For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, and GOVERNMENT OF THE VIRGIN ISLANDS ex rel. GOVERNOR JUAN F. LUIS HOSPITAL AND MEDICAL CENTER, Appellants/Defendants,	)	**S. Ct. Civ. No. 2015-0074** Re: Super. Ct. Civ. No. 497/2013 (STX)
v.	)	
TITAN MEDICAL GROUP, LLC and TITAN NURSE STAFFING, LLC, Appellees/Plaintiffs.	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Douglas A. Brady

Argued: February 16, 2016
Filed: October 25, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

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OPINION OF THE COURT

CABRET, Associate Justice.

Governor Juan F. Luis Hospital and Medical Center ("JFL Hospital") appeals the Superior Court's July 14, 2015 judgment order awarding summary judgment to Titan Medical Group, LLC, and Titan Nurse Staffing, LLC (collectively "Titan"), in the amount of $925,497.58 in a breach of contract and quantum meruit action arising from a staffing agreement for the provision of medical services. Because the Superior Court entered its judgment order against JFL Hospital, an entity not subject to suit, we vacate in part and remand this matter with directions for dismissal of JFL Hospital from this case.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 23, 2010, Darice Plaskett, who at that time was the interim chief executive officer of JFL Hospital, entered into a staffing agreement with Titan on behalf of JFL Hospital. (J.A. 6–16; Super. Ct. Transmittal Jan. 22, 2016, at *28). Pursuant to the staffing agreement, Titan pre-selected a pool of medical and nursing candidates, from which JFL Hospital later selected staff. (J.A. 6–7; Super. Ct. Transmittal 1.22.16, at *10, 28). While Titan paid each selected employee directly and invoiced JFL Hospital each week, the agreement required JFL Hospital to pay Titan within 45 days of receipt, subject to a finance charge of 9% per annum on amounts outstanding for more than 60 days. (J.A. 10, 11; Super. Ct. Transmittal 1.22.16, at *11).

Between June 23, 2010, and August 26, 2013, Titan's employees provided medical services to JFL Hospital. (Super. Ct. Transmittal 1.22.16, at *11, 29). And although JFL Hospital initially made timely payments toward Titan's invoices, it began to fall increasingly behind, accruing unpaid invoices amounting to approximately $700,000 in April 2013, (J.A. 977), and to approximately $800,000 in August 2013. (J.A. 1090, 1145). Eventually, because of JFL Hospital's

increasing unpaid invoice balance, Titan removed its employees. (J.A. 1107; Super. Ct. Transmittal Jan. 22, 2016, at 11, 29).

Following unsuccessful negotiations in late 2013, (*see* J.A. at 1145–46), Titan filed suit in the Superior Court against JFL Hospital and the Government of the Virgin Islands *ex rel.* JFL Hospital ("Government") seeking damages for breach of the staffing agreement and in the alternative, quantum meruit. (J.A. 4, 19–24). In a June 19, 2014 answer, JFL Hospital and the Government denied owing Titan money under the staffing agreement, (J.A. 1537–38), asserted a number of affirmative defenses, and admitted to both entering into the staffing agreement with Titan and receiving "professional medical personnel services." (*Compare* J.A. 20, 23 (complaint), *with* J.A. 1536–39 (answer)).

On December 29, 2014, JFL Hospital and Titan attended a mediation conference and, in a mediation report submitted the next day, notified the Superior Court that "[t]he conflict has been completely resolved" and that the "parties are submitting a Stipulation Agreement and/or Notice of Dismissal." (J.A. 3, 1552). However, less than two months later, on February 12, 2015, JFL Hospital altered its position, informing the court that the parties would "proceed[] with discovery and preparation for trial" because "it appear[ed] unlikely" that the mediation settlement would be approved by the St. Croix District Governing Board.[1] (J.A. 3, 1526, 1557).

On April 8, 2015, Titan moved for summary judgment on both of its claims. (J.A. 2, 1525; Super. Ct. Transmittal 1.22.16, at *1–9). In its opposition, JFL Hospital argued that Titan failed to name a necessary and indispensable party—the Virgin Islands Government Hospitals and Health Facilities Corporation ("VIHHFC")—explaining that under title 19, section 244(a), the Legislature

[1] The St. Croix District Governing Board, which is comprised of nine members, is responsible for determining policy and planning for health care delivery at JFL Hospital. 19 V.I.C. § 243 (g), (j).

authorized suit against the VIHHFC, not JFL Hospital, which it described as having "no legal personality" and not subject to suit "in its own right." (Super. Ct. Transmittal 1.22.16, at *47–50, 52–57). JFL Hospital also argued that Titan failed to establish the existence of an enforceable contract because there was no evidence that the VIHHFC authorized Plaskett to enter into the staffing agreement. (Super. Ct. Transmittal 1.22.16, at *49–50, 53, 55–56). In a July 14, 2015 judgment order, the Superior Court granted Titan's motion and awarded summary judgment against JFL Hospital and the Government in the amount of $925,497.58 for breach of contract. (J.A. 1533–34). The court held that the VIHHFC was not a necessary or indispensable party, explaining that although title 19, section 244(a) authorized suit against the VIHHFC, it did not limit suit against the real party in interest—the Government—which managed JFL Hospital in partnership with the VIHHFC. (J.A. 1528–29 & nn.3–5). The court further held that Titan established an enforceable contract, explaining that JFL Hospital failed to refute Titan's evidence establishing that Plaskett entered into the staffing agreement on behalf of JFL Hospital and the Government. (J.A. 1531). JFL filed a timely notice of appeal on September 3, 2015. (J.A. 1, 1534–35); *see* V.I.S.CT.R. 5(a)(1) ("In a civil case . . . [where] the Government of the Virgin Islands . . . is a party, the notice of appeal may be filed by any party within 60 days after such entry [of judgment].").

II. JURISDICTION

"The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." V.I. CODE ANN. tit. 4, § 32(a). The Superior Court's July 14, 2015 judgment order granting summary judgment to Titan is a final judgment within the meaning of section 32(a), and therefore we have jurisdiction

over this appeal. *United Corp. v. Hamed*, 64 V.I. 297, 302 (V.I. 2016) (citing *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379 (V.I. 2014)).

III. DISCUSSION

JFL Hospital argues that the Superior Court erred by awarding summary judgment, explaining, first, that Titan failed to establish that Plaskett was authorized to enter into the staffing agreement and, second, that Titan failed to join the VIHHFC, a necessary and indispensable party. (JFL Hospital's Br. 8–9, 10–12, 18–19). In the alternative, JFL Hospital argues that even were summary judgment appropriate, the court erred by entering judgment against it because JFL Hospital is not a "legal entity that can sue or be sued." (JFL Hospital's Br. 8–9, 12–17). Since JFL Hospital's alternative argument is dispositive in this appeal, we decline to reach its remaining arguments. *See Phillip v. Marsh-Monsanto*, 66 V.I. 612, 628 n.8 (V.I. 2017) (declining to reach additional arguments where result would remain the same); *Gov't of the V.I. v. Gov't of the V.I. v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 64 V.I. 312, 321 n.3 (V.I. 2016) (same); *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 399 n.10 (V.I. 2014) (same). But before we address the merits of that argument, we must first address Titan's assertion of waiver.

Titan argues that JFL Hospital did not fairly present this argument to the Superior Court because its briefing in opposition to summary judgment focused on whether the VIHHFC was a necessary and indispensable party, not on whether JFL Hospital was subject to suit. (Titan's Br. 6). We disagree.

As we have often explained, "[a] party only needs to raise an issue in time for the Superior Court to address it and take whatever action is necessary in the first instance in order to fairly present the issue and preserve it for appeal." *Marsh-Monsanto v. Clarenbach*, 66 V.I. 366, 379 (V.I. 2017) (citation and internal quotation marks omitted); *accord Woodrup v. People*, 63 V.I.

696, 712 (V.I. 2015). In this case, JFL Hospital repeatedly argued in its opposition to summary judgment that it had "no legal personality" and was not subject to suit in its "own right." (Super. Ct. Transmittal Jan. 22, 2016, at *49, 54–55, 57). JFL Hospital also cited two authorities in support of its argument, including *Hosp. Res. Mgmt., L.C. v. Governor Juan F. Luis Hosp. & Med. Ctr.*, Civ. No. 2003-0056 (D.V.I. June 7, 2004) (unpublished), and title 19, section 244(a). (Super. Ct. Transmittal Jan. 22, 2016, at *54). And although JFL Hospital raised this argument primarily within the context of its related necessary and indispensable party argument, "an advocacy choice, selecting particular arguments for emphasis, does not operate to waive other arguments that were still properly presented[.]" *United States v. Sarraj*, 665 F.3d 916, 920 (7th Cir. 2012) (citation omitted). By repeating and supporting its argument with authority, JFL Hospital undoubtedly brought that issue to the court's attention and provided the court with an opportunity to consider, review, and address that issue. *See Simpson v. Golden*, 56 V.I. 272, 281 (V.I. 2012) (explaining that Supreme Court Rules 4(h) and 22(m) "exist to give the Superior Court the opportunity to consider, review and address an argument before it is presented to this Court"); *People v. Melendez*, 102 P.3d 315, 322 (Colo. 2004) (explaining that although there is no "'talismanic language' to preserve particular argument for appeal," the "trial court must be presented with an adequate opportunity to [address] any issue before" it will be reviewed); *Pratt v. Nelson*, 164 P.3d 366, 373 (Utah 2007) (explaining that "the preservation requirement is based on the premise that, in the interest of orderly procedure, the trial court ought to be given an opportunity to address a claimed error and, if appropriate, correct it" (citation and internal quotation marks omitted)). As a result, we are satisfied that JFL Hospital preserved its argument under Supreme Court Rules 4(h) and 22(m), and now turn to the merits of that issue.

In determining whether a governmental entity is subject to suit in its own name, this Court reviews *de novo* the governing statutory framework, which here is the Virgin Islands Government Hospitals and Health Facilities Corporation Act ("Corporation Act"), 19 V.I.C. §§ 240–249. *See Redemption Holdings, Inc. v. Gov't of the V.I.*, 65 V.I. 243, 249 (V.I. 2016) ("This Court engages in plenary review over all issues of statutory interpretation."); *In re Estate of George*, 59 V.I. 913, 922 (V.I. 2013) (same); *Brooks v. Gov't of the V.I.*, 58 V.I. 417, 423 (V.I. 2013) (same). Ordinarily, we would begin our inquiry by first determining whether the language at issue has a plain and unambiguous meaning. *See, e.g.*, *In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015). However, we cannot do that in this case because neither the Corporation Act nor any other provision of the Virgin Islands Code expressly addresses whether JFL Hospital is subject to suit. In the absence of such language, we broaden our inquiry and consider several factors to ascertain legislative intent, including whether the governing statutory framework establishes JFL Hospital as a separate corporate or politic body, or authorizes it to sue or be sued, and any relevant historical treatment. *See Maltby v. Winston*, 36 F.3d 548, 560 n.14 (7th Cir. 1994) (considering whether multijurisdictional law enforcement agency was a distinct legal entity), *cert. denied*, 515 U.S. 1141, 115 S. Ct. 2576 (1995); *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313–14 (5th Cir. 1991) (considering whether police department had authority "to sue or be sued"); *Morman v. Bd. of Educ. of Richmond Cnty.*, 126 S.E.2d 217, 218 (Ga. 1962) (considering whether county board of education was "a body corporate with authority to sue and be sued" and relevant historical treatment); *Spencer v. Greenwood/Leflore Airport Auth.*, 834 So. 2d 707, 710 (Miss. 2003) (considering whether airport authority was a "body politic or body corporate"). Importantly, the powers of a governmental entity "are limited to those expressed or implied by statute." *State ex rel. St. Louis Hous. Auth. v. Gaertner*, 695 S.W.2d 460, 462 (Mo. 1985) (en banc); *see V.I. Taxi*

Ass'n v. W. Indian Co., 66 V.I. 473, 491–92 (V.I. 2017) (explaining that the respective powers of the West Indian Company and the Virgin Islands Housing Authority are governed by statute).

JFL Hospital, formerly known as St. Croix Hospital, *see* 19 V.I.C. § 240 (g) ("'[G]overnment hospital facilities' means the St. Croix Hospital and Community Center[.]"), *repealed by* Act. No. 6012, § 3(e) (V.I. Reg. Sess. 1994); *Samuel v. Gov't of the V.I.*, 48 V.I. 620, 623 (D.V.I. App. Div. 2006) (explaining that JFL was "formerly St. Croix Hospital"), is owned by the Government of the Virgin Islands. (*See* J.A. 20, 1536 (answer admitting that the Government owns JFL Hospital)); *Hosp. Res. Mgmt.*, Civ. No. 2003-0056, at *4 (noting that JFL Hospital is owned and operated by the Government); *Hurtault v Gov't*, Civ. No. 357/1994, 2000 WL 36724502, at *1 (V.I. Super. Ct. June 29, 2000) (unpublished) (same). Between 1986 and 1994, the Government operated JFL Hospital, along with additional medical facilities, through two Government Hospital Facilities Boards, one on St. Croix and one on St. Thomas and St. John. 19 V.I.C. § 240, *repealed by* Act. No. 6012, § 3(e) (V.I. Reg. Sess. 1994); *see Hosp. Res. Mgmt.*, Civ. No. 2003-0056, at *2 ("The Government operated the public hospitals, such as the JFL Hospital, through the Government Hospital Facilities Board, which was established within the Department of Health."). Each Hospital Facilities Board was subject to suit in its own name under Act No. 5199. *See* Act No. 5199, § 5 (V.I. Reg. Sess. 1986) ("Any claim or remedy against the Government Hospital Facilities Board shall be made pursuant to the provisions of Title 33, chapter 118, Virgin Islands Code[.]"), *amended by* Act. No. 6012, § 3(d) (V.I. Reg. Sess. 1994) ("Unless the context clearly requires otherwise, strike the term 'Government Hospital Facilities Board' wherever it appears in the Virgin Islands Code and insert in lieu thereof the term '[VIHHFC].'").

In 1994, the Virgin Islands Legislature, dissatisfied with the Health Facilities Boards, enacted the Corporation Act. Act No. 6012, § 2 (V.I. Reg. Sess. 1994) (explaining that "[t]he

creation of separate hospital facilities boards in 1986 did not permit consistent continuous health care delivery and failed to provide for Territory-wide health care hospital policy decisions"). The Corporation Act created the VIHHFC, a public corporation, to manage health care delivery in partnership with the Government at JFL Hospital and additional medical facilities. 19 V.I.C. §§ 240(k), 242, 243–245. Under this framework, the VIHHFC is responsible for determining hospital policy and planning at the territorial level, and delegating day-to-day management operations to appropriate staff. 19 V.I.C. §§ 243(j), 244; *see Carty v. Turnbull*, 144 F. Supp. 2d 395, 408 (D.V.I. 2001) (explaining that VIHHFC "has the power to manage, operate, superintend, control, and maintain the hospitals and health facilities of the Government" (citation and internal quotation marks omitted)). The VIHHFC, like its predecessor Hospital Facilities Boards, is also subject to suit in its own name. *See* 19 V.I.C. § 244(a) ("The [VIHHFC] shall have the power to: . . . sue and be sued subject to the limitations and requirements of existing law applicable to the Government of the Virgin Islands."). Less clear, however, is whether the Government plays a role in managing health care delivery beyond its appointment of board members, *see* 19 V.I.C. § 243 (b), (g), and various financial contributions. *See* 19 V.I.C. §§ 240(i), 245(b), 261(b); 22 V.I.C. § 73(e); 33 V.I.C. § 3100b(c)(2)–(3).

But regardless of the nature of the Government's current role, it is clear that the Legislature did not intend to subject JFL Hospital to suit in its own name. Within both the Corporation Act and its predecessor, Act. No. 5199, the Legislature has largely referred to government-owned hospitals, including JFL Hospital, as mere "facilities,"[2] which are not generally subject to suit. *See*

[2] *See* 19 V.I.C. § 241(g) (defining "[h]ealth care facilities" and "health facilities" as "the hospitals and clinics under the jurisdiction of the corporation); 19 V.I.C. § 245(c) ("The corporation shall have jurisdiction over the Governor Juan F. Luis Hospital and Medical Center, the St. Thomas Hospital and Community Center, and the Myrah Keating Smith Health Center; and all personnel and equipment associated therewith."); 19 V.I.C. § 248 (defining "[h]ealth

Matarese v. Archstone Pentagon City, 761 F. Supp. 2d 346, 366 (E.D. Va. 2011) (explaining that the name of a building, a non-existent entity, cannot be sued); *LaCedra v. Donald W. Wyatt Det. Facility*, 334 F. Supp. 2d 114, 133 (D. R.I. 2004) (same); *Fuller v. Woodland Racing*, Civ. A. No. 92-2317-GTV, 1994 WL 171408, at *3 (D. Kan. Apr. 7, 1994) (unpublished) (same). And although there are different characterizations of JFL Hospital in other provisions of the Virgin Islands Code—for example, the Legislature refers to government-owned hospitals as "instrumentalit[ies]" in order to extend their regular employees additional statutory protections, 3 V.I.C. § 530(a)(2)(B)(ix), and includes JFL Hospital under a list of "semiautonomous agencies, instrumentalities, or public corporations" in order to add its executive director to the Virgin Islands Territorial Emergency Management and Homeland Security Council ("VITEMHS"), 23 V.I.C. § 1007(a)(5)(K)–(M)—those characterizations do not indicate that the Legislature intended to recognize JFL Hospital as a separate entity subject to suit.

The first provision, title 3, section 530, does not even refer to JFL Hospital by name, but rather, as a "hospital under the jurisdiction of the [VIHHFC]," *id.*; 19 V.I.C. § 245(c) ("The [VIHHFC] shall have jurisdiction over [JFL Hospital.]"), whereas the second provision, title 23, section 1007, is part of a larger effort intended to improve the government's emergency response and recovery by soliciting feedback from key government personnel, among others, *see* 23 V.I.C. § 1002 (explaining that the Virgin Islands Territorial Emergency Management Act of 2009, 23 V.I.C. §§ 1001–1080, is intended in part to "strengthen the roles of the . . . territorial agencies"

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care facility as "the Roy L. Schneider Hospital, Juan F. Luis Hospital, the Myrah Keating Smith Community Health Center and clinics, owned, operated or managed by the Department of Health"); 19 V.I.C. § 240 (g), (defining "government hospital facilities" as "the St. Croix Hospital and Community Center, the St. Thomas Hospital and Community Center, and the Myrah Keating Smith Clinic on the Island of St. John, the Ingeborg Nesbitt Clinic in Frederiksted on the Island of St. Croix, and such other government facilities providing services similar to that provided by the clinics mentioned herein."), *repealed by* Act. No. 6012, § 3(e) (V.I. Reg. Sess. 1994).

and "provide clear direction, coordination and support of all agencies directly and directly involved" in emergency response and recovery); 23 V.I.C. § 1007 (c) (explaining in part that the VITEMHS is responsible for planning and coordinating emergency management programs), not to implicitly confer JFL Hospital the authority to sue and be sued. *See L. C. Eddy, Inc. v. City of Arkadelphia*, 303 F.2d 473, 475–77 (8th Cir. 1962) (explaining that an airport commission, notwithstanding its status as an "agency or instrumentality" of a city, was not a separate corporate entity where it lacked, among other powers, the authority to sue and be sued); *Brownlee v. Dalton Bd. of Water, Light & Sinking Fund Comm'rs*, 1 S.E.2d 599, 600 (Ga. Ct. App. 1939) (same, but utility board); *Des Moines Park Bd. v. City of Des Moines*, 290 N.W. 680, 681 (Iowa 1940) (same, but park board). If the Legislature had wanted to confer that authority to JFL Hospital, it could have recognized JFL Hospital as a "public corporation," 5 V.I.C. § 1142(b) ("An action may be maintained against any public corporation in the Virgin Islands within the scope of its authority, or for any injury to the rights of the plaintiff arising from some act or omission of such public corporation."), or, as it has done for numerous other governmental entities, expressly authorized JFL Hospital "to sue and be sued."[3] *See Health Care Auth. for Baptist Health v. Davis*, 158 So. 3d

[3] The Legislature has expressly authorized at least twenty governmental entities to "sue and be sued." *See* 3 V.I.C. § 406(b)(4) (Virgin Islands Museum of Fine Arts); 7 V.I.C. § 46(9) (Virgin Islands Conservation District); 17 V.I.C. § 317(a)(1) (United States Virgin Islands Maritime Academy); 17 V.I.C. § 332(a)(4) (Virgin Islands Hospitality Training School); 17 V.I.C. § 486 (Board of Directors of the University of the Virgin Islands Research and Technology Park Corporation); 17 V.I.C. § 492(b) (Board of Trustees of the University of the Virgin Islands); 21 V.I.C. § 103(s) (Virgin Islands Housing Finance Authority); 22 V.I.C. § 1502(n) (Virgin Islands Windstorm and Earthquake Insurance Authority); 29 V.I.C. § 35(2) (Virgin Islands Housing Authority); 29 V.I.C. § 496(d) (Virgin Islands Waste Management Authority); 29 V.I.C. § 543(4) (Virgin Islands Port Authority); 29 V.I.C. § 813(b) (Board of Directors of the Virgin Islands Economic Development Park Corporation); 29 V.I.C. § 902 (Economic Development Bank for the United States Virgin Islands); 29 V.I.C. § 919 (Virgin Islands Public Finance Authority); 29 V.I.C. § 1053(c)(2) (Caribbean Cultural Heritage and Discovery Park Corporation); 29 V.I.C. § 1103 (Virgin Islands Economic Development Authority); 30 V.I.C. § 105(4) (Virgin Islands Water and Power Authority); 30 V.I.C. § 203(b)(4) (Virgin Islands Public Broadcasting System); 32 V.I.C. § 52(3) (Magens Bay Authority); 32 V.I.C. § 72(3) (St. Croix Park Authority); *see also* Act No. 5826, § 4 (V.I. Reg. Sess. 1993) ("[T]he [West Indian Company, Ltd.] shall be empowered to undertake any lawful act or activity . . . permissible for a general business corporation under the general corporation laws of the Virgin Islands.").

397, 405 (Ala. 2013) (explaining that a "sue or be sued" clause "show[s] the intent of the legislature to create a separate entity"); *Morman*, 126 S.E.2d at 218 (explaining that a "sue and be sued" clause enabled suit against a county board of education); *Des Moines Park Bd.*, 290 N.W. at 681 (explaining that "wherever it has been the purpose of the legislature to authorize any of the agencies of government to proceed independently of parent municipality, the power to sue or be sued has been expressly given"); *Tooke v. City of Mexia*, 197 S.W.3d 325, 337 (Tex. 2006) (explaining that a "sue and be sued' clause "can mean . . . that a governmental entity, like others, has the capacity to sue and be sued in its own name").

The dissent contends that "the Legislature has implicitly granted JFL Hospital the right to sue and be sued with respect to contracts that it has explicitly been granted the authority to enter[.]" Yet, the dissent supports this proposition with cases that are readily distinguishable.[4] Because JFL

[4] In *Heck v. Lafourche Parish Council* and *Beta Chapter of Beta Theta Pi Fraternity v. May*, the first two cases cited by the dissent, the courts concluded that it was necessary to read into the relevant authorizing statutes an implied right to sue and be sued because without this implied right, injured parties would be without legal recourse to enforce contractual rights. 860 So.2d 595, 609 (La. Ct. App. 2003) (noting the challenged entity was not a subpart of some larger entity authorized to sue or be sued, but stood on its own in the exercise of its authority); 611 So.2d 889, 894 (Miss. 1992) (same). But in this case, there is no need to find that such an implied right exists, as our statutory framework clearly provides contracting parties with legal recourse by means of suit against the VIGHHFC. The dissent also relies on *Greene County Law Library Ass'n v. Curlett*, 63 N.E.2d 455, 456 (Ohio Ct. App. 1945) (concluding that an unincorporated organization broadly recognized in law in its own right without limitations on its powers has "a legal capacity to be sued on such contracts in its association name"), but JFL has never been recognized as such, either in the Virgin Islands Code or in this Court's jurisprudence. Continuing, *Mathewson v. Mathewson*, 63 A. 285 (Conn. 1906) concerned a breach of contract claim between a wife and husband, where the husband challenged the wife's ability to contract and sue, and is therefore irrelevant to the question presented in this case. In *Cravey v. Southeastern Underwriters Ass'n*, 105 S.E.2d 497, 500 (Ga. 1958) the court, citing a statute expressly authorizing unincorporated associations to administratively appeal, concluded that the Association may appeal an administrative denial to the trial court, but the Virgin Islands Code does not contain such a statute and JFL is not an unincorporated association. In *Forest City Manufacturing Co. v. International Ladies' Garment Workers' Union*, 111 S.W.2d 934, 946 (Mo. Ct. App. 1938),the court implied a right to sue and be sued where the entity was "authorized by statute to *contract in its own name* for certain purposes," but the relevant provisions of the Virgin Islands Code do not specify whether JFL, through its Chief Executive Officer, is authorized to contract in its own name, or merely on behalf of VIGHHFC. *See, e.g. See* 19 V.I.C. § 244a(b) ("The Chief Executive Officer shall serve as the head of the hospital to which he is appointed and shall . . . appoint and remove all managerial personnel, health care providers and all other professional and nonprofessional personnel. . . ."). Finally, *Dormitory Authority of State of N.Y. v. Span Electric Corp.*, 218 N.E.2d 693, 695–96 (N.Y. 1966), is also irrelevant to the resolution of this case, as the court there concluded that the Dormitory Authority was subject to suit based on a statute specifically authorizing the Authority to "sue and be sued."

Hospital is part of the larger entity, the VIHHFC—against whom legal recourse can be sought—and not a distinct entity broadly recognized in law in its own right without limitations on its powers, we reject the proposition that the Legislature implicitly granted JFL Hospital the right to sue and be sued in its own name.

Virgin Islands case law also fails to provide any indication that the Legislature intended to subject JFL Hospital to suit. Since passage of Act. No. 5199, a number of litigants have named government-owned hospitals as defendants, often alongside the Government, individual doctors, a Hospital Facilities Board, the VIHHFC, or some combination thereof. *See Bennett v. Gov't of the V.I.*, 25 V.I. 164 (D.V.I. 1990) (action against Government, individual doctors, and hospital).[5] But only in one of these cases—*Gov't Employees Retirement System v. Governor Juan F. Hospital and Medical Center*—did the court actually address whether JFL Hospital was subject to suit. Case No. SX-16-CV, 2016 WL 5791256, at *2–3 (V.I. Super. Ct. Aug. 29, 2016). And in that case, the Superior Court dismissed JFL Hospital from the suit, explaining "because JFL [Hospital] is a public healthcare facility without the authority to sue or be sued and not having a recognized legal existence, it cannot properly be named as defendant in this lawsuit." *Id.* at *3.

[5] *See also Doolin v. Kasin*, Civ. No. 07-79, 2012 WL 851124 (D.V.I. Mar. 14, 2012) (unpublished) (action against hospital and individual doctors); *Subramaniam, M.D. v. Centeno*, No. 1:09-cv-93, 2010 WL 2244368 (D.V.I. June 3, 2010) (unpublished) (action against hospital, individual doctor, and the St. Croix District Governing Board of Directors); *Williams v. V.I. Gov't Hosps. & Health Facilities Corp.*, Case No. ST-15-CV-159, 2016 WL 1298479 (V.I. Super. Ct. Apr. 1, 2016) (unpublished) (action against hospital, Government, and the VIHHFC); *Hedlund v. Gov't of the V.I.*, Case No. ST-13-CV-279, 2015 WL 5439748 (V.I. Super. Ct. Sept. 10, 2015) (unpublished) (action against hospital, Government, individual doctors, and the VIHHFC); *Appleyard v. Governor Juan F. Luis Hosp. & Med. Ctr.*, Civ. No. SX-14-CV-282, 2014 WL 3767210 (V.I. Super. Ct. July 28, 2014) (unpublished) (action against hospital and individual doctors); *Tobal v. Cebedo*, 41 V.I. 50 (V.I. Super. Ct. 1999) (action against hospital, Government, individual nurses, and the St. Croix District Governing Board of Directors); *Bailey v. St. Croix Hospital*, Civ. No. 287/1993, 1996 WL 35048107 (V.I. Super. Ct. Nov. 6, 1996) (unpublished) (action against hospital and individual doctor); *Fredella ex rel. Titchener v. Farrelly*, 28 V.I. 90 (V.I. Super. Ct. 1993) (action against hospital, Government, individual doctor, and the Hospital Facilities Board).

Like the Superior Court, we conclude that without some indication in the governing statutory framework, there is no reason to believe that the Legislature intended to subject JFL Hospital to suit. The Legislature, by largely referring to JFL Hospital as a mere "facility" and declining to recognize it—as opposed to the VIHHFC—as a "public corporation" with authority to "sue and be sued," did not evidence an intent to subject JFL Hospital to suit. *See City Council of City of Lafayette v. Bowen*, 649 So. 2d 611, 616 (La. Ct. App. 1994) (explaining that a city council was not subject to suit because it was "not an additional and separate government unit with the power to institute litigation on its own behalf"); *Frank Briscoe Co. v. Rutgers, the State Univ. & Coll. of Med. & Dentistry of N.J.*, 327 A.2d 687, 690 (N.J. Super. Ct. Law Div. 1974) ("If the legislature does not grant the public corporation the right to sue or be sued it may not . . . be sued."); *Townsend v. Wisconsin Desert Horse Ass'n*, 167 N.W.2d 425, 430 (Wis. 1969) (explaining that, because a "[d]epartment [was] not set up expressly as a separate corporate or politic body or given the power to sue or be sued," it was "without the capacity of being sued as a separate entity"). Therefore, we conclude that JFL Hospital is not a separate entity subject to suit and must be dismissed from this case.

IV. CONCLUSION

Because JFL Hospital is not a separate legal entity empowered to sue and be sued, the Superior Court erred by entering its July 14, 2015 judgment order awarding summary judgment against it. Therefore, we vacate in part the Superior Court's July 14, 2015 judgment order and remand for further proceedings with directions that the Superior Court dismiss JFL Hospital from this case.

Dated this 25th day of October, 2018.

BY THE COURT:

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

HODGE, Chief Justice, dissenting.

I disagree with the majority that JFL Hospital is not a separate legal entity empowered to sue and be sued. Therefore, I respectfully dissent since I would affirm the Superior Court's July 14, 2015 judgment.

The majority is correct that the Legislature has not granted JFL Hospital the explicit authority to sue or be sued, as it has with certain other governmental instrumentalities. However, it has granted the JFL Hospital Board, as well as the JFL Hospital CEO, the right to enter into contracts. *See* 19 V.I.C. § 244a(b) ("The Chief Executive Officer shall serve as the head of the hospital to which he is appointed and shall . . . appoint and remove all managerial personnel, health care providers and all other professional and nonprofessional personnel. . . ."); 19 V.I.C. § 245a (establishing requirements for the "the Corporation or the respective District Boards" with respect to purchases and contracts); *see also* 19 V.I.C. § 244(k) ("The V.I. Government Hospitals and Health Facilities Corporation shall have the power to . . . delegate to the District Governing Boards, for as long as the district boards exist, those powers and procedures that are necessary to the day-to-day operations of the respective district health facilities . . . provided, however, that no such delegated power shall be greater than the powers of the corporation granted pursuant to this chapter."). Additionally, each District Board has been directed to establish and maintain separate hospital bank accounts "to pay all necessary costs and obligations."[1] 19 V.I.C. § 261.

When the Legislature enacts a statute that grants an entity with the right to enter into contracts, it also implicitly grants that entity the right to sue and be sued with respect to those

[1] That the Legislature has directed that the JFL Hospital have its own bank account that is separate from any other account maintained by the Virgin Islands Government Hospitals & Health Facilities Corporation, and provides that disbursements be made from that account by the JFL Hospital Board rather than by the Corporation, undercuts the majority's assertion that a lawsuit against the Corporation is an effective substitute remedy for suing the JFL Hospital directly.

contracts. *See Heck v. Lafourche Parish Council*, 860 So.2d 595, 609 (La. Ct. App. 2003) ("[The council] is an autonomous legal entity with regard to its ability to enter into contracts affecting the parish, as authorized by the Home Rule Charter. As such, we conclude that the Lafourche Parish Council is a juridical entity for purposes of being sued for breach of the contracts it is authorized to confect."); *Beta Chapter of Beta Theta Pi Fraternity v. May*, 611 So.2d 889, 894 (Miss. 1992) (right to sue and be sued is impliedly authorized when statute authorizes creation of entity and permits it to enter into leases); *Cravey v. Southeastern Underwriters Ass'n*, 105 S.E.2d 497, 500 (Ga. 1958) ("An express statutory provision, however, is not indispensable to an association's capacity to sue and be sued in the association's name; such a suite may be maintained by virtue of a necessary implication arising from statutory provisions . . . ."); *Greene County Law Library Ass'n v. Curlett*, 63 N.E.2d 455, 456 (Ohio Ct. App. 1945) (right to contract confers right to sue); *Forest City Mfg. Co. v. Int'l Ladies' Garment Workers' Union, Local No. 104*, 111 S.W.2d 934, 946 (Mo. Ct. App. 1938) ("Thus an unincorporated association, if authorized by statute to contract in its own name for certain purposes, will necessarily be looked upon as having the corresponding legal capacity to be sued on such contracts in its own name."); *Mathewson v. Mathewson*, 63 A. 285, 286 (Conn. 1906) ("The right to contract involves the right to sue for breach of contract, and, when the law creates a new right to contract, the mere creation of the right includes an appropriate remedy by suit for its violation."); *see also* 6 Am.Jur.2d Associations and Clubs § 52 ("Thus an unincorporated association authorized by statute to contract in its own name for certain purposes, has a legal capacity to be sued on such contracts in its association name."); *cf. Dormitory Auth. of State of N.Y. v. Span Elec. Corp.*, 218 N.E.2d 693, 696 (N.Y. 1966) ("[T]he State itself is not insulated against the operation of an arbitration clause in a contract because the power to contract implies

the power to assent to the settlement of disputes by means of arbitration.").

To further bolster JFL Hospital's independent legal existence, the Legislature has also on several occasions bypassed both the Corporation and the St. Croix District Board and appropriated funds directly to the JFL Hospital. *See, e.g.*, Act No. 7731 § 8(a); Act No. 7237 § 4; Act No. 7168 § 5; Act No. 7071 § 3(a). This would not be possible if JFL Hospital was merely the name of a building and did not have a separate legal existence.[2] That the Legislature has repeatedly appropriated funds directly the JFL Hospital undercuts the proposition that we should disregard other statutes identifying JFL Hospital as a semiautonomous agency or corporation simply because they were enacted for other purposes. *See, e.g.*, 3 V.I.C. § 530(a)(2)(B)(ix); 23 V.I.C. § 1007(a)(5)(K)-(M).

In this case, the staffing agreement was executed by the CEO of the JFL Hospital, and is clearly within the authority conferred through 19 V.I.C. § 244a(b). Since the Legislature has implicitly granted JFL Hospital the right to sue and be sued with respect to contracts that it has explicitly been granted the authority to enter, I conclude that it was properly named a defendant in this case. Consequently, I respectfully dissent.

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[2] I note that in some government documents, the St. Croix District Board has been referred to as "V.I. Government Hospitals and Health Facilities Corporation, St. Croix District Governing Board, Juan F. Luis Hospital." *See, e.g.* http://legvi.org/committeemeetings/Health,%20Hospitals,%20Human%20Services/2017/February%203,%202017%20-%20JFL%20-%20STX/Important%20Documents/St.%20Croix%20District%20Governing%20Board-%20Composition.pdf. To the extent "Juan F. Luis Hospital" is intended to refer to the St. Croix District Board, it would certainly make Titan's lawsuit proper, particularly since it is well-established that a board of directors is not an entity capable of being sued, but that such suits should be brought against the entity over which the board exercises control. *See, e.g.*, *Willmschen v. Trinity Lakes Improvement Ass'n*, 840 N.E.2d 1275, 1280-81 (Ill. Ct. App. 2005); *Flarey v. Youngstown Osteopathic Hosp.*, 783 N.E.2d 582, 586 (Ohio Ct. App. 2002).

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court