

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

CLALWAYN E. WEBSTER,

Plaintiff,

v.

**CBI ACQUISITIONS, LLC, d/b/a
CANEEL BAY RESORT,**

Defendant.

CASE NO. ST-11-CV-558

MEMORANDUM OPINION

Plaintiff filed a Complaint on September 30, 2011, alleging that Defendant terminated him improperly and without cause. Defendant filed a Motion to Dismiss on December 1, 2011, and Webster responded to Defendant's motion on December 21, 2011. On January 3, 2012, Defendant replied to Plaintiff's December 21, 2011, response. Webster filed a Motion to Amend Complaint and an Amended Complaint on February 2, 2012.

FACTS

According to Plaintiff's Complaint and Opposition to Defendant's Motion to Dismiss, Clalwayn E. Webster was employed by Caneel Bay Resort for a period of third-four (34) years, twenty-five (25) years of which he served as Defendant's Diversified Mechanic Supervisor. On or about February 19, 2010, Caneel Bay indicated that the 2010 annual raise for its employees would be twenty-three (23) cents instead of the usual "annual increase as a percentage of their salary."¹ Defendant led three middle management supervisors who were dissatisfied with the amount of the raise in writing a joint letter addressed to Defendant's managing director, Nikolay Hotze. Although Defendant's personnel manager ordered that the employees receive more than the twenty-three (23) cent raise and reinstated the percentage-based raise system, Plaintiff's supervisor allegedly refused to give Plaintiff

¹ September 30, 2011, Complaint, p. 3.

either the disputed twenty-three (23) cent raise or the percentage-based raise. Plaintiff was terminated on July 15, 2011.

STANDARD OF REVIEW

The Court must consider two factors when deciding a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure. First, “all well-pleaded allegations of the complaint must be taken as true and interpreted in the light most favorable to the plaintiffs, and all inferences must be drawn in favor of them.”² Although the Court must take all of the factual allegations in the Complaint as true, courts “are not bound to accept as true a legal conclusion couched as a factual allegation”.³ Factual and legal elements of a claim should be separated,⁴ and, while Rule 8⁵ does not require “detailed factual allegations,”⁶ it does “demand[] more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”⁷ A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do,” nor does a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.”⁸

Second, the Court must decide whether the claim is plausible “on its face.”⁹ A claim is plausible when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” and a court must “draw on its judicial experience and

² *Crawford v. Daly*, Civil No. ST-08-CV-281, 2010 WL 5677946, at *2 (V.I. Super. Ct. November 29, 2010) (quoting *Schrob v. Catterson*, 948 F.2d 1402, 1408 (3d Cir.1991) (citation omitted)).

³ *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

⁴ *Bethea v. Merchants Commercial Bank*, Civil No. 2011-51, 2011 WL 4861873, at *1 (D.V.I. Oct. 13, 2011) (citing *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir.2009); *Iqbal*, 129 S.Ct. at 1950).

⁵ “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”. FED. R. CIV. P. 8(a).

⁶ *Iqbal v. Ashcroft*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlanta Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

⁷ *Iqbal*, 129 S.Ct. at 1949.

⁸ *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555 and 557).

⁹ *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570).

common sense” in making the plausibility determination.¹⁰ The plausibility standard requires more than “a sheer possibility that a defendant has acted unlawfully.”¹¹ If the Court determines that “there are well-pleaded factual allegations, [it will] assume their veracity and then determine whether [the allegations] plausibly give rise to an entitlement to relief.”¹² The Court now applies this standard.

DISCUSSION

1. Wrongful Discharge

There is no common law claim for wrongful discharge under Virgin Islands law.¹³ The Virgin Islands Wrongful Discharge Act (the Act), codified at 24 V.I.C. §§ 76-79, was adopted by the Virgin Islands Legislature as the exclusive attempt to define the boundaries of permissible reasons for termination of non-union employees in the Territory.¹⁴ An employee who is discharged by an employer for a reason other than one of the nine enumerated grounds listed under the Act “shall be considered to have been wrongfully discharged.”¹⁵ If the reason given for the discharge falls under one of the acceptable grounds listed in the Act, the plaintiff must set forth “weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons for its action,”¹⁶ and the plaintiff may assert a reason for which the employer's justification for termination is a

¹⁰ Saja A. Thomas, *The New Summary Judgment Motion: The Motion to Dismiss Under Iqbal and Twombly*, Lewis & Clark L. Rev. 15, 27 (2009) (discussing changes to the requirements for the motion to dismiss as recently established by the Supreme Court in *Twombly* and *Iqbal*) (quoting *Iqbal*, 129 S.Ct. at 1949-50).

¹¹ *Iqbal*, 129 S.Ct. at 1949.

¹² *Id.* at 1950.

¹³ *Bethea*, 2011 WL 4861873 at *13 (citing *Sprauve v. CBI Acquisitions, LLC*, Civil No. 2009-165, 2010 WL 3463308, at *11 (D.V.I. Sept. 2, 2010) (“Absent the applicability of the [Wrongful Discharge Act], there is no common law cause of action for wrongful discharge Plaintiff may claim.”)); *Smith v. V.I. Water and Power Auth.*, Civil No. 2004-148, 2008 WL 5071685, at *9 (D.V.I. Nov.24, 2008) (“This court has recently held that where a plaintiff is unable to state a claim for wrongful discharge under the [Wrongful Discharge Act], no common law action based on public policy exists.”)).

¹⁴ *Sorber v. Glacial Energy VI, LLC*, Civil No. ST-10-CV-588, 2011 WL 3854244, at *2 (V.I. Super. Ct. June 07, 2011).

¹⁵ *Glasgow v. Veolia Water North America Operating Services LLC*, Civil No. 2009-19, 2010 WL 3780966, at *9 (D.V.I. Sept. 21, 2010).

¹⁶ *Fenton v. C & C Const. and Maintenance, Inc.*, Civil No. SX-96-CV-791, 2007 WL 1202867, at *4 (V.I. Super. Ct. April 04, 2007).

pretext for a wrongful discharge.¹⁷ “Once the plaintiff establishes a *prima facie* case, a presumption of wrongful discharge will arise against the employer.”¹⁸

The Wrongful Discharge Act was added to the Virgin Islands Code in 1986 to provide a remedy for the wrongful discharge of employees.¹⁹ The Act governs substantive rights²⁰ and requires just cause for termination of employment.²¹ In order to state a claim under the Act, a plaintiff must allege that: (1) he was an employee; (2) of a covered employer; (3) he was discharged; (4) and the discharge was wrongful.²² Plaintiff must indicate that Defendant is a “covered employer,” someone “that has employed five (5) or more employees for each working day in each of the twenty (20) or more calendar weeks in the two (2) year period preceding a discharge.”²³ The Act allows for the possibility of multiple “employers” because the term “‘employer’ includes any person acting in the interest of an employer directly or indirectly”.²⁴ If the Court cannot decipher whether a plaintiff’s claim is proper under the Act, the Court may dismiss the claim without prejudice and order a reasonable time for the plaintiff to cure the complaint.²⁵

Defendant argues that the Court must dismiss Webster’s Complaint since Plaintiff fails to allege that he is a covered employee under the Act because “[t]he Wrongful Discharge Act... does not apply to

¹⁷ *Id.*

¹⁸ *Rajbahadoorsingh*, 168 F.Supp.2d at 505.

¹⁹ Virgin Islands Wrongful Discharge Act, 1986 V.I. Sess. Laws p. 377, No. 5227 (1987).

²⁰ *Matheson v. Virgin Islands Community Bank, Corp.*, 297 F. Supp. 2d 819, 830 (D.V.I. 2003).

²¹ Barry D. Roseman, *Just Cause in Montana: Did the Big Sky Fall?*, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY, Sept. 2008, at 7 n.50.

²² *Glasgow*, 2010 WL 3780966 at *9 (citing *Rajbahadoorsingh v. Chase Manhattan Bank*, 168 F.Supp.2d 496, 504–05 (D.V.I. 2001)).

²³ *Glasgow*, 2010 WL 3780966 at *10; 24 V.I.C. § 62.

²⁴ 24 V.I.C. § 62.

²⁵ See *Glasgow*, 2010 WL 3780966 at *10 (“While it is likely that Defendant fits the definition of an ‘employer’ as used by the [Wrongful Discharge Act], the Court cannot infer this from the [first amended complaint].... [T]hese defects may be easily cured and Plaintiff’s [Wrongful Discharge Act] claim is dismissed without prejudice. Plaintiff shall have thirty days to amend his complaint to properly plead a cause of action under the [Act].”)

supervisors.”²⁶ In response, Plaintiff counters that “the term ‘supervisor’ is a term of art” and “Plaintiff was a supervisor in name only.”²⁷

Several cases support Defendant’s proposition that Count I should be dismissed because the Act does not apply to supervisors and is thus preempted by the National Labor Relations Act, 29 U.S.C. §§ 151–69 (NLRA).²⁸ The NLRA defines a “supervisor” as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”²⁹ The Supreme Court of the United States has found that “an employee need only perform one of the statutory supervisory functions to qualify as a supervisor.”³⁰ The Defendant provided exhibits in support of Webster’s authority to “direct” an employee³¹, but submitted those exhibits as part of its reply. It would be improper for the Court to consider these in deciding a motion to dismiss without converting Defendant’s motion to one for summary judgment and giving Plaintiff the opportunity to respond.³² Further,

²⁶ Defendant’s December 1, 2011, Memorandum of Law in Support of Motion to Dismiss Plaintiff’s Complaint, p. 4, and January 3, 2012, Reply to Plaintiff’s Opposition to Defendant’s Motion to Dismiss and Opposition to Motion for Summary Judgment.

²⁷ Plaintiff’s December 21, 2011, Opposition to Defendant’s Motion to Dismiss Plaintiff’s Complaint, pp. 3 and 4.

²⁸ *Smith v. Virgin Islands Port Authority*, Civ. No. 2002–227, 2009 WL 3417592, at *5 (D.V.I. Oct. 19, 2009) and *Warner v. Kmart Corp.*, Civ. No. 2005-128, 2009 WL 1476476, at *21 (D.V.I. May 27, 2009) (both citing to *St. Thomas–St. John Hotel & Tourism Ass’n v. Virgin Islands*, 357 F.3d 297, 302, 304 (3d Cir.2004)).

²⁹ 29 U.S.C. § 152(11).

³⁰ *Warner*, 2009 WL 1476476 at *22 (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574, 114 S.Ct. 1778, 128 L.Ed.2d 586 (1994) and *Natl. Labor Relations Board v. Kentucky River Community Care, Inc.*, 532 U.S. 702, 713 (2001) (“Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held “in the interest of the employer”).

³¹ Defendant’s January 3, 2011, Reply to Plaintiff’s Opposition to Defendant’s Motion to Dismiss and Opposition to Motion for Summary Judgment, exhibits (employee “reports to: Clalwyn Webster, supervisor”; Webster signed off on employee’s vacation time as “Department Manager”).

³² By referring to information outside the pleadings, Plaintiff has “converted this motion to dismiss into a motion for summary judgment.” *Shurelds v. Silo*, 1987 WL 8559, at *3 (E.D. Pa. 1987) (citing *Messer v. Virgin Islands Urban Renewal Bd.*, 623 F.2d 303, 307 (3d Cir. 1980); see also Fed. R. Civ. P. 12(d) (if matters outside the pleadings are presented on a

Defendant has specifically indicated that it had “filed a Motion to Dismiss..., not a Motion for Summary Judgment.”³³

2. Breach of the Duty of Good Faith and Fair Dealing

Plaintiff may not allege a claim for breach of the duty of good faith and fair dealing absent a contractual relationship.³⁴ Plaintiff states that he was employed by Caneel Bay as an hourly employee for thirty-four (34) years, twenty-five (25) of which he served as the Diversified Mechanic, and that “[a]n employment agreement was created between Plaintiff and Defendant by[:] Defendant’s Employee Manual, Defendant’s Our Culture: A Guidebook manual[,] and the course of conduct between Plaintiff and Defendant.”³⁵

“In certain circumstances, an employment contract may be derived from employee manuals or handbook.”³⁶ “It is well established that ‘internal personnel rules can be construed as an implied contract,’” but there must be “evidence that the employer intended to be bound by the requirements set forth in those rules”³⁷ because “[e]mployment contracts, like other binding agreements, should be the product of informed understanding and mutual assent as to the subject matter to be covered.”³⁸

motion to dismiss and are not excluded by the court, the motion shall be treated as a motion for summary judgment). In addition, the parties must be given “reasonable opportunity to present all material that is pertinent to the motion.” Fed. R. Civ. P. 12(d).

³³ Defendant’s January 3, 2012, Reply to Plaintiff’s Opposition to Defendant’s Motion to Dismiss and Opposition to Motion for Summary Judgment.

³⁴ *Bethea*, 2011 WL 4861873 at *8 (citing *Fraser v. Kmart Corp.*, Civ. No. 2005-129, 2009 WL 1124953, at *15 (D.V.I. April 24, 2009) (dismissing claim for breach of implied covenant of good faith and fair dealing where employee handbooks did not create contractual relationship); *Greene v. Virgin Islands Water and Power Authority*, Civ. No. 06-011, 2011 WL 3032466, at *12 (July 22, 2011) (“Since no contract existed, any discussion of the duty of good faith and fair dealing is a blind alley”).

³⁵ September 30, 2011, Complaint, p. 5.

³⁶ *Fraser*, 2009 WL 1124953 at *13 (citing *Monaco v. Am. Gen. Assur. Co.*, 359 F.3d 296, 308 (3d Cir. 2004); *Bostic v. AT&T*, 2003 U.S. Dist. LEXIS 25477, at *21 (D.V.I. Apr. 15, 2003)).

³⁷ *Fraser*, 2009 WL 1124953 at *14 (citing *Smith v. V.I. Port Auth.*, Civ.NO.2002-227, 2005 WL 15459, at *4 (D.V.I. Jan. 2, 2005); *Monaco*, 359 F.3d at 308)).

³⁸ *Fraser*, 2009 WL 1124953 at *14.

Although Webster has pled that he had a contractual relationship with the Defendant, neither party has provided the Court with further evidence in support of or against the binding effect of the manual.

Defendant also counters that to plead a breach of the duty of good faith and fair dealing, Webster “must allege acts amounting to fraud or deceit on the part of the employer.”³⁹ Under Virgin Islands law, to claim a breach of the implied duties of good faith and fair dealing, a plaintiff must allege: “(1) that a contract existed between the parties, and (2) that, in the performance or enforcement of the contract, the opposing party engaged in conduct that was fraudulent, deceitful, *or otherwise inconsistent with the purpose of the agreement or the reasonable expectations of the parties*” (emphasis added).⁴⁰ Webster has alleged that he was fired in retaliation for leading his co-workers in objecting to a pay-raise that they found to be unreasonable. This behavior could certainly be considered inconsistent with the purpose of the agreement, if indeed a contract is established between the parties.

The allegations of Plaintiff’s Complaint, viewed in the light most favorable to Plaintiff, give rise to a reasonable inference that discovery will reveal whether the Employment Manual was meant to be binding on the parties. Discovery may also reveal undisputed contrary facts on this issue, but, at this point, Defendant’s Motion to Dismiss is denied without prejudice with regard to Count II.

3. Intentional Infliction of Emotional Distress

The Restatement (Second) of Torts § 46 states that one “who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such

³⁹ Defendant’s January 3, 2011, Reply to Plaintiff’s Opposition to Defendant’s Motion to Dismiss and Opposition to Motion for Summary Judgment, p. 5.

⁴⁰ *Smith v. Virgin Islands Housing Authority*, Civ. No. 2009–011, 2011 WL 797373, at *7 (D.V.I. Feb. 28, 2011) (quoting *LPP Mortgage Ltd. v. Prosper*, Civ. No. 2006–180, 2008 WL 5272723, at *2 (D.V.I. Dec. 17, 2008) (in turn citing Restatement (Second) of Contracts § 205)).

emotional distress, and if bodily harm to the other results from it, for such bodily harm.”⁴¹ The Plaintiff must show that the Defendants’ conduct was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.”⁴² Whether Defendants’ “conduct is so extreme as to permit recovery”⁴³ is initially a question of law for the Court,⁴⁴ and this is a high bar to meet. A review of case law in the Virgin Islands and Third Circuit makes it clear that “[i]t is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress”.⁴⁵ Recovery has been denied for: “evidence of an unpleasant work place experience and termination”;⁴⁶ defamatory remarks made by management that Plaintiff was “a disgruntled former employee who had committed bad acts and had been terminated” and that he “wanted to unionize the employees so he could use their dues to pay his bills”;⁴⁷ termination in retaliation for cooperating with federal officials;⁴⁸ discriminatory actions favoring white stateside employees over a black West Indian plaintiff;⁴⁹ and an employer’s refusal to allow plaintiff to return to work after plaintiff became ill, humiliating plaintiff.⁵⁰ While Plaintiff alleges that he “suffered great distress, including emotional trauma, as a result of Defendant’s retaliatory termination of his

⁴¹ “The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, 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.” 1 V.I.C. § 4.

⁴² *Hodge v. Daily News Pub. Co., Inc.*, Civil No. ST-00-CV-726, 2009 WL 8391641, at *6 (V.I. Super. Ct. Dec. 17, 2009) (quoting *Mann v. The Leather Shop Inc.*, 960 F.Supp. 925, 930 (D.V.I.1997)).

⁴³ *Cox v. Keystone Carbon Co.*, 861 F.2d 390, 396 (3d Cir. 1988) (citing *Krushinski v. Roadway Express*, 627 F.Supp. 934, 938 (M.D.Pa.1985) (in turn citing Restatement (Second) of Torts § 46 comment h)).

⁴⁴ *Greene v. Virgin Islands Water and Power Authority*, Civil No. 2006-11, 2011 WL 3032466, at *13 (D.V.I. July 22, 2011).

⁴⁵ *Greene*, 2011 WL 3032466 at *13 (quoting *Ramos v. St. Croix Alumina, L.L.C.*, 277 F.Supp.2d 600, 604 (D.Vi.2003)).

⁴⁶ *Greene*, 2011 WL 3032466 at *13.

⁴⁷ *Nicholas v. Grapetree Shores, Inc.*, Civil No. 2005-119, 2011 WL 2518804, at *1, *9 (D.V.I. June 23, 2011).

⁴⁸ *Smith v. Virgin Islands Housing Authority*, 2011 WL 797373 at *8.

⁴⁹ *Berrios v. Hovic*, Civil No. 2005-192, 2010 WL 3069480, at *8 (D.V.I. July 29, 2010).

⁵⁰ *Hodge*, 2009 WL 8391641 at *1.

employment,”⁵¹ only blatant discriminatory hostility and malice directed toward the plaintiff have been held to be sufficiently outrageous.⁵² Although the Court questions Plaintiff’s ability to meet the extremely high standard for an employment-related intentional infliction of emotional distress claim,⁵³ it will not dismiss Count IV at this stage, but leave this issue to be fleshed out in discovery.

4. Due Process

The Due Process Clause of the 14th Amendment “protects an individual’s right to be deprived of life, liberty, or property only by the exercise of lawful power.”⁵⁴ However, “[i]t is axiomatic that at-will employees do not have an entitlement to continued employment.”⁵⁵ Webster has challenged his status as an at-will employee, and maintains that there is a valid employment contract between the parties via the Defendant’s Employee Manual, Employee Guidebook, and the course of conduct between Plaintiff and Defendant. Although Courts “are not bound to accept as true a legal conclusion couched as a factual

⁵¹ February 2, 2012, Amended Complaint, p. 6.

⁵² *Glasgow*, 2010 WL 3780966 at *8 (citing *Warner v. Kmart Corp.*, Civil No. 2005-128, 2009 WL 1476476 at *15-17 (D.V.I. May 27, 2009) (evidence that plaintiff’s supervisor threatened her employment and retaliated against her after she refused his overt sexual advances and reported him to management were sufficiently outrageous behavior to support IIED claim); *McCleave v. R.R. Donnelley & Sons Co.*, 226 F.Supp.2d 695, 698 n. 8, 703 (E.D.Pa. 2002) (allegations that manager used racial epithets toward defendant and dismissed other black workers on the basis of race before finally terminating plaintiff sufficiently stated claim for IIED); *Codrington v. V.I. Port Auth.*, 911 F.Supp. 907, 918 (D.V.I. 1996) (evidence that supervisor “repeatedly subjected [plaintiff] to unwanted touching, kissing and sexual propositions [and] that he attempted to rape her on one occasion” sufficient to survive motion for summary judgment on IIED claim); *Bishop v. Okidata, Inc.*, 864 F.Supp. 416, 428 (D.N.J. 1994) (noting that court was “skeptical of [plaintiff’s] ability to meet the extremely high standard for an employment-related intentional infliction of emotional distress claim” but denying motion to dismiss IIED claim where plaintiff alleged “a continuing pattern of harassment” including that defendants made false accusations against her, threatened her with discharge, “made negative comments regarding her cancer at performance evaluations,” forced her return to work two weeks after her surgery, and refused to allow her leave for needed radiation and chemotherapy treatments); *Porta v. Rollins Environmental Services (NJ), Inc.*, 654 F.Supp. 1275, 1285 (D.N.J. 1987) (evidence that plaintiff received threatening and sexually offensive notes from coworkers and repeated derogatory sexual comments from supervisor, complained to management who in turn did not address issue of sexual harassment and was finally terminated for pretextual reasons sufficient to support claim of IIED at summary judgment)).

⁵³ *Bishop*, 864 F.Supp. at 428.

⁵⁴ *J. McIntyre Machinery, Ltd. v. Nicaastro*, 131 S.Ct. 2780, 2786 (2011); citing to *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966).

⁵⁵ *Greene*, 2011 WL 3032466 at * (D.V.I. July 22, 2011) (citing *Robertson v. Fiore*, 62 F.3d 596, 601 (3d Cir.1995)).

allegation,”⁵⁶ the Court may reserve its ruling on a motion to dismiss until further facts are presented regarding the existence – or nonexistence – of a contractual relationship between the parties.

5. Motion to Amend Complaint

The Plaintiff filed a Motion to Amend Complaint and an Amended Complaint on February 2, 2012. Leave to amend should be given freely when prejudice would not be caused to the opposing party.⁵⁷ The Court finds that the Defendant will not be harmed by allowing the Plaintiff to amend the Complaint at this stage of the proceedings.

CONCLUSION

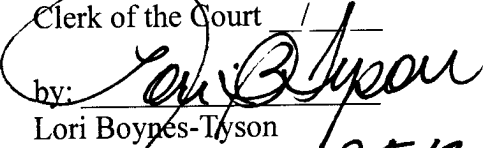
Plaintiff's application for relief accuses Defendant of wrongful termination, violating its duty of good faith and fair dealing, breach of contract, intentional infliction of emotional distress, and violating Plaintiff's due process; cites how he alleges he has been harmed; and sets forth what relief he seeks. Defendant's Motion to Dismiss Counts I, II, IV, and V is denied without prejudice, and Plaintiff's Motion to Amend Complaint is granted. An appropriate Order is issued simultaneously herewith.

Dated: March 5, 2012


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:

Venetia H. Velasquez, Esq.
Clerk of the Court

by: 

Lori Boynes-Tyson
Court Clerk Supervisor 3/5/12

⁵⁶ *Papasan*, 478 U.S. at 286.

⁵⁷ *Simmons v. Catamaran Cruises, Inc.*, 17 V.I. 333, 1980 U.S. Dist. LEXIS 8917 (1980).

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

CLALWAYN E. WEBSTER,

Plaintiff,

v.

CBI ACQUISITIONS, LLC, d/b/a

CANEEL BAY RESORT,

Defendant.

CASE NO. ST-11-CV-558

ORDER

The Court having issued a Memorandum Opinion denying Defendant's Motion to Dismiss, it is

ORDERED that Defendant's Motion to Dismiss as to Counts I, II, IV, and V is DENIED WITHOUT PREJUDICE; and it is

ORDERED that Plaintiff's Motion to Amend Complaint is GRANTED and Plaintiff's proposed First Amended Complaint is deemed filed as of February 2, 2012; and it is

ORDERED that Defendant is to respond to the First Amended Complaint by March 20, 2012; and it is

ORDERED that the parties are to conduct a Rule 29(f) conference by March 27, 2012, and submit a proposed discovery plan and a proposed order adopting it as the scheduling order in this case by April 2, 2012; and it is

Clalwayn E. Webster v. CBI Acquisitions, LLC, d/b/a Caneel Bay Resort
Case No. ST-11-CV-558
Order, March 1, 2012
Page 2 of 2

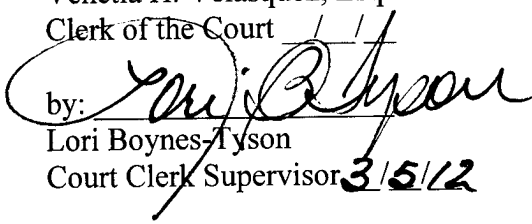
ORDERED that copies of this Order shall be directed to counsel of record.

Dated: March 5, 2012


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:

Venetia H. Velasquez, Esq.
Clerk of the Court

by: 

Lori Boynes-Tyson
Court Clerk Supervisor 3/5/12