

FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

FREDERICK ESPINOSA,	)	
	)	
Plaintiff,	)	CASE NO. SX-16-CV-286
	)	
v.	)	
	)	ACTION FOR DEFAMATION
HOLLAND REDFIELD, II,	)	
GWENDOLYN HALL BRADY, and	)	
HERBERT SCHOENBOHM,	)	<u>JURY TRIAL DEMANDED</u>
	)	
Defendants.	)	
FREDERICK ESPINOSA,	)	
	)	
Plaintiff,	)	CASE NO. SX-16-CV-544
	)	
v.	)	
	)	ACTION FOR DEFAMATION
JOHN YOB, WARREN COLE, GLENN	)	
WEBSTER, NOEL LOFTUS, TANYA	)	
MARIE SINGH, ELISSA RUNYON, FRED	)	
VIALET, JR., and AVA BOURDAN,	)	<u>JURY TRIAL DEMANDED</u>
	)	
Defendants.	)	

YOHANA M. MANNING, Esq.
Manning Legal Services, P.C.
2021 Company Street, Suite 1
Christiansted, VI 00820-4945
Yohana14@gmail.com
Attorney for Plaintiff

ESZART A. WYNTER, SR., Esq.
27 Estate Whim
P.O. Box 1847
Frederiksted, VI 00841-1847
Attorney for Plaintiff

CARTY, RENÉE GUMBS, Judge

DARYL BARNES, Esq.
PAUL NEIL, Esq.
Barnes & Neil, LLP
1134 King Street, 2nd Floor
Christiansted, VI 00820
Attorneys for Defendant Tanya Marie Singh

MEMORANDUM OPINION
(Filed: September 17, 2018)

Pending before this Court is Defendant Tanya Marie Singh's "Renewed Motion to Dismiss for Failure to State a Claim" filed on February 14, 2017. For the following reasons, Defendant's motion will be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Frederick Espinosa's Original Complaint stems from an alleged illegal concerted action, that occurred on April 16, 2016, by all named Defendants in their attempt to defame Espinosa.¹ On January 13, 2017, the Court, *sua sponte*, granted Plaintiff leave to amend his Complaint to sufficiently plead his claims, and simultaneously deferred ruling on Defendant Singh's initial Motion to Dismiss that was filed on November 7, 2016.² Plaintiff filed his Amended Complaint on February 6, 2017. In the Amended Complaint, Plaintiff alleges three counts against the Defendant: 1.) Civil Conspiracy, 2.) Civil Aiding and Abetting, and 3.) Defamation.³ Defendant subsequently filed a Renewed Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.⁴ This Court agrees with Defendant, and accordingly, dismissal of the claims against Defendant Tanya Marie Singh is warranted.

II. LEGAL DISCUSSION

The Court will address the counts out of turn; first the conspiracy charge, and then the defamation charge will be addressed. The aiding and abetting charge will be the last issue discussed.

¹ See generally Amended Complaint, para. 32-37.

² See Order by Judge Douglas A. Brady, at pg. 3.

³ See Amended Complaint, para. 49- 57.

⁴ See generally Defendant Tanya Marie Singh's Renewed Motion to Dismiss.

a. Motion to Dismiss for Failure to State A Claim Standard

Virgin Islands Rule of Civil Procedure 12(b)(6) allows a party to move for a motion to dismiss for “failure to state a claim upon which relief can be granted.”⁵ The sufficiency of a complaint is governed by the rule of pleadings in Rule 8 of the Virgin Islands Rules of Civil Procedure.⁶ Since the Virgin Islands is a “notice pleading jurisdiction,” it requires that a complaint must “adequately allege facts that places an accused party on notice of claims brought against it.”⁷ The United States Supreme Court has articulated, in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*, that the proper standard for evaluating motions to dismiss for failure to state a claim requires the complaint “to contain enough factual matter (taken as true) to suggest the required element.”⁸ Thus, under the *Twombly* and *Iqbal* standard, and subject to precedent from the Supreme Court of the Virgin Islands in *Joseph v. Bureau of Corrections*, a complaint must survive a three-pronged test when a trial court is reviewing a motion to dismiss filed under Rule 12(b)(6).⁹

The three-pronged test requires:

First, the court must take note of the elements a plaintiff must plead to state a claim, so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either

⁵ V.I. R. Civ. P. 12(b)(6) (The Virgin Islands Rules of Civil Procedure was promulgated on March 31, 2017. It is largely analogous to Fed. R. Civ. P. 12, which was still in effect at the time of Defendant Singh’s filing); *Robles v. HOVENSA, LLC*, 49 V.I. 491, 500-501 (V.I. 2008) (quoting *Phillips v. County of Allegheny*, 515 F.3d 224 (3d. Cir. 2008)) (providing that the Third Circuit Court of Appeals has also reevaluated the *Twombly* standard).

⁶ V.I. R. Civ. P. 8 (Fed. R. Civ. P. 8’s language is similar, but V.I. R. Civ. P. 8 adds that “this is a notice pleading jurisdiction”); see also *Mills-Williams v. Mapp*, 67 V.I. 574, 584-86 (V.I. 2017) (stating that V.I. R. Civ. P. 8(a)(2) eliminates the plausibility standard and restores the notice pleading regime that had previously been in effect); *Brathwaite v. H.D.V.I. Holding Co.*, No. ST-16-CV-764, 2017 V.I. Lexis 76, at *2-4 (V.I. Super. Ct. May 24, 2017).

⁷ V.I. R. Civ. P. 8(a)(2). See also *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (noting that FRCP 8(a)(2) also requires a pleading to contain “a short and plain statement of the claim showing that the pleader is entitled to relief”).

⁸ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007) (demonstrating that a complaint needs to provide grounds for relief and that requires a showing, rather than blanket assertions of entitlement to relief); *Iqbal*, 556 U.S. at 678-79.

⁹ See *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649-50 (V.I. 2011) (affirming that *Robles*, *Twombly*, and *Iqbal* all look to this three-pronged test). See also *Brady v. Cintron*, 55 V.I. 802, 823; *Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471-472 (V.I. 2013) (finding that a Court must always seek to first to determine whether the Complaint is sufficient).

legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.¹⁰

b. Count I: The Civil Conspiracy Claim Does Not Survive the Three-Pronged Test

This Court will begin its analysis with the conspiracy charge. The elements of civil conspiracy are “when that person (1.) does a tortious act in concert with the co-defendant pursuant to a common design with him; (2.) knows that the co-defendant's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the co-defendant to so conduct him or herself; or (3.) gives substantial assistance to the co-defendant in accomplishing a tortious result and his or her own conduct, separately considered, constitutes a breach of duty to the plaintiff.”¹¹

Plaintiff fails to adequately plead any relevant facts to ascertain that Defendant Singh was involved in a civil conspiracy because Plaintiff was unable to highlight the presence of a tortious act to hinge this claim on. Here, Plaintiff offered *Berrios v. Hovic* from the Virgin Islands District Court, in an effort to establish that the conspiracy claim implicates the Defendant with respect to the defamation claim.¹² Plaintiff highlighted that “[n]ot every conspirator must commit an overt act... so long as at least one does.”¹³ *Berrios* also adds that “civil conspiracy consists of an agreement or combination to perform a wrongful act that results in damage to the plaintiff... [and] may also consist of an agreement to do a lawful act by unlawful means.”¹⁴ Plaintiff then concludes that because Defendant Singh accompanied Ms. Brady, participated in the illegal meeting at Defendant Warren

¹⁰ *Joseph*, 54 V.I. at 649- 50; *Santiago v. Warminster Twp.*, 629 F.3d 121, 130 (3d. Cir. 2010).

¹¹ *See Donastorg v. Daily News Publ'g Co., Inc.*, 63 V.I. 196, 330 (V.I. Super Ct. 2015); *Isaac v. Crichtlow*, 63 V.I. 38, 65 (V.I. Super. Ct. 2015).

¹² *See* Plaintiff's Opposition Brief, at pg. 2-3.

¹³ *Berrios v. Hovic*, No. 05-CV-192-F, 2010 U.S. Dist. Lexis 77525, at *20 (D.V.I. July 29, 2010).

¹⁴ *Id.* at *18.

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Cole's office, and voted in favor of the subsequent resolution, that resulted in the subsequent defamation of Espinosa by the other Defendants, "she is liable as if she published the statements."¹⁵ This Court disagrees.

Here is where Plaintiff's argument is deficient; Espinosa references the meeting that was held on April 16, 2016, at Attorney Warren Cole's office, after the conclusion of the Republican Party meeting.¹⁶ Espinosa incorrectly identifies the alleged illegal meeting as a wrongful act. However, Espinosa neither cites to any authority nor provides any factual evidence to prove that such meetings are indeed illegal. Plaintiff's Amended Complaint and his Opposition brief seem to improperly characterize the subsequent meeting as the "wrongful act," and thus incorrectly analyzes the *Berrios* case to the facts pleaded. It is clear that the convening of the Defendants, after the conclusion of a properly conducted meeting, failed to comply with the Rules, Principles, and Policies of the Republican Party of the United States Virgin Islands.¹⁷ However, absent a provision in the aforementioned rules, or other evidence provided by Plaintiff that such meetings are indeed illegal or unlawful, this Court cannot rely on Plaintiff's interpretation where case law clearly demonstrates that the unlawful act charged is presumed to be a tortious conduct, such as the violation of law.¹⁸ Similarly, this Court echoes the previous Court's Order that Plaintiff failed to identify the qualifying tortious conduct that is "necessary to pursue Plaintiff's conspiracy claims."¹⁹ Therefore, due to Espinosa's

¹⁵ *Id.*; see Plaintiff's Opposition Brief, at pg. 2-3; see also Amended Complaint, para. 31 & 32.

¹⁶ See Amended Complaint, para. 26 & 32.

¹⁷ See Amended Complaint, para. 37.

¹⁸ See *Berrios*, 2010 U.S. Dist. Lexis 77525, at *20 (noting that in *Berrios*, the unlawful act was a violation of Plaintiff's civil rights pursuant to 10 V.I.C. § 3); see generally Rules, Principles, and Policies of the Republican Party of the United States Virgin Islands (noting that there is no provision in the Rules that characterizes improperly conducted meetings as illegal).

¹⁹ See Order by Judge Douglas A. Brady, at pg. 2.

failure to sufficiently identify “the underlying tortious conduct” with respect to Defendant Singh, this Court holds that the civil conspiracy claim fails.²⁰

Moreover, Plaintiff supported his reasoning for the conspiracy claim with persuasive but non-binding authority. This Court is neither required to consider nor apply non-binding precedent out of California, Illinois, or West Virginia in the face of binding case law within the Virgin Islands jurisdiction.²¹ Alternatively, where Plaintiff provided binding Virgin Islands precedent, Plaintiff fails to take note that the civil conspiracy claims in those situations were predicated on some violation of applicable law—in *Sorber*, the plaintiff’s claim was based on a violation of the Virgin Islands Wrongful Discharge Act, in *De Jongh*, the underlying violation came in the form of an unfair labor practice claim, and *Capogrosso* is inapplicable because it specifically addresses the issue of judicial conspiracy.²² However, in this present case, Espinosa incorrectly asserts that the alleged illegal meeting is the instance of wrongful or illegal conduct; therefore, Defendant Singh’s participation suffices as her role in the conspiracy.²³ Accordingly, this Court remains unmoved by Plaintiff’s arguments and dismisses the civil conspiracy claims against Defendant Singh.

c. Count III: The Defamation Claim Does Not Survive the Three-Pronged Test

With respect to the Defamation claim, the Virgin Islands jurisdiction has since established in *Kendall v. Daily News Publ. Co.*, that the elements of a defamation claim are (a) “a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault

²⁰ See generally *Crichlow*, 63 V.I. at 65; *Donastorg*, 63 V.I. at 330; *Sarpolis v. Tereshko*, 625 Fed. App’s 594, 598 (3d. Cir. 2016).

²¹ Plaintiff provided the Court with *Favila v. Katten Muchin Rosenman, LLP*, 188 Cal. App. 4th 189 (2d. Dist. 2010); *Politino v. Azzon Inc.*, 212 W. Va. 200, 204 (2002); *Reuter v. MasterCard Int’l Inc.*, 397 Ill. App. 3d. 915 (5th Dist. 2010).

²² See *Hill v. De Jongh*, No. ST-10-CV-585, 2012 V.I. Lexis 11, at *11 (V.I. Super Ct. Apr. 19, 2012); *Sorber v. Glacial Energy VI, LLC*, No. ST-10-CV-S88, 2011 V.I. Lexis 34, at *5 (V.I. Super. Ct. June 7, 2011); *Capogrosso v. Supreme Court of N.J.*, 588 F.3d 180, 184-185 (3d. Cir. 2009).

²³ See generally Plaintiff’s Opposition Brief.

amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.”²⁴ Additionally, the burden to establish the existence of defamatory statements lies with the Plaintiff.²⁵

This Court need not delve any further into the three-pronged test as to the defamation claim, because Espinosa has not pled sufficient facts to establish the *prima facie* elements of defamation as required by *Kendall*. In the Virgin Islands, the Supreme Court has ruled in *Fleming v. Cruz* that the Plaintiff must provide “sufficient factual matter” needed to support its claims. The Superior Court in *Stevens v. Louise* also reiterated that the Plaintiff “need not make detailed factual allegations, but is required to assert more than an unadorned, the-defendant-unlawfully-harmed-me accusation”.²⁶ This Court recognizes the elements necessary for a defamation claim and finds that in light of the facts pleaded in the Amended Complaint, Plaintiff fails to provide any evidence supporting the allegation that Defendant “allegedly made and/or published” defamatory statements toward Plaintiff.²⁷

Further, despite the previous Court’s leave to amend the Complaint because the initial complaint contained labels and baldly asserted conclusions, Plaintiff still unsuccessfully demonstrates that Defendant Singh purportedly made or published any defamatory statements about Espinosa, which is a necessary element of a defamation claim.²⁸ This Court notes that Plaintiff readily identified the satisfactory defamatory actions of the other Defendants (Yob, Redfield, Webster, Schoenbohm, and Bourdain). As such, Plaintiff exercised due care to highlight the specific defamatory element of

²⁴ Restatement (Second) of Torts § 588, (1977); *Kendall v. Daily News Publ’g Co.*, 53 V.I. 250, 261-62 (V.I. Super. Ct. 2010).

²⁵ See *Kendall*, 53 V.I. at 262.; see also *VECC, Inc. v. Bank of Nova Scotia*, 296 F. Supp. 2d 617, 622 (D.V.I. 2003).

²⁶ *Fleming v. Cruz*, 62 V.I. 702, 714 (quoting *Twombly*, 550 U.S. at 557); *Stevens v. Louise*, No. SX-14-CV-456, 2016 V.I. Lexis 80, at *4 (asserting that the plaintiff failed to provide the Court with any basis to determine whether a disparaging statement was made).

²⁷ See Order by Judge Douglas A. Brady, at pg. 2.

²⁸ See *Fleming*, 62 V.I. at 714 (noting that Complaints that contain labels and conclusions without factual enhancements to support those claims are the types of complaints that Iqbal warns against).

publishing by offering that the statements were widely circulated in “local, national, and international media.”²⁹ He also goes to great length to precisely detail some of the contents of said statements.³⁰ However, with respect to Defendant Singh, Plaintiff neither provides any illustration of an instance of Singh’s alleged defamatory statement nor indicates that any such statements were published. Instead, Espinosa merely employs broad language such as “others” or “other Defendants” when referring to Singh’s conduct relative to the generalized actions of the group of defendants.³¹

As the previous Court Order noted, and as this Court reaffirms, the Plaintiff’s Amended Complaint “presents vague allegations lumping all Defendants together but is devoid of a recitation of facts...that identifies tortious conduct by Singh....”³² Absent any facts in the Amended Complaint, this Court cannot rely on vague, broad, and unsubstantiated statements about the existence of an alleged defamatory statement by Singh where Plaintiff also provides particular factual examples regarding other Defendants. Hence, this Court finds that Plaintiff has failed to state a claim upon which relief can be granted and dismisses the defamation claim with respect to Defendant Singh.

d. Count II: The Aiding and Abetting Claim Does Not Survive the Three-Pronged Test

Notwithstanding the three-pronged test, this Court determines that, based on the lack of statutory authority and absence of common law precedent, the Virgin Islands does not recognize the civil liability theory of aiding and abetting as an independent cause of action. Moreover, Plaintiff Espinosa failed to adequately plead facts that demonstrate and support the allegation that Defendant Singh “aided or abetted the other Defendants” due to her participation in the alleged illegal meeting. Consequently, this Court grants Defendant Singh’s motion to dismiss on this claim also.

²⁹ See Amended Complaint, para. 40-45.

³⁰ *Id.*

³¹ See Amended Complaint, para. 38-46 (noting that Defendant Singh is only identified by name in paragraphs 31, 32, and 37 of the Amended Complaint).

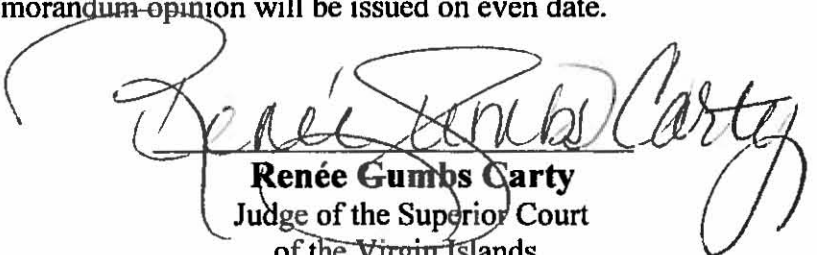
³² See Order by Judge Douglas A. Brady, at pg. 2.

III. CONCLUSION

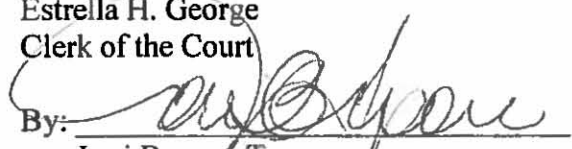
For the reasons stated herein, this Court concludes that Plaintiff Espinosa failed to meet the standard of review for failure to state a claim upon which relief can be granted, in accordance with Rule 12(b)(6). The facts alleged in the Amended Complaint are rife with vague and ambiguous factual allegations pertaining to Defendant Singh. Though this Court recognizes that the Plaintiff does not have to provide "detailed factual allegations," Rule 8(a)(2) still requires the Plaintiff to plead sufficient facts that "place the defendant on notice of the claims brought against him".³³ Additionally, the Court duly notes that although the meeting violated the Republican Party's rules, this Court finds nothing wrong with a meeting between members of a group, in fact this Court recognizes that it is well within the Defendant's constitutional right to assemble. Therefore, this Court will grant Defendant Singh's Renewed Motion to Dismiss on all three claims because Plaintiff's complaint failed to illustrate that the Defendant engaged in 1.) a civil conspiracy, 2.) the tortious alleged act of defamation, and 3.) civil aiding and abetting.

An Order consistent with this memorandum opinion will be issued on even date.

Dated: September 17, 2018


Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court

By: 
Lori Boynes-Tyson
Chief Deputy Clerk 9/17/18

CERTIFIED A TRUE COPY

Date: 9/17/18


Clerk of the Court
By: 
Court Clerk

³³ V.I. R. CIV. P. 8. See also *Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017).