

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT CHRISTIANSTED

EPHRAIM JACOBS

PLAINTIFF

vs.

HECTOR DIAZ and REED, WIBLE
and BROWN

DEFENDANT

CIVIL NO. 893/82

ACTION FOR DAMAGES

MEMORANDUM ORDER

This matter came before the Court on Defendant, Reed, Wible and Brown's Motion to Dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff has filed an Opposition to the Motion to Dismiss and a Motion for leave of Court to Amend the Complaint pursuant to Fed. R. Civ. P. 15(a). Plaintiff in his Opposition to the Motion to Dismiss and proposed Amended Complaint, makes conclusory allegations that defendant committed the tortious act while within the scope of employment. Based on this assertion, it, therefore, appears that a granting of a Motion to Dismiss would not be proper at this juncture. The Court having read and considered the moving papers of both parties and the opposition thereto, and being otherwise fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant, Reed, Wible and Brown's Motion to Dismiss will be DENIED; and it is further

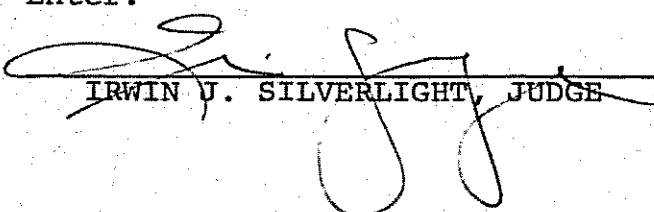
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ORDERED, ADJUDGED and DECREED that because Plaintiff's Proposed Amended Complaint, particularly in regard to the critical area of the scope of employment, is couched in conclusory language as opposed to being "a short plain statement of the claim" as required by Fed. R. Civ. P. 8(a); 5 VIC App. 7 Rule 8(a), the Motion for Leave of Court to Amend the Complaint will be DENIED without prejudice to it being renewed. Counsel is directed to the Supreme Court's oft-quoted decision in Conley v. Gibson, 325 U.S. 41 (1957), where the Court stated that the Federal Rules require the complaint to give defendant fair notice of what the plaintiff's claim is and the grounds upon which it stands.

"Implicit in this passage is the notion that the rules contemplate a statement of circumstances, occurrences, and events in support of the claim being presented". WRIGHT & MILLER, Federal Practice and Procedure: Civil §1215(1969). In this regard, a statement of facts rather than legal conclusions seems to be generally accepted although the latter may be acceptable if such meets the test of fair notice. Id at §1216. The Court holds that the conclusory pleadings fail to give Defendant Reed, Wible and Brown the type of fair notice envisioned by the rules and therein lies the basis for the Court's denial of the Motion for leave to Amend the Complaint without prejudice to resubmission.

Dated: January 26, 1983

Enter:


IRWIN J. SILVERLIGHT, JUDGE