SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ALIYA FELIX,	)
	)
Plaintiff,	)
	)
vs.	) **CASE NO. ST-12-CV-709**
	)
GOVERNMENT OF THE VIRGIN ISLANDS,	)
BUREAU OF INTERNAL REVENUE, and	)
CLAUDETTE WATSON-ANDERSON, in her official	)
Capacity as Director of Bureau of Internal Revenue,	)
	)
Defendants.	)
	)

MEMORANDUM OPINION

Pending before the Court are Plaintiff's motion for judgment on the pleadings[1] and Defendants' motion to dismiss.[2] For the following reasons, Defendants' motion to dismiss will be granted rendering Plaintiff's motion moot.

FACTUAL AND PROCEDURAL HISTORY

In July of 2007, Plaintiff caused a vehicle to be shipped from Florida to the Virgin Islands. On July 9, 2007, Verne A. Hodge paid $1,058.83 to the VI Bureau of Internal Revenue for a personal use tax assessed on a vehicle.[3] On July 25, 2007, the District

[1] Plaintiff filed her motion on January 24, 2013; Defendants filed a response on February 15, 2013; and Plaintiff filed a reply on March 14, 2013.

[2] Defendants filed their motion to dismiss on February 15, 2013. Deeming Plaintiff's March 14, 2013, reply to be an opposition to their motion to dismiss as it addressed arguments raised in that motion, Defendants filed a reply on March 22, 2013. Defendants filed a second motion to dismiss on April 2, 2013, which the Court will not address as it generally raises the same arguments raised in the initial motion to dismiss.

[3] In her pleadings, Plaintiff alleges she paid the tax, but the payment was drawn on the account of Hodge as evidenced by Exhibit A to the Complaint. Documents that are attached to the pleadings as "exhibits are considered part of the pleadings for all purposes." *Williams v. Kmart Corp.*, CIV. 1999-0102, 2001 WL 304024 (D.V.I. Mar. 5, 2001) amended, CIV. 1999-0102, 2001 WL 242523 (D.V.I. Mar. 13, 2001). While it is possible that Exhibit A conflicts with Plaintiff's pleadings, the Court will assume their veracity.

Court of the Virgin Islands declared the personal use tax to be unconstitutional.[4] Plaintiff filed an action to recover the tax paid on the vehicle on December 12, 2012.

STANDARD

Fed. R. Civ. P. 12(b), made applicable to the Superior Court through SUPER CT. R. 7, provides that upon motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a "failure to state a claim upon which relief can be granted" to the claimant. When determining whether the allegations in a compliant are sufficiently pled, a court must engage in a three step inquiry:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim.".... Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth".... 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 for relief."[5]

A motion to dismiss a complaint should be denied if the factual allegations are "enough to raise a right to relief above the speculative level."[6]

ANALYSIS

Defendants argue that the statute of limitations bars this action given that Plaintiff paid the tax on July 9, 2007, the tax was determined to be unconstitutional on July 25, 2009, and Plaintiff filed her Complaint on December 12, 2012. Defendants also assert that Plaintiff has failed to provide valid proof of her compliance with 33 V.I.C. § 1202.

Pursuant to 33 V.I.C. § 1692(a),

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[4] See *Molloy v. Government of the Virgin Islands*, Civil Action No. 2006-51 (D.V.I. 2007).
[5] *Santiago v. Warminster Tp.*, 629 F.3d 121, 130 (3d Cir.2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 881 (2009)).
[6] *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d. Cir. 2008). See also *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

> No action or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Director, according to the provisions of law in that regard, and the regulations of the Director established in pursuance thereof.[7]

33 V.I.C. § 1202 provides that an action under section 1692(a) cannot be filed "before the expiration of 6 months from the date of filing the claim required under such section unless the Director renders a decision thereon within that time."[8] Generally, a "[c]laim for credit or refund of an overpayment of any internal revenue tax ... shall be filed by the taxpayer within 3 years from the time the return was required to be filed ... or 2 years from the time the tax was paid."[9]

This case is time barred as Plaintiff filed her Complaint several years after the statute of limitations ran. In addition, Plaintiff has failed to allege facts indicating that she complied with 33 V.I.C. § 1202. Although Exhibit B, attached to Plaintiff's Complaint, consists of a claim for a tax refund, the claim is undated and the pleadings do not otherwise indicate when the claim was filed. The Court is left to speculate whether Plaintiff complied with the provisions of 33 V.I.C. § 1202 and exhausted her administrative remedies before filing this action. Accordingly, Plaintiff has failed to state a claim upon which relief can be granted and Defendants' motion will be granted.

[7] 33 V.I.C. § 1692(a) has no application to the "allowance of credit for excise taxes paid on articles, goods, merchandise and commodities exported from the Virgin Islands." As this case involves the importation of a vehicle to the Virgin Islands, the exception to 33 V.I.C. § 1692(a) is inapplicable.
[8] 33 V.I.C. § 1202.
[9] 33 V.I.C. § 1181.

An Order consistent with this Opinion will follow.

Dated: April 10, 2013

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ____/____/____

by: ________________
for Donna D. Donovan
Court Clerk Supervisor 4/12/2013