

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

NILSA CRUZ HOSPEDALES,

Plaintiff,

v.

ST. CROIX EYE GROUP, INC.,

Defendant.

CIVIL NO. SX-08-CV-320

ACTION FOR WRONGFUL DISCHARGE

JURY TRIAL DEMANDED

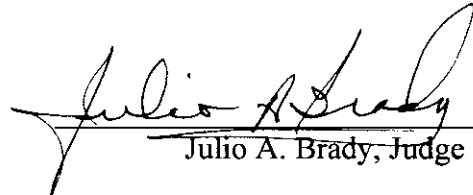
ORDER

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment, and Plaintiff's Opposition thereto. For the reasons fully set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that Defendant's Motion is GRANTED. It is further

ORDERED that a copy of this Order be served on all Parties.

Dated: June 22, 2012


Julio A. Brady, Judge

ATTEST:

VENETIA H. VELÁZQUEZ
Clerk of the Court

By: 
for Court Clerk Supervisor
6/22/12

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DIVISION OF ST. CROIX

NILSA CRUZ HOSPEDALES,	)	
	)	
Plaintiff,	)	CIVIL NO. 'SX-08-CV-320
	)	
v.	)	
	)	ACTION FOR WRONGFUL DISCHARGE
ST. CROIX EYE GROUP, INC.,	)	
	)	
Defendant.	)	JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment, and Plaintiff's Opposition thereto. For the reasons that follow, Defendant's motion will be granted.

Plaintiff commenced employment with Defendant St. Croix Eye Group, Inc. on May 14, 1998, initially in the position of Front Desk Clerk. Plaintiff worked in that position until late 2003, when she was assigned by Defendant to assist Dr. S. Richard Ombres, who was working as an Ophthalmologist/Retinal Surgeon. Plaintiff continued to work in this capacity until October 12, 2006, when Dr. Ombres ended his association with Defendant. The following day, Plaintiff was notified of her termination by Defendant's Business Manager, who stated that the reason for her termination was because of Dr. Ombres departure.

Plaintiff filed her lawsuit on June 23, 2008, alleging that she was wrongfully discharged under V.I. CODE ANN. tit. 24 § 76(a), otherwise known as the Wrongful Discharge Act (WDA). Following some discovery, Defendant filed its Motion For Summary Judgment on January 4, 2010, claiming that it had terminated Plaintiff's employment due to cessation of business operations, requiring a cutback in the work force, as contemplated in V.I. CODE ANN. tit. 24 §

76(c). Plaintiff disputes that she was terminated due to a cessation of business operations, insisting on the presumption of wrongful discharge delineated in V.I. CODE ANN. tit. 24 § 76(a).

Legal Standard

“Because summary judgment is a drastic remedy, it should be granted only when ‘the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.’” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I.2008). (quoting Fed.R.Civ.P. 56(c)) (citations omitted). “When reviewing the record, this Court must view the inferences to be drawn from the underlying facts in the light most favorable to the nonmoving party, and we must take the non-moving party's conflicting allegations as true if ‘supported by proper proofs.’” *Id.* (quoting *Seales v. Devine*, S.Ct. Civ. No.2007–040, 2008 WL 901528, at *1 (V.I. Mar. 3, 2008) (unpublished)). “[T]o survive summary judgment, the nonmoving party's evidence must amount to more than a scintilla, but may amount to less than a preponderance.” *Id.* (internal quotations omitted). Importantly, the nonmoving party may not rest on its pleadings but “‘must set forth specific facts showing that there is a genuine issue for trial.’” *Bright v. United Corp.*, 50 V.I. 215, 222 (V.I.2008) In order to defeat summary judgment, the Plaintiff must provide “significant, probative evidence demonstrating the existence of a triable issue of fact.” *Charles v. Hess Oil Virgin Islands Corp.*, 24 F. Supp. 2d, 484, 486 (D. V.I. 1997).

Analysis

Plaintiff has asserted that she was wrongfully terminated, noting that she was (1) an employee (2) of a covered employer who (3) was discharged, and (4) has stated that the discharge was wrongful. *See* V.I. CODE ANN. tit. 24 § 76. After establishing her prima facie case

of wrongful discharge, the burden shifted to the Defendant to articulate their reason for Plaintiff's discharge. *Mendez v. Hovenssa, LLC*, 2008 WL 803115, *5 (D. V.I. 2008) (quoting *Rajbahadoorsingh v. Chase Manhattan Bank, NA.*, 168 F.Supp.2d 496, 505 (D.V.I.2001)). In doing so, Defendant quotes the same section of the Virgin Islands Code, which provides that, after stating the presumption of wrongful discharge, "nothing in this section shall be construed as prohibiting an employer from terminating an employee as a result of the cessation of business operations or as a result of a general cutback in the work force due to economic hardship." Defendant has stated, and confirmed with evidence, that one of their doctors, Dr. Ombres, who Plaintiff assisted, ended his association with Defendant. As a result of Dr. Ombres leaving, Defendant no longer had need for an assistant for him. Furthermore, Plaintiff's salary was funded by deduction of the amounts paid by Defendant to Dr. Ombres for his services, meaning that Dr. Ombres essentially paid Plaintiff's salary. *See* Def. Mot. Summ. J. Ex. D. While plaintiff worked for Defendant prior to Dr. Ombres' association, Plaintiff clearly states that her employment changed from Front Desk Clerk to being Dr. Ombres' assistant.

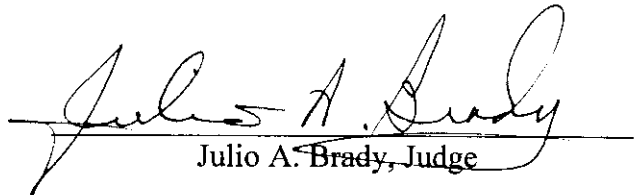
To counter Defendant's assertion, instead of coming forward with significant, probative evidence as required by *Charles*, *supra*, Plaintiff simply claims that there was no cessation of business operations. Essentially, Plaintiff claim seems to state that any termination that comes as a result of a job no longer being necessary is actionable as a wrongful termination. This Court is not inclined to create new remedies for employees who are discharged due to cutbacks brought on by economic hardship when the legislature has already provided for such employees with programs like unemployment compensation. While drawing unemployment compensation does not preclude Plaintiff for seeking damages under the WDA, it remains clear to this Court that

they type of wrongful discharge contemplated in the WDA did not occur in this circumstance. *See Harrilal v. Blackwood* 2001 WL 1769735 (V.I. Terr. Ct. 2001). In Plaintiff's Opposition, she makes no reference to section 76(c) other than to generically dispute that the discharge was not due to a cessation of business. Plaintiff has therefore failed to support her assertion that there is a genuine issue of material fact with any evidence sufficient to defeat Defendant's Motion for Summary Judgment, and therefore Defendant's Motion will be granted.

Conclusion

After reviewing the entire record, this Court is satisfied that there is no genuine issue of material fact for a jury to determine, even when taken in the light most favorable to the Plaintiff. Plaintiff was merely the unfortunate victim of downsizing, whose remedy of drawing unemployment was already contemplated by the legislature. A separate Order will accompany this Memorandum Opinion.

Dated: June 22, 2012.


Julio A. Brady, Judge

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
for Court Clerk Supervisor
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