

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

BIG BEAR CONSTRUCTION, INC.,	)	Case No. ST-2013-CV-670
PAUL PONO, and LANNY ROBERTS,	)	
	)	
Plaintiffs,	)	Action for Abuse of Process, Publication
	)	of Injurious Falsehood, Fraud, Quantum
v.	)	Meruit, Restitution and Unjust
	)	Enrichment, and Conversion
PHILIP HOLFORD, and	)	
KIWI CONSTRUCTION, LLC,	)	Jury Trial Demanded
	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION

By motion filed on January 23, 2014, Defendants Philip Holford (“Holford”) and Kiwi Construction, LLC (“Kiwi”) (collectively, “Defendants”), have moved to dismiss the claims asserted in Plaintiffs’ Complaint. Plaintiffs filed a response in opposition to Defendants’ motion on February 28, 2014, and Defendants filed a reply to Plaintiffs’ response in opposition on March 17, 2014. The Court heard oral arguments on Defendants’ motion on September 16, 2014. The claims asserted against Kiwi either fail to state claims upon which relief can be granted, or are counterclaims to a related proceeding the Superior Court of the Virgin Islands, and must therefore be dismissed. The allegations against Holford state claims upon which relief can be granted. Therefore, Defendants’ motion to dismiss will be granted in part and denied part.

BACKGROUND

On January 8, 2013, Kiwi filed a multi-count complaint against Plaintiffs. This case is presently docketed in the Superior Court as case number ST-2013-CV-011 (the “First Case”). In its Complaint, Kiwi alleges that Plaintiffs breached a contract to perform certain construction work on real property know as Parcel No. 5A, Estate Peter Bay, St. John, Virgin Islands.¹ After disputes arose concerning the quality and cost of Plaintiffs’ work, Kiwi alleges that Plaintiffs walked off the job.² As a result, Kiwi claimed that it “was forced to make repairs to the work” that Plaintiffs had completed,³ and that it “was forced to perform work which should have been performed by [Plaintiffs].”⁴

In its Complaint, Kiwi purports to state four causes of action against Plaintiffs. Kiwi first alleges that Plaintiffs are liable for fraudulent misrepresentation due to their alleged misrepresentations concerning the quality of their work and their capacity to complete the

¹ Compl. ¶ 6, Ex. 1 at 1, *Kiwi Const. LLC v. Pono*, ST-2013-CV-011.

² *Id.* ¶ 27.

³ *Id.* ¶ 70.

⁴ *Id.* ¶ 71.

construction project.⁵ Kiwi then alleges that Plaintiffs are liable for a breach of a contractual obligation to supervise the employees of Plaintiff Big Bear Construction, Inc. (“Big Bear”) in order to ensure that said employees performed their work to standard.⁶ Third, Kiwi alleges that Plaintiffs breached a contractual obligation to ensure that their work was performed in accordance with the construction plans and specifications.⁷ Finally, Kiwi alleges that it suffered damages when it was “forced to make repairs” to the work performed by Plaintiffs and when it was “forced to perform work which should have been performed by [Plaintiffs].”⁸

Instead of answering Kiwi’s Complaint, Plaintiffs moved to dismiss it. By Order dated April 14, 2014, the Court denied Plaintiffs’ motion to dismiss as to all claims asserted by Kiwi against Plaintiffs Paul Pono and Lanny Roberts, and stayed all claims asserted by Kiwi against Big Bear pending arbitration.

On May 20, 2013, Plaintiffs answered Kiwi’s Complaint and attempted to plead a “counterclaim and third party claim” against Kiwi and Holford. Kiwi and Holford moved to dismiss the putative counterclaims asserted by Plaintiffs by motion dated June 10, 2013. In response, Plaintiffs simultaneously filed a response in opposition to Holford’s motion and moved to amend their counterclaim against Holford. Plaintiffs’ motion to amend was denied without prejudice because Plaintiffs failed to follow the applicable rules of procedure for amending pleadings. Plaintiffs filed a renewed motion to amend on August 5, 2013, but withdrew same by filing dated December 18, 2013.

Then, instead of properly amending its counterclaims, Plaintiffs filed this lawsuit. Plaintiffs acknowledge that “[t]here are some claims that are identical to the claims previously asserted [as putative counterclaims in the First Case.]”⁹ Nevertheless, Plaintiffs contend that “the issues and status of the [First Case] are not relevant” to Defendants’ motion to dismiss.¹⁰

LEGAL STANDARDS

Kiwi and Holford have moved to dismiss the claims asserted against them, arguing first that the claims are compulsory counterclaims to the First Case, and second, that Plaintiffs’ putative causes of action fail to state claims upon which relief can be granted.

I. COUNTERCLAIMS

Superior Court Rule 34 provides that “[a]ll claims . . . for relief, except a complaint or third-party complaint, shall be asserted in an answer as a counterclaim, and not otherwise” Yet Superior Court Rule 34 does not provide guidance for determining when causes of action must be considered counterclaims, or whether causes of action may be pleaded independently in a

⁵ *Id.* ¶¶ 50–58.

⁶ *Id.* ¶¶ 59–61.

⁷ *Id.* ¶¶ 66–68.

⁸ *See id.* ¶¶ 69–72 (setting forth Kiwi’s fourth cause of action against Plaintiffs).

⁹ Pls.’ Opp. to Defs.’ Mot. to Dismiss 2–3 n.2.

¹⁰ *Id.*

complaint or third-party complaint. In order to distinguish those claims that must be pleaded as counterclaims from those claims that may be asserted in a complaint or third-party complaint, the Court turns to the framework provided by Federal Rule of Civil Procedure 13.¹¹ If a claim may be characterized as a counterclaim—either compulsory or permissive—under Federal Rule of Civil Procedure 13, Superior Court Rule 34 obligates a party to plead such a claim as counterclaim in an answer, “and not otherwise.”¹²

A compulsory counterclaim is “any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim”¹³ In contrast, a permissive counterclaim is any claim against an opposing party that is not a compulsory counterclaim.¹⁴

While the standard for identifying a permissive counterclaim is clear, the standard for identifying compulsory counterclaims requires further explanation. Although not binding, interpretations of Federal Rule of Civil Procedure 13 by federal courts are nonetheless instructive on how this Court may apply Rule 13. Generally, federal courts have developed four tests to determine whether a counterclaim is compulsory under Rule 13:

(1) Are the issues of fact and law raised by the claim and counterclaim largely the same? (2) Would *res judicata* . . . bar a subsequent suit on defendant's claim absent the compulsory-counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim? and (4) Is there any logical relationship between the claim and the counterclaim?¹⁵

II. MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM

“The adequacy of a complaint is governed by Rule 8 of the Federal Rules of Civil Procedure.”¹⁶ A complaint must set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.”¹⁷ To survive a motion to dismiss for failure to state a claim upon which relief can be granted, “a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim for relief that is plausible on its face.’”¹⁸ All material allegations in the complaint are taken as true, and the Court must construe all facts in a light most favorable to the non-moving

¹¹ The Federal Rules of Civil Procedure apply to this proceeding as rules of last resort through the operation of Superior Court Rule 7. Although Superior Court Rule 34 states a general rule concerning where counterclaims must be alleged, Rule 34 provides no guidance on whether a claim must be included as a counterclaim. Consequently, this Court elects to rely on the well-established framework provided by Federal Rule of Civil Procedure 13 to determine whether Plaintiffs' putative causes of action are properly characterized as counterclaims.

¹² *Accord Abdallah v. Abdel-Rahman*, Case No. ST-2013-CV-227, 2015 V.I. LEXIS 102, at *9 n.15 (V.I. Super. Ct. Aug. 20, 2015) (employing the same reasoning).

¹³ *Seales v. Devine*, S. Ct. Civ. No. 2007-040, 2008 V.I. Supreme LEXIS 23, at *6–7 (quoting FED. R. CIV. P. 13(a)).

¹⁴ FED. R. CIV. P. 13(b).

¹⁵ Wright, Miller, Kane, *FEDERAL PRACTICE AND PROCEDURE* §1410, at 52–55 (2010). *See also id.* nn.7–10 (collecting cases).

¹⁶ *Brady v. Cintron*, 55 V.I. 802, 822 (V.I. 2011).

¹⁷ FED. R. CIV. P. 8(a)(2).

¹⁸ *Ashcroft v. Iqbal*, 559 U.S. 662, 677 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2002)).

party.¹⁹ However, a plaintiff is obliged to provide “more than labels and conclusions.”²⁰ Determining whether a complaint states “a plausible claim for relief” is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.”²¹ In making the plausibility determination, the Supreme Court of the Virgin Islands instructs that:

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 legal conclusions couched as factual allegations or naked 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.²²

If the remaining facts are sufficient enough for the court to draw a reasonable inference that the defendant is liable based on the elements the plaintiff must plead, then the claim is considered plausible and it will survive a motion to dismiss for failure to state a claim upon which relief can be granted.²³

ANALYSIS

Plaintiffs purport to state claims against Kiwi and Holford.

I. CLAIMS AGAINST KIWI

Plaintiffs purport to assert four theories of liability against Kiwi: (a) abuse of process; (b) publication of an injurious falsehood; (3) restitution and unjust enrichment; and (4) conversion. Plaintiffs’ abuse-of-process allegations do not state a claim upon which relief can be granted, and Plaintiffs remaining claims must be pleaded as counterclaims to the claims asserted by Kiwi in the First Case. All of Plaintiffs’ putative causes of action against Kiwi must therefore be dismissed.²⁴

a. Abuse of Process

As discussed in the Memorandum Opinion issued on January 15, 2016 in the First Case, the abuse-of-process claim pleaded by Plaintiffs in the First Case failed to state a claim upon which relief can be granted. The bases for the abuse-of-process claim contained in Plaintiffs’ Complaint

¹⁹ *L’Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 206–170, 2010 WL 924259, at *1 (D.V.I. Mar. 11, 2010) (citing *Christopher v. Harbury*, 536 U.S. 403, 406 (2002)).

²⁰ *Twombly*, 550 U.S. at 555.

²¹ *Iqbal*, 559 U.S. at 679.

²² *Brady v. Cintron*, 55 V.I. 802, 822–23 (2011) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649–50 (2011)).

²³ *Id.*

²⁴ See *Seales v. Devine*, S. Ct. Civ. No. 2007-040, 2008 V.I. Supreme LEXIS 23, at *9 (V.I. 2008) (citing *Prusky v. Reliastar Life Ins. Co.*, 445 F.3d 695, 700 n.10 (3d Cir. 2006) (holding that dismissal was the appropriate remedy for a claim that should have been pled as a compulsory counterclaim)).

are identical to the bases for their putative counterclaim from the First Case.²⁵ For the same reasons set forth in the Memorandum Opinion issued on January 15, 2016 in the First Case, Plaintiffs' abuse-of-process claim fails to state a claim upon which relief can be granted.

b. Publication of Injurious Falsehood

As a claim against Kiwi—the plaintiff in the First Case—Plaintiffs' injurious falsehood claim is a permissive counterclaim to the First Case. Because the claim can properly be characterized as a permissive counterclaim, Superior Court Rule 34 obligates Plaintiffs to assert this counterclaim against Kiwi in the First Case.

c. “Restitution and Unjust Enrichment”

Plaintiffs' claim for “restitution and unjust enrichment” is a compulsory counterclaim to the First Case. In Count V of Kiwi's Complaint in the First Case, Kiwi alleges that, as a result of Defendants' “negligent, un-workmanlike and shoddy work” at 5A, Estate Peter Bay, Kiwi was “forced to make repairs to the work” and “forced to perform work which should have been performed by Defendant.”²⁶ In this case, Plaintiffs allege that they “are entitled to compensation for the work they performed for [Kiwi and Holford] based upon the value of the work performed and services rendered”²⁷ as part of the construction project at 5A, Estate Peter Bay. Therefore, each claim arises from the work that Plaintiffs performed at 5A, Estate Peter Bay.

Count V of Kiwi's Complaint in the First Case and Plaintiffs' “restitution and unjust enrichment” claim in this case also share common questions of fact. For example, in both cases, the extent of Plaintiffs' work must be ascertained, as must the quality of that work. Both cases require a determination of whether Plaintiffs performed their obligations under the construction subcontract. Both cases also require a determination of how much, if anything, Plaintiffs were paid for their work, so that the trier of fact can determine whether Plaintiffs were underpaid—thereby suffering damages—paid what they were owed, or overpaid—thereby damaging Kiwi.

Plaintiffs' “restitution and unjust enrichment” arises from the same occurrence as Count V of Kiwi's Complaint in the First Case, and the putative causes of action share common questions of fact. There is a logical relationship between the two causes of action, and therefore, Plaintiffs are obligated to plead their “restitution and unjust enrichment” claim as a counterclaim to Kiwi's Complaint in the First Case pursuant to Superior Court Rule 34.

²⁵ Compare Compl. ¶ 26 (“Kiwi . . . wrongfully and intentionally filed a Complaint . . . against Plaintiffs and asserted claims knowing that there was no basis for the claims and further knowing that its pursuit of the claim was purposefully designed to improperly coerce Plaintiffs into settling baseless claims, as a form of extortion) and *id.* ¶ 26 (“Therefore, [Kiwi's] act of filing the Complaint was to accomplish an improper purpose, which constitutes the tort of abuse of process”), with Counter Claim and Third Party Claim ¶ 12, ST-2013-CV-011 (“[Kiwi] wrongfully and intentionally filed its Complaint asserting claims knowing that there was no basis for the claims and further knowing that its pursuit of the claim was purposefully designed to improperly coerce Defendants into settling its baseless claim, as a form of extortion”) and *id.* ¶ 13 (“[t]herefore, [Kiwi's] act of filing the Complaint was to accomplish an improper purpose, which constitutes the tort of abuse of process”).

²⁶ Compl. ¶¶ 70–71, *Kiwi Const. LLC v. Pono*, ST-2013-CV-11.

²⁷ Compl. ¶ 62.

d. Conversion

Similar to Plaintiffs' "restitution and unjust enrichment" claim, Plaintiffs' conversion claim is a compulsory counterclaim to the First Case. In Count V of the First Case, Kiwi complains that it "was forced to perform work which should have been performed by Defendant" at 5A, Estate Peter Bay.²⁸ By so complaining, Kiwi founds its cause of action on the actions it took in response to the cessation of Plaintiffs' work at 5A, Estate Peter Bay. In this case, Plaintiffs allege that once they left the project, "[t]he tools, materials and equipment which belonged to Plaintiffs remained on the property[,]" and that Kiwi "interfered with Plaintiffs['] possession and control of its property" when it allegedly "locked Plaintiffs off the project [on] July 12, 2012." Thus, Plaintiffs conversion claim is also founded on the actions that Kiwi took in response to the cessation of Plaintiffs' work at 5A, Estate Peter Bay.

In order to resolve both cases, a trier of fact will have to determine exactly what actions were taken by which party following the cessation of Plaintiffs' work at 5A, Estate Peter Bay. Not only do these claims arise from the same occurrence, they also share common questions of fact. There is a logical relationship between the two causes of action, and therefore, Plaintiffs are obligated to plead their conversion claim as a counterclaim to Kiwi's Complaint in the First Case pursuant to Superior Court Rule 34.

II. CLAIMS AGAINST HOLFORD

Defendants allege that the claims asserted against Holford are compulsory counterclaims to the First Case, and do not state claims upon which relief can be granted. The Court disagrees.

a. Plaintiffs' claims against Holford are not counterclaims to the First Case.

Counterclaims are those claims that the pleader has against an opposing party. Plaintiffs' claims against Holford are not counterclaims because Holford is not an opposing party to the First Case; Kiwi is the only plaintiff named in the First Case, and by Memorandum Opinion and Order dated January 15, 2016 in the First Case, Plaintiffs' alleged third-party claims against Holford were dismissed. Therefore, any claims that Plaintiffs have against Holford are not properly characterized as counterclaims, and Superior Court Rule 34 does not obligate Plaintiffs to plead those claims in the First Case.

b. Plaintiffs have stated claims against Holford upon which relief can be granted.

Plaintiffs purport to state three claims against Holford: (a) Fraud; (b) Unjust Enrichment;²⁹ and (c) Conversion.

²⁸ Compl. ¶ 71, *Kiwi Const. LLC, v. Pono et al.*, ST-2013-CV-011.

²⁹ Plaintiffs purport to state a claim for quantum meruit in one count, and a claim for "restitution and unjust enrichment" in another. A claim for quantum meruit is the same as a claim for unjust enrichment. *Walters v. Walters*, 60 V.I. 768, 776 (V.I. 2014). Since each of Plaintiffs' putative claims are based on the same allegation (i.e. that Plaintiffs did not receive payment for the work they performed), the claims are analyzed together under the heading of 'unjust enrichment.'

- i. Plaintiffs have stated a claim for fraudulent misrepresentation against Holford.

Under the section of Plaintiffs' Complaint captioned "fraud," Plaintiffs allege that Holford "fraudulently misrepresented" information to Plaintiffs.³⁰ To state a claim for fraudulent misrepresentation, a plaintiff must plead that the defendant (1) made a misrepresentation of fact, opinion, intention, or law (2) that the defendant either knew or had reason to know was false, (3) and that was made for the purpose of inducing plaintiff to act or refrain from acting on it, and (4) that plaintiff suffered pecuniary loss caused by the his or her justifiable reliance on the misrepresentation.³¹

Plaintiffs have carried this burden. Specifically, Plaintiffs have pleaded that Holford made misrepresentations of fact by representing to Plaintiffs "that [Kiwi] existed at the time the Subcontract between the parties was signed, on June 9, 2011[,]""³² and by representing "that [Kiwi] was the Contractor at the time that the Subcontract between the parties was signed, on June 9, 2011""³³ Plaintiffs then allege that Holford "knew that [these representations] were false and/or made them recklessly and should have known that they were false[,]""³⁴ and that Holford made such representations with the intention that Plaintiffs would rely on them.³⁵ Finally, Plaintiffs allege that they justifiably relied on these representations to their detriment.³⁶ Therefore, Plaintiffs have stated a claim for fraudulent misrepresentation against Holford.

- ii. Plaintiffs have stated a claim for unjust enrichment against Holford.

Plaintiffs have alleged that Holford was "unjustly enriched not only because [he] took away Plaintiffs' subcontract but also because [he] used Plaintiffs' materials and equipment to perform the work without any compensation to Plaintiffs."³⁷ To state a claim for unjust enrichment in the Virgin Islands, a plaintiff must plead four elements: "(1) that the defendant was enriched, (2) that such enrichment was at the plaintiff's expense, (3) that the defendant had appreciation or knowledge of the benefit, and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff."³⁸

³⁰ Compl. ¶ 38.

³¹ See Memorandum Opinion 10, *Merchants Commercial Bank v. Oceanside Village, Inc. et al.*, ST-2013-CV-653. Although the Supreme Court of the Virgin Islands has not defined the elements of a claim for fraudulent misrepresentation, this Court, in the case of *Merchants Commercial Bank v. Oceanside Village, Inc. et al.* conducted a *Banks* analysis and determined that the rule stated above represents the soundest rule of law for the Virgin Islands. *Id.* at 7–11. Having reviewed the *Banks* analysis conducted in *Merchants Commercial Bank*, and agreeing with the methodology and conclusions of same, the Court hereby adopts the standard articulated in *Merchants Commercial Bank*.

³² Compl. ¶ 38.

³³ *Id.* ¶ 39.

³⁴ *Id.* ¶ 41.

³⁵ *Id.* ¶ 42.

³⁶ *Id.* ¶¶ 43–46.

³⁷ *Id.* ¶ 53. This allegation appears under the heading titled "Quantum Meruit." The same allegation appears under the heading titled "Restitution and Unjust Enrichment." See *id.* ¶ 69 (alleging that Plaintiffs "are entitled to compensation for the value of the work performed and services rendered" to Kiwi and Holford).

³⁸ *Walters v. Walters*, 60 V.I. 768, 779–80 (V.I. 2014).

Plaintiffs have pleaded the requisite elements to sustain an unjust enrichment claim against Holford. Plaintiffs allege that Holford was enriched in Paragraphs 53 and 69. Plaintiffs allege that this enrichment occurred at Plaintiffs expense in the same paragraphs by alleging that Plaintiffs performed work for Holford, but did not receive compensation for same. Plaintiffs allege that Holford knew of and appreciated that benefit in Paragraphs 52, 56, 63, and 69, in which Plaintiffs generally allege that Holford continued construction, relying the concrete poured by Plaintiffs as well as other materials belonging to Plaintiffs, and ultimately complete the project. Finally, in Paragraphs 53, 62, and 65–67 Plaintiffs allege circumstances under which it would be inequitable for Holford to retain the benefits he received without compensating Plaintiffs for same. Therefore, Plaintiffs have stated a claim for unjust enrichment against Holford.

iii. Plaintiffs have stated a claim for conversion against Holford.

The Supreme Court of the Virgin Islands has not issued an opinion that defines this cause of action. In *Isaac v. Crichlow*,³⁹ the Superior Court conducted a *Banks* analysis and determined that the soundest rule of law for the Virgin Islands was to define the tort of conversion as

an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.⁴⁰

Having reviewed the analysis performed in *Crichlow*, this Court is satisfied with *Crichlow*'s reasoning and conclusion, and adopts its *Banks* analysis.

Plaintiffs have carried their burden under the standard adopted above. Specifically, Plaintiffs have alleged that Holford “interfered with Plaintiffs['] possession and control of its property,” including Plaintiffs’ “tools, materials, and equipment,” when Plaintiffs were “locked . . . off” of the construction project at 5A, Estate Peter Bay on July 12, 2012.⁴¹ Plaintiffs further allege that some of this property “is still being wrongfully held and used by [Kiwi and Holford.]”⁴² Assuming these allegations to be true, it follows that Plaintiffs have been, and continue to be deprived of the use of at least some of the personal property that was used at 5A, Estate Peter Bay. Therefore, Plaintiffs have stated a claim for conversion against Holford.

³⁹ Civil No. SX-12-CV-065, 2015 V.I. LEXIS 15 (Feb. 10, 2015).

⁴⁰ *Id.* at *26 (quoting RESTATEMENT (SECOND) OF TORTS § 222A).

⁴¹ Compl. ¶¶ 72–73.

⁴² *Id.* ¶ 73.

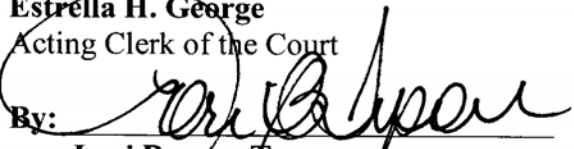
CONCLUSION

As against Kiwi, Plaintiffs have either failed to state claims upon which relief can be granted, or has pleaded in this action claims that must be pleaded as counterclaims to the First Case. Therefore, all claims asserted against Kiwi will be dismissed without prejudice. As against Holford, Plaintiffs have stated claims for fraudulent misrepresentation, unjust enrichment, and conversion. Therefore, Plaintiffs' claims against Holford survive Defendants' motion to dismiss. An appropriate order shall follow.

Dated: January 15, 2016

ATTEST:

Estrella H. George
Acting Clerk of the Court

By: 

Lori Boynes-Tyson
Court Clerk Supervisor

1/15/16



DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

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By motion filed on January 23, 2014, Defendants have moved to dismiss all claims asserted in Plaintiffs' Complaint. Plaintiffs filed a response in opposition to Defendants' motion on February 28, 2014, and Defendants filed a reply to Plaintiffs' response in opposition on March 17, 2014. The Court heard oral arguments on Defendants' motion on September 16, 2014. For the reasons set forth in the accompanying Memorandum Opinion,

ORDERED that Defendants' Motion to Dismiss for Failure to State a Claim is **GRANTED IN PART**; and it is further

ORDERED that all remaining portions of Defendants' Motion to Dismiss for Failure to State a Claim are **DENIED**; and it is further

Dated: January 15, 2016

By:

Lori Boynes-Tyson
Court Clerk Supervisor

DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

11/15/16