

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

CATHERINE FIGUEROA,

Plaintiff,

vs.

**THE BUCCANEER HOTEL, INC.,
COMPANION ASSURANCE COMPANY, and
MERIDIAN ENGINEERING, INC.,**

Defendants.

CIVIL NO. 302/1998

**ACTION FOR DAMAGES AND
WRONGFUL DISCHARGE**

JURY TRIAL DEMANDED

NOT FOR PUBLICATION

Lee J. Rohn, Esq.
Law Offices of Rohn & Cusick
1101 King Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820
(Attorneys for Plaintiff)

George H. Logan, Esq.
Nichols Newman Silverlight Logan & D'eramo, P.C.
1131 King Street, Suite 204
Christiansted St. Croix
U.S. Virgin Islands 00820
Wilfredo A. Geigel, Esq.
P.O. Box 25749, Gallows Bay
Christiansted, St. Croix
U.S. Virgin Islands 00824
(Attorneys for Defendants)

CABRET, J.

MEMORANDUM OPINION

(April 14, 1999)

Catherine Figueroa sued the Buccaneer Hotel, Inc., Companion Assurance Company and Meridian Engineering, Inc. (collectively "Defendants") for damages allegedly caused by Defendants terminating her employment. In her complaint, Figueroa alleges causes of action for

wrongful discharge, violation of the Virgin Islands Civil Rights Act, breach of contract and intentional infliction of emotional distress. The matter is now before the Court on Defendants' Motion to dismiss Figueroa's Complaint on the grounds that it is barred by the doctrines of collateral estoppel and res judicata and by the applicable statutes of limitations. Figueroa has not responded to Defendants' motion,¹ and for reasons which follow, the motion is granted in part and denied in part.

I. FACTS

The record shows that Figueroa previously filed an almost identical complaint against the same defendants in the District Court of the Virgin Islands.² In her district court complaint, Figueroa alleged the same causes of action as in the instant case, and in addition alleged religious discrimination under Title VII of the Civil Rights Act of 1964.³ In response to the defendants' motion for summary judgment, the district court dismissed the case. In its opinion, the district court explained that it was dismissing Figueroa's Title VII claim because she failed to file her complaint within 90 days of receiving a right to sue letter from the Equal Employment Opportunity Commission as required by 42 U.S.C. § 2000e-5(f) (1). The court further explained that it was dismissing Figueroa's claim under the Virgin Islands Civil Rights Act because

¹ Although Local Rule of Civil Procedure 7.1 (j) authorizes the Court to treat the motion as conceded due to Plaintiff's failure to respond, for the reasons stated in this opinion the Court finds that dismissal of Plaintiff's entire complaint is not appropriate.

² Figueroa v. The Buccaneer Hotel, Inc., No. 96-15 (D.V.I. filed Jan. 24, 1996).

³ See id., slip op. at 1 (D.V.I. decided Feb. 19, 1998).

[i]t must be clear by now that Title 24 does not provide a private right of action. Plaintiff's assertion that the claim was based not (sic) on Title 10, Virgin Islands Code, and not on Title 24, must also be rejected. See Andersen v. Government, Civ. No. 96-118 (M) (D.V.I. November 21, 1997): 'While [the plaintiff] may be able to obtain redress via [Title 10], the act still does not create a private cause of action under which the plaintiff can proceed. As delineated in the enforcement provisions . . . , only the Commission can sue to recover damages, not the individual claiming to be aggrieved. Id. at 16.⁴

Finally, the district court concluded that because the "remaining counts state no federal cause of action, this case will be dismissed with prejudice for lack of subject matter jurisdiction."⁵

II. DISCUSSION

In this case, Defendants contend that the district court's prior judgment bars all of Figueroa's claims under the doctrines of res judicata and collateral estoppel. The Court disagrees. Although the Court finds that Figueroa's claim under the Virgin Islands Civil Rights Act is res judicata, and therefore barred by the district court's judgment, her remaining claims are not barred by either doctrine.

Under the doctrine of res judicata, also called claim preclusion, "'a final judgment, rendered upon the merits, without fraud or collusion, by a court which had jurisdiction over the parties and the subject matter, is conclusive in a subsequent action between the parties or their privies based upon the same cause of action.' Bank of Nova Scotia v. Bloch, 19 V.I. 45, 51, 533 F. Supp. 1356 (D.V.I. 1982) (citing Restatement of Judgments § 1)." Julien v. Comm. of Bar Exam'rs, 923 F. Supp. 707, 716 (D.V.I. 1996). In comparison to the res judicata doctrine which

⁴ Figueroa, No. 96-15 slip op. at 3-4.

⁵ Id. at 4.

bars relitigation of the same claim, the doctrine of collateral estoppel, also called issue preclusion, "prevents the relitigation of issues that have been decided in a previous action."

Hawksbill Sea Turtle v. Fed. Emergency Management Agency, 126 F.3d 461, 474 (3rd Cir. 1997) (citation omitted). Like res judicata, the collateral estoppel doctrine bars relitigation of an issue only if, among other requirements, the court presiding over the previous action exercised jurisdiction over the matter. Id. at 475; Julien, 923 F. Supp. at 716.

In this case, although Defendants have generally referred to both doctrines in their brief, it is clear that they are actually relying on the doctrine of res judicata in support of their contention that the district court's prior judgment bars Figueroa from relitigating her claims before this court. *See id.* Notwithstanding Defendants' argument, however, the Court finds that only one of Figueroa's claims is res judicata. In its final judgment, the district court only addressed the merits of Figueroa's civil rights claims. And, after concluding that the Virgin Islands Civil Rights Act did not create a private cause of action, the court granted Defendants' summary judgment on that claim. As for Figueroa's remaining claims, the district court plainly stated that it was dismissing them "for lack of subject matter jurisdiction."⁶ Accordingly, the district court's dismissal of Figueroa's claims for wrongful discharge, breach of contract and intentional infliction of emotional distress does not bar her from asserting those claims here. *See Julien*, 923 F. Supp. at 716.

⁶ Figueroa, No. 96-15 slip op. at 4.

Neither will the Court dismiss these remaining claims based on Defendants' bald assertion that they are barred by the applicable statute of limitations. Defendants have not supported this assertion with any argument, reference to the record or citation of authority. The rules governing motions practice in this court plainly require a moving party to state with particularity the grounds for a motion and the authority relied upon in support of a motion. LRCi 7.1 (e). It is not the function of this Court to speculate about the particular grounds or the authority relied upon in support of a party's motion or to research and rule upon a motion without any argument or citation of authority by the moving party. Accordingly, inasmuch as Defendants have totally failed to comply with Local Rule of Civil Procedure 7.1 (e) by stating what statutes of limitations govern Figueroa's claims and why those statutes bar the claims, their motion to dismiss on this ground will be denied. *See* LRCi 7.1 (j).

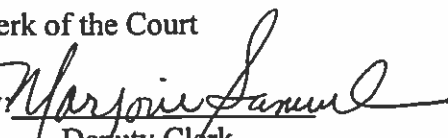
III. CONCLUSION

For the foregoing reasons, the Court concludes that Defendants' Motion to Dismiss should be granted in part and denied in part. Plaintiff's claim against these same defendants for damages under the Virgin Islands Civil Rights Act, codified at title 10 of the Virgin Islands Code, was dismissed on the merits by the District Court of the Virgin Islands in a previous action and is thus *res judicata*. *See Julien*, 923 F. Supp. at 716. Plaintiff's remaining claims, however, were dismissed by the district court due to lack of subject matter jurisdiction and accordingly are not barred by the doctrine of *res judicata*. *See id.* Defendants' assertion that all of Plaintiffs claims are barred by the statute of limitations is not supported by argument or citation of

authority as required by Local Rule of Civil Procedure 7.1 (e) and will therefore be denied by the Court. See LRCi 7.1 (j).


MARIA M. CABRET
Territorial Court Judge

ATTEST:
YVONNE V. WESSELHOFT
Clerk of the Court

By: 
Deputy Clerk
Dated: 4/13/99