

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

SARAH CRAWFORD,

Plaintiff,

SX-09-CV-292

v.

**H. DUANE BOBECK, JANIS BOBECK, PASSPORT
HOLDINGS, NEPTUNE HOLDINGS LLP and XYZ
COMPANY,**

Defendants.

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants H. Duane Bobeck, Janis Bobeck, Passport Holdings, Neptune Holdings LLP and XYZ Company (collectively “Defendants” or “Bobecks”) Motion to Dismiss Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and 10(b) filed on October 15, 2009. This matter is fully briefed. For the reasons stated below, the Court will deny the Bobecks’ Motion.

FACTS AND PROCEDURAL HISTORY

Plaintiff Sarah Crawford (hereinafter “Crawford”) was hired by the Bobecks in July 2005, to be the First Mate on the family’s yacht Passport. Crawford passed the initial thirty (30) day probationary period and was paid a salary of thirty six thousand dollars (\$36,000.00) per year. Crawford alleges that over time, her job assignments changed from First Mate to catering all parties for the Defendants either at the yacht or at home, caring for the Bobecks’ dog, doing Janice Bobecks’ makeup for parties, babysitting the Bobecks’ grandchildren and managing the home. Crawford’s repeated requests for additional pay for the additional duties was denied by the Bobecks. Crawford also alleges that from the time she began working for Defendants, H. Duane Bobeck (hereinafter “Duane”) sexually harassed her. Duane would allegedly stand too close, make inappropriate comments, like “you would look good if you showed up naked in the pool” or “I

should change your uniform into a bikini.” The Bobecks’ son also allegedly got drunk on the yacht and harassed Crawford in front of his parents on two separate occasions. In 2007, the Bobecks’ son allegedly grabbed Crawford’s hand and placed it on his erect penis. The following year, the Bobecks’ son allegedly grabbed Crawford and kissed her.

On January 3, 2009, Plaintiff was directed to take the yacht to Frederiksted with the captain and Duane to prepare for a party. As Crawford was preparing food for the party, Duane allegedly entered the galley and began to converse about cheating on his wife and his history of infidelity. Crawford left the gallery and Duane followed her outside. Duane allegedly stated that he could figure out a way to get interested in women again, grabbed Crawford’s breasts and kissed her on the mouth. Crawford pushed him away and went back to the galley. About thirty (30) minutes later, Crawford went outside and Duane grabbed her breasts and started kissing her. Crawford pushed him away and returned to the galley. Crawford alleges that she was horrified and she felt nauseated and ill. The following day, while working another party on the yacht with Duane as the yacht sailed back to Christiansted, Duane allegedly approached her and said, “that was a really good conversation we did not have last night wasn’t it?”

Crawford allegedly became physically ill, anxious and distraught as a result of her encounters with Duane, could not report to work following the January 3 incident, she later resigned. On January 14, 2009, Crawford allegedly called Duane’s wife, Janis Bobeck (hereinafter “Janis”) and explained to her what occurred. Janis allegedly represented that she would investigate and get back to plaintiff. Crawford alleges that Janis has full knowledge of Duane’s improper actions, facilitates and aids him in his actions because Duane allegedly has a history of sexually harassing and attacking females. After Crawford resigned, Duane allegedly contacted Josh Tate, Crawford’s former brother-in-law and falsely told him that she took his cell phone and computer. The Bobecks allegedly repeated this and other defamatory statements to others in the community.

On June 8, 2009, Crawford filed a complaint with the Equal Employment Opportunity Commission (hereinafter "EEOC"). Thereafter, on June 11, 2009, Crawford filed a Complaint in the instant matter alleging nine counts including violation of the Wrongful Discharge Act (Count I), violations of Title VII of the Civil Rights Act (Count II), anti-discrimination statutes (Count III), assault and battery (Count IV), defamation (Count V), breach of contract and the duty of good faith and fair dealing (Count VI), intentional and/or negligent infliction of emotional distress (Count VII), false misrepresentations (Count VIII), and punitive damages (Count IX). The issue before the Court is whether to dismiss Crawford's Complaint for failure to state a claim.

STANDARD FOR MOTION TO DISMISS

In ruling on a motion to dismiss for failure to state a claim for relief, the Superior Court must first:

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 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 reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.¹

DISCUSSION

The Bobecks contend that there are two grounds for dismissal: (1) Crawford's Complaint consists entirely of conclusory allegations and fails to allege sufficient facts to support a claim for relief and (2) Crawford's Complaint fails to set forth separate and distinct counts for each defendant, in contravention of Federal Rule of Civil Procedure 10(b). (Def.'s Mot. to Dismiss at 1, 2). Crawford argues that she has alleged sufficient facts to avoid dismissal and even if the facts are

¹ *Brady v. Cintron*, 55 V.I. 802, 823 (2012) (internal alteration omitted) (quoting *Joseph v. Bureau of Corr.*, 54 V.I. 644, 649-50 (2011)).

insufficient, the Court should give her an opportunity to amend her Complaint to cure any defect. In their motion to dismiss, the Bobecks only challenged the sufficiency of Counts I, II and III.

Therefore the Court will not address the additional counts raised in the Bobeck's reply brief.

Christopher v. People, 57 V.I. 500, 513 n.7 (V.I. 2012) ("Any argument that is raised for the first time in a reply brief is considered waived, because the [opposing party] will not have a chance to respond.") (collecting cases); *see also Benjamin v. AIG Ins. Co. of P.R.*, 56 V. I. 558, 567-68 (V. I. 2012).

In Count I of her Complaint, Crawford alleges that she was "constructively discharged ... in violation of the Wrongful Discharge Act (VIDWA)." Compl. ¶¶ 33-35. To state a claim under V.I. Code Ann. tit. 24, § 76(a), the Virgin Islands Wrongful Discharge Act, plaintiff only need to plead that defendant was his employer and that he had wrongfully discharged her.² "Under the constructive discharge doctrine, an employee's reasonable decision to resign because of unendurable working conditions is equated to a formal discharge for remedial purposes."³ To establish constructive discharge, the employee has the burden of showing that a reasonable person in the employee's position would have felt compelled to resign.⁴

Here, the parties disagree as to whether Crawford plead sufficient facts to show that she is entitled to relief under a theory of constructively discharge. The Bobecks contend that Crawford "conclusorily asserts that a single, alleged, incident of boorish behavior... caused her to be constructively discharged." (Def.'s Mot. to Dismiss at 4). The Court disagrees with the Bobecks' position. The alleged facts detail sexual comments directed at Crawford, being made to touch someone's penis, and Crawford being forcibly kissed and fondled by Duane Bobeck and his son on

² *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 533 (VI. 2015).

³ *Id.* at 529 n.11 (quoting *Fraser v. Kmart Corp.*, Civ. No. 2005-0129, 2009 U.S. Dist. LEXIS 35253, [WL], at *7 (D.V.I. 2009) (unpublished)).

⁴ *Pedro v. Ranger American of the Virgin Islands*, 2015 V.I. Supreme LEXIS 19, *7 (VI. 2015) (internal quotation marks and citation omitted)).

more than one occasion. The alleged facts show that Crawford's working conditions were so difficult and intolerable that a reasonable person would feel forced to resign from her position, which is a prerequisite to any constructive discharge claim.⁵ Ergo, Crawford has pled sufficient facts to avoid dismissal on her constructive discharge claim.

Count II alleges that "the actions of the Defendants are in violation of Title VII of the Civil Rights Act." Count III alleges that "the actions of the Defendants constitute violations of the law under the Virgin Islands against discrimination." In her complaint, Crawford fails to present sufficient factual matter which, when accepted as true, would state a claim to relief that is plausible on its face as required under these standards. *See Fleming v. Cruz*, 62 V.I. 702, 714 (VI. 2015) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Crawford's Opposition to the Motion to Dismiss raises claims that were not included in the pleadings. Although Crawford need not make detailed factual allegations, she was required to give the Defendants notice of the claims raised so that they would be prepared to defend against them at trial. *See id.* (Plaintiff was required to present "more than an unadorned, the-defendant-unlawfully-harmed-me accusation."). *See also Marsh-Monsanto v. St. Thomas-St. John Bd. of Elections*, 2014 V.I. LEXIS 3, *30 (V.I. Super. Ct. 2014). Ergo, Count II and Count III are not properly plead. In lieu of dismissal, Superior Court Rule 8 permits the court to allow the parties to amend any process or pleading for any omission or defect therein.⁶

Finally, the Bobecks contend that the Complaint should be dismissed for failure to plead in the form required by Federal Rule of Civil Procedure 10(b). Rule 10(b) requires, *inter alia*, that a party "state claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances..." *See Bryan v. Ponce*, 51 V.I. 239, 249 (VI. 2009); *see* SUPER. CT. R. 29

⁵ *See Jeffery v. City of Nashua*, 163 N.H. 683, 48 A.3d 931, 934 (N.H. 2012).

⁶ *Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 275 (VI. 2012); *see* SUPER. CT. R. 8.

(Federal Rule of Civil Procedure 10 is made applicable to the Superior Court through Superior Court Rule 29.) The Bobecks argue that the complaint only contains allegations against one defendant and fails to specify which of the other five defendants conduct subjects them to liability. (Def. Mot. to Dismiss at 7). The Court agrees with the Defendants. As mentioned *supra*, since this case is against multiple defendants, Crawford must amend the complaint by specifically naming the defendants in each count in order to apprise the defendants of which claims they should be prepared to defend.

CONCLUSION

Based on the foregoing reasons, the Court will deny the Bobecks' motion to dismiss. Count I is sufficiently plead, but Counts II and III are improperly plead. Reorganization to specifically name defendants is necessary and any defects in the Complaint can be cured by an amendment. The Court will deny the Bobecks' Motion to Dismiss and will permit Crawford to amend Counts II and III of the Complaint. The Court will issue an Order consistent with this Opinion.

Dated: 2-4-16



Harold W.L. Willocks
Administrative Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 2/4/16