

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

BRENDA PHILLIPS, a minor by	)	
ROBERT PHILLIPS, next friend,	)	
	)	CIVIL NO. 617/1983
Plaintiff,	)	
	)	
v.	)	ACTION FOR DAMAGES
	)	
GOVERNMENT OF THE VIRGIN	)	
ISLANDS and JAMES ALEXIS,	)	
	)	
Defendants.	)	

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PETERSEN, Judge

MEMORANDUM OPINION
August 14, 1984

This matter is before the Court on the defendant-Government's FED. R. CIV. P. 12(c) motion for judgment on the pleadings on the grounds of lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. In the alternative, the Government moves for summary judgment, pursuant to FED. R. CIV. P. 56.

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FED R. CIV. P. 12(c) and 56 are made applicable to this Court by 5 V.I.C. App. IV R. 7 (1982). For the reasons set forth below, the Government's motion must be denied.

FACTS

On or about May 19, 1983, the plaintiff, Brenda Phillips, was allegedly injured in an altercation with another individual at the Woodson Jr. High School bus shanty. The plaintiff filed a complaint with this Court on June 19, 1983, in which she alleges that her injuries were sustained as a result of the negligent supervision of her schoolteacher. A summons and a copy of the complaint were served on the Office of the Governor and on the office of the Attorney General on July 20, 1983.

The Government contends that the complaint must be dismissed for the failure of the plaintiff to serve a notice of intention to file a claim on the Office of the Governor within ninety days of the accrual of her claim, as required by the Virgin Islands Tort Claims Act (hereinafter referred to as "The Tort Claims Act"), 33 V.I.C. Section 3409(c) (1983 Supp.). The plaintiff argues that the service of the complaint on the Governor and on the Office of the Attorney General within ninety days of the accrual of the claim satisfied the notice requirement of 33 V.I.C. Section 3409(c).

ISSUE

The issue before the Court is whether the service of a summons and a court complaint containing the factual information required by 33 V.I.C. Section 3410 (1983 Supp.), on the Office of the Governor and on the Office of the Attorney General within ninety days of the accrual of the claim satisfies the notice requirement of 33 V.I.C. Section 3409(c).

DISCUSSION

33 V.I.C. Section 3409(c) provides that in order to obtain a judgment against the Government

a claim to recover damages for injuries to property or personal injury caused by the tort of an officer or employee of the Government of the Virgin Islands while acting as such officer or employee, shall be filed within 90 days after the accrual of such claim unless the claimant shall file within such time a written notice of intention to file a claim therefor, in which event the claim shall be filed within two years after the accrual of such claim.

The claim or notice of intention to file a claim must be filed in the Office of the Governor with a copy served upon the Attorney General. 33 V.I.C. Section 3410. The claim must state the time when and the place where such claim arose, the nature of the claim, and the items of damage or injuries sustained and the total sum claimed. Id.

The purpose behind the ninety-day notice provision

of the Tort Claims Act is to prevent the presentation of stale claims so that the Government has an adequate opportunity to investigate and to explore the merits of a claim and to pursue a settlement while the evidence remains fresh in the memory of witnesses. See Dublin v. Virgin Islands Telephone Corp. 15 V.I. 214, 232 (Terr. Ct. St. T. and J. 1978). See also Hopkins v. E. Syracuse Fire Department District, 49 Misc. 2d, 197, 267 N.Y.S.2d 61, 66 (City Ct. Syracuse 1966).

In the case at bar, the plaintiff served the summons and a copy of the complaint on the Office of the Governor and on the Office of the Attorney General on June 20, 1983, approximately thirty-two days after the accrual of her claim. The complaint contains all of the factual information concerning the claim required by 33 V.I.C. Section 3410. Thus, the Government received an adequate opportunity to investigate the claim, explore its merits and pursue a settlement well within the ninety-day time limit of 33 V.I.C. Section 3409(c). Moreover, it has been held elsewhere that a summons and a complaint may be treated as a valid notice of claim where, as here, it sets forth facts which must be included in a notice of claim. See Moskol v. Sood, 404 F.Supp. 916, 919 (W.D.N.Y. 1975) (applying New York law); Davidson v. Bronx Municipal Hospital, 99 A.D.2d 730, 472 N.Y.S.2d 355, 356-57 (N.Y. App. Div. 1984); Quintero v. Long

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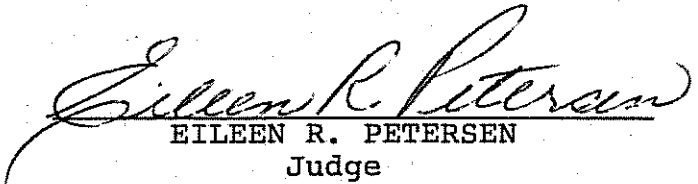
Island Railroad, 31 A.D.2d 844, 298 N.Y.S.2d 109, 110 (N.Y. App. Div. 1969); Oliner v. Lenox Hill Hospital, 106 Misc.2d 107, 431 N.Y.S.2d 269, 270-71 (N.Y. Sup. Ct., Special Term 1980).

To prevail on a FED. R. CIV. P. 12(c) motion for judgment on the pleadings or on a FED. R. CIV. P. 56 motion for summary judgment, the movant must show that no issue of material fact remains to be resolved and that he is entitled to judgment as a matter of law. Greenberg v. General Mills Fun Group, Inc., 478 F.2d 254, 256 (5th Cir. 1973) (per curiam); Lambert v. Inryco Inc., 569 F.Supp. 908, 912 (W.D. Okl. 1982); Alken v. Lerner, 485 F.Supp. 871, 873 (D.N.J. 1980). See, generally, Cardio-Medical Associates, Ltd. v. Crozer-Chester Medical Center, 536 F.Supp. 1065, 1070 (E.D.Pa. 1982). Considering the evidence in the light most favorable to the non-moving party, Continental Insurance Co. v. Bodie, 682 F.2d 436, 438 (3d Cir. 1982); Lerner, supra; 5 WRIGHT AND MILLER, FEDERAL PRACTICE AND PROCEDURE, CIVIL: Section 1368 at 690 (1969), this Court finds that the service of the summons and a copy of the complaint on the Office of the Governor and on the Office of the Attorney General within ninety-days of the accrual of the claim satisfies the claim or notice of claim filing requirement of 33 V.I.C. Sections 3409(c) and 3410 under the facts of this case. Accordingly,

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the Government's motion must be denied.

As the Court finds that the plaintiff filed her claim with the Government within the required ninety-day period, the Court need not address the Government's argument that the plaintiff has failed to file a motion for permission to file a late claim.


EILEEN R. PETERSEN
Judge