

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

VIWAPA PROFESSIONAL AND	)	
TECHNICAL EMPLOYEES UNION INC.,	)	CASE NO. ST-18-CV-186
	)	
Plaintiff,	)	
v.	)	ACTION FOR DECLARATORY
	)	JUDGMENT and INJUNCTIVE
VIRGIN ISLANDS WATER AND POWER	)	RELIEF
AUTHORITY,	)	
	)	
Defendant.	)	

Cite as: 2019 VI Super 46U

MEMORANDUM OPINION AND ORDER

¶1 Before the Court is Defendant Virgin Islands Water and Power Authority's (hereinafter "WAPA") Motion to Dismiss, which was filed on July 26, 2018. Plaintiff VIWAPA Professional and Technical Employees Union, Inc. (hereinafter "the Union"), filed an opposition on August 8, 2018. With the issue fully briefed, the Court will deny WAPA's Motion to Dismiss.

I. BACKGROUND

¶2 On April 4, 2018, the Union filed a Complaint seeking a declaratory judgment and permanent injunction against WAPA. The sole point of contention is the lawfulness of WAPA's Donated Leave Policy, and, according to the Union, this issue is not covered under the Collective Bargaining Agreement currently in effect.

¶3 On July 26, 2018, WAPA filed the Motion to Dismiss that is now before the Court. WAPA argues that the Union has failed to cause proper service upon the Governor of the Virgin Islands and the Attorney General of the Virgin Islands as required by Rule 4 of the Virgin Islands Rules of Civil Procedure.¹ In response, the Union asserts that it properly served WAPA in accordance with Rule 4(i)(2)(B), which does not require that the plaintiff serve the Governor and Attorney General, by causing service upon WAPA's General Counsel and Executive Director.²

II. ANALYSIS

¶4 The motion and opposition essentially present a question of rule interpretation: Does Rule 4 of the Virgin Islands Rules of Civil Procedure require service upon the Government of the Virgin Islands where the sole defendant is a public corporation and autonomous instrumentality of the

¹ Mem. of Law in Supp. of Virgin Islands Water and Power Authority's Mot. to Dismiss 3.

² Pl.'s Opp'n to Virgin Islands Water and Power Authority's Mot. to Dismiss 2-3.

Government that can sue and be sued in its own corporate name? To answer this question, the Court must first address WAPA's legal relation to the Government of the Virgin Islands.

A. WAPA is a public corporation and autonomous instrumentality of the government whose legal status is separate and apart from the Government of the Virgin Islands.

¶5 To determine WAPA's legal status, the Court looks to the enabling statute, V.I. Code Ann. tit. 30, §§ 103-05. As with any statutory interpretation, the Court begins with a plain reading of the statute to determine whether its language is clear and unambiguous because no further inquiry is needed where the language is clear.³

¶6 Section 103 designates WAPA as a public corporation that is distinct from the Government of the Virgin Islands:

(a) There is hereby created a body corporate and politic constituting *a public corporation and autonomous governmental instrumentality of the Government of the Virgin Islands*, by the name of the "Virgin Islands Water and Power Authority,"

...

(b) The Authority hereby created is and shall be an autonomous governmental instrumentality subject, as provided for herein, to the control of the Governing Board thereof, *but it is a corporation having legal existence and personality separate and apart from the Government*⁴

Section 105 builds on this intended separation between the Government and WAPA:

[T]he Authority is granted and shall have and may exercise all rights and power necessary or desirable for carrying out said purposes, including, but without limiting the generality of the foregoing, the following:

(4) to sue and be sued in its corporate name[.]⁵

¶7 Based on the plain language of WAPA's enabling statute, the Legislature intended to establish WAPA as a public corporation that operates and exists separately from the Government, which means that WAPA not only has the authority to initiate litigation but also bears the responsibility of defending itself in all suits without the aid of the Attorney General of the Virgin Islands.

¶8 With this statutory status in mind, the Court turns to Rule 4 of the Virgin Islands Rules.

³ See *First Am. Dev. Group/Carib, LLC v. WestLB AG*, 55 V.I. 594, 602 (V.I. 2011).

⁴ 30 V.I.C. § 103 (emphasis added).

⁵ 30 V.I.C. § 105(4).

B. Rule 4(i)(2)(B) governs the service of process required in this matter.

¶9 Because WAPA is a public corporation and autonomous governmental instrumentality, the Court looks to Rule 4(i)(2) of the Virgin Islands Rules to determine if the Union caused proper service. As with statutes, “[w]hen construing a rule, courts first ‘look at the language of the rule’ and then give the ‘words their plain, ordinary and commonly understood meaning.’”⁶ If the language is unambiguous, the inquiry stops; however, “if a rule is ambiguous in terms or because of doubtful language . . . then courts must look beyond the rule’s language to determine its meaning.”⁷

¶10 Rule 4(i)(2)(A)-(B) governs service of process over public corporations, as well as autonomous government agencies and the Government itself:

(2) *Public Corporations; Autonomous or Semi-Autonomous Government Agencies or Boards; Officers or Employees Sued in an Official Capacity.*

(A) To serve a public corporation, autonomous or semi-autonomous government agency or board, or an [sic] governmental officer or employee sued only in an official capacity, a party must

(i) serve the Government of the Virgin Islands as provided in Rule 4(i)(1), and

(ii) also serve a copy of the summons and complaint on the chief executive officer of the entity, and

(iii) also serve a copy of the summons and complaint on any officer or employee named in the action;

(B) To serve a public corporation that can be sued pursuant to 5 V.I.C. § 1142(b), a party must serve the designated resident agent, the chief executive officer, or any other person authorized by law to accept service of process, unless otherwise provided by law[.]⁸

According to subpart (A), a litigant causes proper service upon a public corporation and autonomous government agency by serving the Government, the chief executive officer of the entity, and the officer or employee named in the action, if any. Subpart (B), however, specifically focuses on public corporations that can be sued pursuant to 5 V.I.C. § 1142(b).⁹

⁶ *Valerino v. Manning*, 68 V.I. 276, 296 (Super. Ct. 2018) (quoting *In re Petition for Disbarment of Plaskett*, 56 V.I. 441, 447 (V.I. 2012)).

⁷ *Id.* (quoting *Braffith v. Gov’t of the V.I.*, 1 V.I. 582, 588 (3d Cir. 1928)) (internal quotation marks omitted).

⁸ V.I.R. Civ. P. 4(i)(2)(A)-(B).

⁹ “An action may be maintained against any public corporation in the Virgin Islands within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such public corporation.” 5 V.I.C. § 1142(b).

¶11 Upon first glance, subparts (A) and (B) make an apparent distinction between public corporations broadly and public corporations that can be sued under § 1142(b). The relationship between subparts (A) and (B), however, is not clear. Because public corporations are “generally . . . given [the] capacity to sue and be sue[d] by statute”¹⁰ – and § 1142 normally applies to public corporations that can sue and be sued – a situation where a litigant could not name a public corporation as a named defendant under § 1142(b) would be uncommon.¹¹ Yet, if one reads Rule 4(i)(2) as creating distinct categories of defendants, Rule 4(i)(2)(A) envisions a circumstance where service upon a public corporation is required even when that corporation cannot be a named defendant under § 1142(b). Hence, the plain language of these two rules do not allow for a straightforward application.¹²

¶12 Looking beyond the language of the rule itself, the Court finds that Rule 4(i)(2)(B) applies to service of process upon WAPA and similarly situated public corporations. Rule 4(i)(2) is broken down into four subparts: subpart (A) references public corporations, autonomous or semi-autonomous government agencies or boards generally, and governmental officers or employees sued only in an official capacity; subpart (B) references public corporations that can be sued under § 1142(b); subpart (C) references autonomous or semi-autonomous governmental agencies or boards that can be sued in its own name; and subpart (D) references officials or employees of either a public corporation or an autonomous or semi-autonomous agency or board that are sued in relation to those employees’ employment or position.¹³ The Advisory Committee on Rules comment relating to subpart (i) explains that the required service of process is different for each possible defendant that is referenced in subpart (i): “For *each category of prospective defendant*[,] it is made clear whether the Governor or the Attorney General, and/or the chief executive officer of the entity involved, needs to be served with a copy of the summons and complaint.”¹⁴ Further, reading Rule 4(i)(2) in this manner produces practical results based on WAPA’s function and status as a public corporation. WAPA retains a “legal existence and personality separate and apart from the Government,”¹⁵ with the authority to undertake “debts, obligations, contracts, bonds, notes, debentures, receipts, expenditures, accounts, funds, facilities, and property” in its own name,¹⁶ “sue and be sued in its corporate name,”¹⁷ and even “adopt, alter, and use a corporate seal.”¹⁸ Considering this in its totality, no purpose is achieved by requiring parties who sue WAPA to serve the Governor and the Attorney General.

¹⁰ *Goodwin v. Fawkes*, 67 V.I. 104, 125 (Super. Ct. 2016).

¹¹ See *Juan F. Luis Hosp. & Med. Ctr., & Gov’t of the V.I. ex rel. Governor Juan F. Luis Hop. & Med. Ctr. V. Titan Med. Group, LLC*, S. Ct. Civ. No. 2015-0074, 2018 V.I. Supreme LEXIS 33, at *15 n.3 (V.I. Oct. 25, 2018) (listing twenty-five governmental entities that are authorized by the Legislature to “sue and be sued.”).

¹² See *Keith v. Governor Juan F. Luis Hosp. & Med. Ctr.*, Civ. No. 17-CV-587-GKF-JFJ, 2018 U.S. Dist. LEXIS 127478, at *4-5 (N.D. Okla. July 31, 2018) (noting that “Plaintiff has not addressed the issue of which of the subdivisions of V.I. R. Civ. P. 4(i)(2) governs service of process on the hospital.”).

¹³ V.I.R. Civ. P. 4(i)(2)(A)-(D).

¹⁴ V.I.R. Civ. P. 4(i), Advisory Committee on Rules comment (emphasis added).

¹⁵ 30 V.I.C. § 103(b)

¹⁶ *Id.*

¹⁷ § 105(4).

¹⁸ § 105(2).

¶13 WAPA's assertion that Rule 12(a)(2) supports the position that the Government must be served is unpersuasive. Rule 12(a)(2) states that "[t]he Government of the Virgin Islands, public corporations, autonomous or semi-autonomous governmental agencies or boards, or an officer or employee of the Virgin Islands sued only in an official capacity, must serve an answer to a complaint, counterclaim, or crossclaim within 30 days after service thereof upon the Governor and the Attorney General of the Virgin Islands." According to WAPA, the phrase, "within 30 days after service upon the Governor and the Attorney General," indicates that service upon the Governor and Attorney General is required. But Rule 12(a)(2) does not reference the defendants mentioned in Rule 4(i)(2)(B)-(C), and the Advisory Committee comment merely states that a "30 day period for responsive pleading is allowed."¹⁹ Rule 4(i)(2) clearly distinguishes between categories of governmentally-related defendants, and Rule 12(a)(2) cannot be read to qualify, amend, or alter that rule as doing so would essentially make subparts (B) and (C) of Rule 4(i)(2) irrelevant.²⁰

III. CONCLUSION

¶14 In sum, the Union needed only cause service of process upon WAPA as prescribed in Rule 4(i)(2)(B). According to the Court's record, the Union caused service upon Lawrence J. Kupfer, WAPA's Executive Director, on April 24, 2018, and upon Lorelei Farrington, WAPA's General Counsel, on April 18, 2018. Service upon WAPA was proper and sufficient. Therefore, the Court will deny WAPA's Motion to Dismiss. Further, the Court will deny the Union's Motion for Entry of Default given that WAPA responded on July 26, 2018. Accordingly, it is hereby

ORDERED that Defendant Virgin Islands Water and Power Authority's Motion to Dismiss is **DENIED**; and it is further

ORDERED that Plaintiff VIWAPA Professional & Technical Employees Union's Motion for Entry of Default as to the Virgin Islands Water and Power Authority is **DENIED**; and it is further

ORDERED that, on or before April 30, 2019, Defendant Virgin Islands Water and Power Authority **SHALL** respond to the Complaint; and it is further

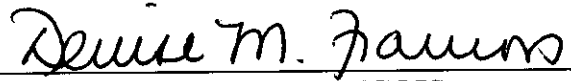
ORDERED that, on or before May 14, 2019, the parties **SHALL** meet and confer, and **SHALL** file a Joint Proposed Discovery Plan and Scheduling Order; and it is further

¹⁹ V.I.R. Civ. P. 12(a)(2), Advisory Committee on Rules comment.

²⁰ See *In re Petition of Mejia*, Super. Civ. No. ST-13-MC-11, 2013 V.I. LEXIS 29, at *4 (V.I. Super. Ct. May 13, 2013) ("[W]hen a statute is subject to conflicting interpretations or the interpretation results in an illogical outcome, courts should . . . select the [interpretation] which is rational and sensible.") (internal quotation marks omitted).

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record.²¹

DATE: 3/29/2019

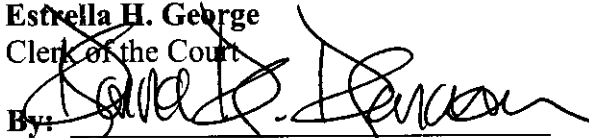


DENISE M. FRANCOIS

Judge of the Superior Court
of the Virgin Islands

ATTEST:

Estrella H. George
Clerk of the Court

By: 

Donna D. Donovan
Court Clerk Supervisor

3/29/2019

²¹ Plaintiff is represented by Julita de Leon, Esquire, and Sharnelle M. Samuel, Esquire, filed a special appearance on behalf of Defendant Virgin Islands Water and Power Authority.