracts.[10]

For example, on or about July 3, 2015, Plaintiffs agreed to provide financing for the purchase of a 2014 Toyota Corolla 4 door Gray VIN 5YFBURHE7EP016243 ("2014 Toyota Corolla") in the amount of Seventeen Thousand Four Hundred Ninety Nine Dollars ($17,499.00).[11]

In October 2015, the purchaser gave the 2014 Toyota Corolla to Plaintiffs, in lieu of repossession, because the purchaser could not make the required payments. [12] Thereafter, Plaintiffs notified Auto Depot.[13]

Plaintiffs attempted to register the 2014 Toyota Corolla and were notified that Defendants had placed an "improper and fraudulent lien" on the 2014 Toyota Corolla.[14] Defendants refused to release the fraudulent lien placed on the 2014 Toyota Corolla despite having been paid in full for the vehicle and Defendants refused to tender the Certificate of Title for the 2014 Toyota Corolla.[15]

Plaintiffs attempted to obtain relief from the V.I. Bureau of Motor Vehicles ("BMV") by requesting that the lien be removed from the 2014 Toyota Corolla.[16] However, the BMV said they could not remove the lien without a Court Order.[17]

As a result of Defendants' actions, Plaintiffs assert three claims against Defendants: (1) slander of title; (2) fraudulent misrepresentation; and (3) a violation of V.I. CICO. Defendants now seek to dismiss all counts of the Complaint for failure to state a claim upon which relief can be granted.

MOTION TO DISMISS STANDARD

To determine if a claim will survive a motion to dismiss, the V.I. Supreme Court instructs that:

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[7] Compl. ¶ 4.
[8] Pls. Resp. in Opp. to Defs. Mot. to Dismiss, 2, June 29, 2016.
[9] *Id.*
[10] *Id.*
[11] Compl. ¶ 6.
[12] Compl. ¶ 7.
[13] Compl. ¶ 7.
[14] Compl. ¶ 8.
[15] Compl. ¶¶ 9, 10.
[16] Compl. ¶ 13.
[17] Compl. ¶ 13.

> First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked assertions devoid of further factual enhancement. 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 of relief.[18]

Pursuant to the now-repealed Superior Court Rule 7, Virgin Islands courts have applied Federal Rule of Civil Procedure 8(a) when considering if a party adequately pleaded a claim.[19] Under Fed. R. of Civ. P. 8(a), a complaint needs only present a short, plain statement of the causes of action and the basis for the claims for relief.[20] A complaint does not have to plead specific items of proof in its allegations, but must aver more than labels and conclusions.[21]

On April 3, 2017, the V.I. Supreme Court adopted the Virgin Islands Rules of Civil Procedure. Fed. R. of Civ. P. 8(a)(2) and V.I. R. Civ. P. 8(a)(2) both provide that "a pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." However, V.I. R. Civ. P. 8(a)(2) specifies the Virgin Islands "is a notice pleading jurisdiction." This language is included "to note that practice in the Virgin Islands continues to adhere to the traditional 'notice' pleading ethos . . . applying an approach that declines to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief."[22] Therefore, the Court determines it should take an even more liberal approach than that prescribed by Virgin Islands precedent applying Fed. R. Civ. P. 8(a)(2) when considering if a complaint adequately alleges facts that put an accused party on notice of claims brought against it.

ANALYSIS

I. Plaintiffs' Complaint sufficiently pleads a claim for slander of title.

Defendants argue that Plaintiffs' Complaint fails to state a claim for slander of title. First, Plaintiffs do not allege that they are the actual owners of the 2014 Toyota Corolla but, in fact, Plaintiffs assert that a third party was the purchaser of the vehicle.[23] For example, Defendants allege that other jurisdictions have dismissed slander of title claims when the Plaintiff did not own

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[18] *Brady v. Cintron*, 55 V.I. 802, 822-23 (V.I. 2011) (citing *Joseph v. Bureau of Corrections*, 54 V.I. at 649-50).
[19] *See, e.g., Robles v. HOVENSA, L.L.C.*, 49 V.I. 491, 500 (V.I. 2008); *Brady*, 55 V.I. at 822.
[20] *Robles v. HOVENSA, L.L.C.*, 49 V.I. at 500; *Brady*, 55 V.I. at 822 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). The Court recognizes these memorandum opinions cite to Federal Rule of Civil Procedure 8 by operation of the now-repealed Superior Court Rule 7. However, the Court finds the rationale behind the V.I. Supreme Court's interpretation of Fed. R. Civ. P. 8 persuasive and applicable to V.I. R. Civ. P. 8.
[21] *Gov't Emps. Ret. Sys. v. Gov't of the V.I. Office of the Attorney Gen.*, 64 V.I. 205, 215 (V.I. Super. Ct. 2016).
[22] V.I. R. Civ. P. 8 note to April 3, 2017 adopted rule.
[23] Brief in Supp. of Mot. to Dismiss, 3, April 22, 2016.

the property in question.[24] Second, Defendants allege that slander of title claims only apply to real property.[25] Third, Defendants argue that Plaintiffs' Complaint fails to plead a specific date of the alleged fraudulent lien.[26] Fourth, the Complaint lacks specificity on why the Auto Depot lien is not valid.[27]

The Superior Court of the Virgin Islands conducted a *Banks* analysis on slander of title in *Heavy Material, LLC v. Daniel's Construction Company*.[28] In order to plead a claim for slander of title, a claimant must allege: "[1] falsity of the statement; [2] injury to pecuniary interests, such as property, products, or business; [3] publication to a third person; [4] special harm in the form of actual pecuniary loss; and [5] intent, malice, or fault to cause harm."[29]

With respect to the first element—falsity of the statement, Plaintiffs allege that the recordation of the auto lien on the 2014 Toyota Corolla was "improper and fraudulent."[30] The Court finds that Plaintiffs have satisfied the first element.

With respect to the second element—injury to pecuniary interests, such as property, products, or business, Plaintiffs allege that they cannot resell the vehicle.[31] The Court finds that Plaintiffs have satisfied the second element.

With respect to the third element—publication to a third person, Plaintiffs allege that Auto Depot, LLC filed the lien.[32] By virtue of filing a lien, the Court finds that there has been publication to a third person. Thus, Plaintiffs have satisfied the third element.

With respect to the fourth element—special harm in the form of actual pecuniary loss, Plaintiffs allege that the 2014 Toyota Corolla continues to depreciate in value, and as such, Defendants are liable to Plaintiffs for all damages and losses including the diminution in value due to depreciation.[33] The Court finds that Plaintiffs satisfied their burden with respect to the fourth element.

With respect to the fifth element—intent, malice or fault to cause harm, Plaintiffs satisfy this element by alleging that "Defendants' acts and omissions as aforesaid were intentional, wrongful, and fraudulent, and on information and belief were undertaken with an evil motive to cause injury and harm to Harbison. . . ."[34] Taking all of Plaintiffs' factual allegations as true, the Court will deny Defendants' Motion to Dismiss with respect to Count I (Slander of Title).

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[24] *Id.*
[25] *Id.* at 4.
[26] *Id.* at 5.
[27] *Id.*
[28] *Heavy Material, LLC v. Daniel's Construction Company*, 2016 V.I. LEXIS 108, at *9 (V.I. Super. Ct. July 27, 2016) (having conducted a *Banks* analysis on slander of title).
[29] *Id.* at *9.
[30] Compl. ¶ 8.
[31] Compl. ¶ 14.
[32] Compl. ¶ 8.
[33] Compl. ¶ 16.
[34] Compl. ¶ 18.

II. Plaintiffs' Complaint sufficiently pleads a claim for fraudulent misrepresentation.

Defendants argue that the "most glaring omission" from the Complaint is the lack of allegations to support the fifth requirement of detrimental reliance and justifiable reliance (*i.e.* damages).[35] Defendants argue that there is a logical fallacy to Plaintiffs' allegation because there are no damages.[36] Further, Defendants argue that the injury suffered by the Plaintiffs is too "speculative" for an award of damages in a fraud claim.[37]

"Fraud" is defined as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."[38] In the Virgin Islands, this principle expresses itself as a cause of action for fraudulent misrepresentation.[39] Fraudulent misrepresentation occurs when "one makes a misrepresentation of fact, opinion, intention, or law that he or she either knew or had reason to know was false, and that was made for the purpose of inducing another to act or refrain from acting on it, is subject to liability to the other for pecuniary loss caused by the other's justifiable reliance on the misrepresentation."[40]

Plaintiffs' Complaint alleges that Defendants sent emails to Plaintiffs, which materially and fraudulently misrepresented the terms of the purchase of vehicles Auto Depot sought to sell to its customers.[41] Specifically, Plaintiffs argue that a series of fraudulent misrepresentations included the following: (1) Defendants represented that Plaintiffs had or would be providing down payments for vehicles; (2) Defendants provided Plaintiffs with paperwork showing that customers had provided a given amount for a down payment when, in fact, that amount had been inflated by Defendants; (3) Plaintiffs reasonably relied on Defendants' fraudulent emails and representations, and as a result financed at least fifteen (15) separate contracts for a total amount of approximately One Hundred Seventy-Five Thousand Dollars ($175,000.00), even though Auto Depot's customers had no equity or substantially less equity than would have been acceptable for a financing contract with Plaintiffs;[42] and (4) as a result of Defendants' fraudulent misrepresentations, Plaintiffs will continue to suffer damages and losses due to Auto Depot's customers "walking away from their obligations and leaving Plaintiffs unable to recover the full amount financed from the vehicles."[43]

Given that Plaintiffs' Complaint does in fact allege justifiable reliance, damages, and misrepresentations made by Defendants, the Court finds that Plaintiffs' Complaint sufficiently pleads enough allegations to assert a claim for fraudulent misrepresentation. Therefore, the Court will deny Defendants' Motion to Dismiss with respect to Count II (Fraudulent Misrepresentation).

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[35] Brief in Supp. of Mot. to Dismiss, 6, April 22, 2016.
[36] *Id.*
[37] *Id.* at 7.
[38] BLACK'S LAW DICTIONARY 731 (9th ed. 2009).
[39] *See Isaac v. Crichlow*, 63 V.I. 38, 57 n.8 (V.I. Super. Ct. 2015) (analyzing claims for "misrepresentation" and for "fraud" as claims for "fraudulent misrepresentation").
[40] *Merchs. Commercial Bank v. Oceanside Vill., Inc.*, 64 V.I. 3, 21-22 (V.I. Super. Ct. 2015).
[41] Compl. ¶ 21.
[42] Compl. ¶ 22-24.
[43] Compl. ¶ 25.

III. Plaintiffs' Complaint sufficiently pleads a violation of V.I. CICO.

Defendants argue that Plaintiffs' claim for a violation of V.I. CICO must be dismissed for the following reasons: (1) Plaintiffs fail to allege that Defendants are associated with an enterprise; (2) Plaintiffs merely assert a series of conclusory statements that do not meet the V.I. CICO requirements; (3) Plaintiffs' allegations fail because they take place over a short period of time; and (4) Plaintiffs' allegations involve a single alleged scheme and involve a single victim.[44]

Enterprise is defined as "any individual, sole proprietorship, partnership, corporation, trust, or other legal entity, or any union, association or group of persons, associated in fact although not a legal entity, and includes illicit as well as licit enterprises and governmental as well as other entities."[45] Pursuant to V.I. CODE ANN. tit. 14, § 605(a), "it is unlawful for any person employed by, or associated with, any enterprise[46]. . . to conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of criminal activity."[47] Under this offense, a plaintiff must show a pattern of criminal activity by a defendant, which means "two or more occasions of conduct that . . . constitute criminal activity; are related to the affair of the enterprise; and are not isolated."[48]

In the instant case, Plaintiffs allege that "Auto Depot was run by the Salem [D]efendants as an enterprise as that term is defined by [V.I. CODE ANN. tit. 14, § 604(h)] and the Salem Defendants operated Auto Depot as an enterprise to facilitate their scheme or fraud."[49] Plaintiffs allege criminal activity with respect to fraud and false statements pursuant to V.I. CODE ANN. tit. 14, § 834,[50] which is a criminal activity pursuant to 14 V.I.C. § 604(e)(16). Plaintiffs also allege that there were multiple auto loans, specifically, Plaintiffs financed "fifteen (15) separate contracts for a total amount of approximately One Hundred Seventy-Five Thousand Dollars ($175,000.00),"[51] which are two or more occasions of conduct that constitute criminal activity by Defendants. Given the aforementioned allegations in the Complaint, the Court finds that Plaintiffs' Complaint pleads a violation under V.I. CICO and will deny Defendants' Motion to Dismiss with respect to Count III (V.I. CICO).

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[44] Brief in Supp. of Mot. to Dismiss, 8, April 22, 2016.
[45] 14 V.I.C. § 604.
[46] 14 V.I.C. § 604(h) ("Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, or other legal entity, or any union, association or group of persons, associated in fact although not a legal entity, and includes illicit as well as licit enterprises and governmental as well as other entities.").
[47] *See also* 14 V.I.C. § 604(e) ("Criminal activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in the crimes, offenses, violations or the prohibited conduct as variously described in the laws governing this jurisdiction including any Federal criminal law, the violation of which is a felony and, in addition, those crimes, offenses, violations or prohibited conduct as found in the Virgin Islands Code . . . .").
[48] *Jefferson v. Bay Isles Assocs., L.L.L.P.*, 59 V.I. 31, 55-56 (V.I. Super. Ct. 2011) (citing 14 V.I.C. § 604(j)).
[49] Compl. ¶ 33.
[50] *See* 14 V.I.C. § 834 ("Whoever knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, shall—(1) if such property or money was less than $100 in value, be fined not more than $200 or imprisoned not more than 1 year, or both; or (2) if such property or money was $100 or more in value, be imprisoned not more than 10 years.").
[51] Compl. ¶ 24.

CONCLUSION

Having considered the premises, the Court will deny Defendants' Motion to Dismiss because Plaintiffs' Complaint sufficiently pleads claims for slander of title (Count I), fraudulent misrepresentation (Count II), and a violation of V.I. CICO (Count III).

Accordingly, it is hereby

ORDERED that Defendants' Motion to Dismiss is **DENIED**; and it is further

ORDERED that, **on or before June 12, 2017**, Defendants shall file a Response to Plaintiffs' Complaint; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record.

DATED: 5/24/2017

Denise M. Francois
DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court

By: ______________________
fr **Lori Boynes-Tyson**
Chief Deputy Clerk 5/24/2017