

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

JOSEPH EDWARDS,

Plaintiff,

v.

**MARRIOTT HOTEL MANAGEMENT COMPANY
(VIRGIN ISLANDS), INC., d/b/a MARRIOTT
FRENCHMAN'S REEF & MORNING STAR
BEACH RESORT.**

Defendant.

CASE NO. ST-14-CV-222

ACTION FOR BREACH OF CONTRACT

MEMORANDUM OPINION

Before the Court is Defendant Marriott Hotel Management Company's July 1, 2014, Motion to Dismiss and for Summary Judgment, in which it argues that Plaintiff Joseph Edwards' breach of contract claims must be dismissed because a contractual relationship did not exist between the parties; that Plaintiff fails to establish the elements of a prima facie tort claim, a claim for wrongful discharge or a claim for intentional infliction of emotional distress; and that Defendant did not improperly interfere with any contract Plaintiff alleges to have with the Virgin Islands Taxi Authority (the "VITA"). Edwards opposed the motion on August 15, 2014, countering that an at-will employment relationship is a contractual relationship "simply without a term of duration"; that the prima facie tort claim should be preserved because it is pled as an alternative claim; that Marriott's actions were indeed egregious; and that Defendant wrongfully interfered with Plaintiff's right to operate from the taxi stand located on Defendant's property. Defendant replied on September 5, 2014, claiming that, even if there was a contract, Plaintiff fails to establish how it was breached and that the actions of Defendant did not amount to fraud or deceit; the prima facie tort claim is duplicative of Plaintiff's other claims; Plaintiff's

termination was neither wrongful nor egregious; and that, if Plaintiff had a contract with the VITA, any interference by Defendant was proper.¹

Because the Court relies on matters outside of the pleadings, Defendant's motion shall be treated as one for summary judgment. Both parties concede that Edwards was an at-will employee of the Defendant and that Plaintiff pushed a fellow employee on Marriott's property in violation of the Defendant's Conditions of Employment. The Court finds that: as an at-will employee, Plaintiff was terminable at any time, with or without cause; Plaintiff fails to establish any fraud or deceit on the part of the Defendant; his prima facie tort claim is duplicative; even if the Court accepted that there was a contractual relationship between the parties, the firing was not outside of the reasonable expectations of the parties; Plaintiff's termination did not violate the Virgin Islands Wrongful Discharge Act; and Defendant's act of terminating Plaintiff was not outrageous. Because there may be issues of material fact pertinent to Count VII, Tortious Interference, the Court will allow additional briefing on that claim. Defendant's motion for summary judgment is granted as to Counts I, II, III, V, and VI.

RELEVANT FACTUAL HISTORY²

Joseph Edwards was employed as a security guard for the Defendant for approximately twenty-five (25) years as an at-will employee. Plaintiff also works as a taxi driver for the VITA and was, prior to his termination, stationed to operate his taxi from Defendant's property.

¹ The parties have conceded to dismissal of Count IV, Negligent Hiring. Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment, p. 21; Defendant's September 5, 2014, Reply in Support of [Defendant's] Motion to Dismiss and For Summary Judgment, p. 7. On August 28, 2014, Plaintiff was granted leave to exceed the 20 page page limitation of LRCi 65.1(e) in his Opposition.

² Relevant Facts are undisputed and taken from Defendant's July 1, 2014, Statement of Undisputed Facts in Support of [Defendant's] Motion for Summary Judgment; Plaintiff's August 15, 2014, Response to Defendant's Statement of Undisputed Facts in Support of Defendant's Motion for Summary Judgment; [Defendant's] Response to Plaintiff's Counterstatement of Undisputed Facts; Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment.

On April 15, 2004, Plaintiff received and signed a copy of the Associate Handbook and signed a separate document entitled Conditions of Employment. Both documents contain identical warnings that an employee may be discharged without warning if the employee “hit[s], push[es] or otherwise strik[es] another person... while on company premises”.³

On October 10, 2013, Plaintiff argued with and pushed Asner Bellvue, who is employed by Marriott as a shuttle driver. A Disciplinary Action Form was issued to Plaintiff on October 10, 2013, which explained that Plaintiff was suspended pending an investigation into the incident and warned that Plaintiff’s conduct may result in termination. The October 18, 2013, Investigation Findings and Determinations of Defendant’s Director of Human Resources concluded that Plaintiff’s conduct in connection with the October 10, 2013, incident constituted serious misconduct in violation of Defendant’s rule against hitting, pushing or striking another person on company premises. On October 22, 2013, Marriott sent Edwards a letter notifying Edwards that he was being terminated for serious misconduct. Defendant also contacted the taxi stand supervisor and stated that Plaintiff was not to be permitted on Defendant’s property.

STANDARD OF REVIEW – MOTION FOR SUMMARY JUDGEMENT

Summary judgment is only appropriate when the movant establishes both “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁴ Once the moving party meets its initial burden, “the non-moving party [then] has the duty to set forth specific facts showing that a genuine issue of material fact exists and that

³ Associate Handbook, Conditions of Employment; Conditions of Employment, p. 2, para. 6.

⁴ FED. R. CIV. P. 56(c); *Wheatley v. Magras*, Civ. No. ST-05-CV-548, 2012 WL 203480, at *2 (V.I. Super. Ct. Jan. 11, 2012) (quoting *Lockhart v. Gov’t of the V.I.*, Civ. No. 2005-127, 2009 WL 2407821, at *3 (D.V.I. Aug. 3, 2009)).

a reasonable factfinder could rule in its favor.”⁵ All inferences are drawn in favor of the non-moving party;⁶ but, in order to survive summary judgment, the non-moving party must present evidence that amounts to “more than a scintilla, but may amount to less than a preponderance.”⁷ Summary judgment “cannot be entered unless the movant has established [both] its right[] to a judgment with such clarity as to leave no room for controversy and [that] the other party is not entitled to recover under any discernable circumstances.”⁸

DISCUSSION

I. Breach of Contract

Plaintiff argues in Count I of his First Amended Complaint that Marriott’s employment handbook created a contractual relationship between the parties, and that Defendant breached the contract; however Defendant states that the handbook expressly informs employees that the handbook is not intended to “create contractual rights”.⁹ Plaintiff also asserts that there is an oral contract for employment at-will between the parties;¹⁰ but, Defendant counters that Edwards “points to no evidence of any employment contract and fails to identify the terms of the alleged contract” and “neglects to address whether the purported contract was breached.”¹¹

⁵ *Wheatley*, 2012 WL 203480 at *2 (quoting *Crossley v. Elliot*, Civ. No. 2007-17, 2011 WL 1107868, at *3 (D.V.I. March 25, 2011)) (in turn quoting *Ridgewood Bd. of Educ. v. N.E. exrel. M.E.*, 172 F.3d 238, 252 (3d Cir.1999)).

⁶ *Etienne v. United Corp.*, Civ. No. ST-99-CV-205, 2001 WL 1568598, at *2 (Terr. Ct. Oct. 15, 2001) (citing to *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986)).

⁷ *Modern Day Construction v. Carty*, Civ. No. ST-09-CV-608, 2013 WL 2996549, at *2 (V.I. Super. Ct. June 13, 2013) (quoting *Wheatley*, 2012 WL 203480 at *2).

⁸ *Etienne*, 2001 WL 1568598 at *2 (quoting *Bottle v. Industrious*, 26 V.I. 83, 85 (Terr. Ct. 1991)).

⁹ Defendant’s July 1, 2014, Memorandum in Support of Motion to Dismiss and for Summary Judgment, p. 6. A complete copy of the Associate Handbook is attached to this motion as Exhibit 1.

¹⁰ Plaintiff’s August 15, 2014, Opposition to Defendant’s Motion to Dismiss and For Summary Judgment, p. 6.

¹¹ Defendant’s September 5, 2014, Reply in Support of [Defendant’s] Motion to Dismiss and For Summary Judgment, pp. 2-3.

A. AN AT-WILL EMPLOYEE MAY BE TERMINATED AT ANY TIME, WITHOUT CAUSE.

While the Court applauds Plaintiff's in-depth analysis of the lack of binding authority issued by the Virgin Islands Supreme Court regarding the status of at-will employment within the Territory, "absent a different interpretation by [the Supreme Court of the Virgin Islands], the Superior Court is required to follow [prior interpretations of local law issued by]" the Third Circuit Court of Appeals and the Appellate Division of the District Court.¹² In 2014, the Third Circuit stated that an at-will employee is "an individual whose employment could be terminated at any time, without cause,"¹³ as long as the termination does not violate the Virgin Islands Wrongful Discharge Act, which is discussed in more depth below. Therefore, as an at-will employee, Edwards could be terminated at any time for any or even no reason.¹⁴

B. EVEN IF THE HANDBOOK HAD CREATED A CONTRACTUAL RELATIONSHIP BETWEEN THE PARTIES, DEFENDANT COULD TERMINATE PLAINTIFF WITHOUT WARNING SINCE PLAINTIFF ADMITS TO VIOLATING DEFENDANT'S TERMINABLE CONDITIONS OF EMPLOYMENT.

Plaintiff has "failed to produce evidence that [Defendant] intended to be contractually bound by the employment manual's provisions."¹⁵ Both parties acknowledge that the Associate Handbook and Conditions of Employment state that the hitting, pushing or shoving of another person on Marriott's property – an infraction that Edwards admits to committing – is a terminable offense, without warning. Therefore, even if the parties were contractually bound by the Associate Handbook, Plaintiff admits to committing an act in violation of his employer's

¹² *Berrios-Rodriguez v. Berrios*, 58 V.I. 477, at *2 (V.I. 2013) (citing *Najawicz v. People*, S.Ct.Crim. No.2012–0109, 2013 WL 1095416, at *5–6 (V.I. Mar. 15, 2013)).

¹³ *Greene v. Virgin Islands Water & Power Auth.*, 557 F. App'x 189, 201 (3d Cir. 2014) (on appeal from D.V.I.).

¹⁴ *Kazimir v. General Adjustment Bureau*, 18 V.I. 124, 125 (T.Ct. 1982); but see *Ferris v. Industrial Gases, Inc.*, 23 V.I. 183, 192 (D.V.I. 1987) (duty of good faith and fair dealing preclude terminating at-will employee without good cause).

¹⁵ *Greene*, 557 F. App'x at 201, citing *Chapman v. Cornwall*, No. 2012–32, 2013 WL 2145092, at *4 (May 15, 2013) (In which "WAPA explicitly disclaimed any intent to be contractually bound by its employee manual, stating... both that its employee manual was not a contract and that WAPA could modify or eliminate its provisions at any time").

conditions of employment. Edwards' termination, then, would not constitute a breach of the agreement.¹⁶

II. Breach of Covenant of Good Faith and Fair Dealing

A. BECAUSE PLAINTIFF ADMITS THAT THE WORKPLACE INCIDENT WAS A TERMINABLE WITHOUT WARNING INFRACTION, DEFENDANT'S ACTIONS AMOUNT TO NEITHER FRAUD NOR DECEIT.

Edwards alleges that Defendant never took any action against the co-worker who was pushed by Plaintiff, Bellvue, for the incident giving rise to Plaintiff's termination and that Marriott failed to discipline Bellvue for "over 10 different assaults and batteries upon Plaintiff[,]" all of which occurred on the premises of Defendant."¹⁷ In Count II, Plaintiff argues that these failures constitute a breach of the covenant of good faith and fair dealing. Defendant argues that the covenant must arise out of a contractual relationship and that there is no contract between the parties. Defendant also asserts that, even if there was a contract, Plaintiff "cannot show that [Defendant's] alleged conduct breached any duty of good faith and fair dealing."¹⁸ Edwards responds that an implied covenant of good faith and fair dealing is present because there is an at-will employment contract between the parties and that Marriott "acted in contravention of [Plaintiff's] reasonable expectations of employment."¹⁹ In reply, Defendant avers that "[i]t is doubtful that the Supreme Court of the Virgin Islands will hold that [a duty of good faith and fair dealing is] implied from at-will employment contracts".²⁰

¹⁶ *Walter v. Netherlands Mead, N.V.*, 9 V.I. 438, 451 (D.V.I. 1973) (employee may be terminated for material breach of employment contract).

¹⁷ May 23, 2014, First Amended Complaint, Count II.

¹⁸ Defendant's July 1, 2014, Memorandum in Support of Motion to Dismiss and for Summary Judgment, pp. 8-9.

¹⁹ Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment, pp. 12 and 18.

²⁰ Defendant's September 5, 2014, Reply in Support of [Defendant's] Motion to Dismiss and For Summary Judgment, p. 4.

In 2013, the Supreme Court of the Virgin Islands held that “[t]he duty of good faith limits the parties’ ability to act unreasonably in contravention of the other party’s reasonable expectations. A successful claim ... requires proof of acts amounting to fraud or deceit on the part of the employer.”²¹ And in 2014, the Third Circuit held that the implied covenant of good faith and fair dealing may lie even in the absence of an express contract.²² Therefore, although the covenant may apply to parties who are not bound by an express contract, the aggrieved party must establish at least an implied contract plus either fraud or deceit on the part of the other party. As Plaintiff points out, the “covenant of good faith and fair dealing... [is] merely the recognition of the general requirement that parties to a contract must act in good faith.”²³ This covenant, then, applies to both parties.

Even if the Court were to find that Plaintiff’s at-will employment created a contractual relationship between the parties, Edwards must also establish either fraud or deceit on the part of the Marriott. “Fraud means an intention to deceive,”²⁴ while deceit involves “[t]he act of intentionally giving a false impression”.²⁵ Plaintiff was aware that having a physical altercation on Defendant’s property could result in termination without warning, and he admits to having a physical altercation on Defendant’s property. All inferences are drawn in favor of the non-moving party,²⁶ but, in order to survive summary judgment, the non-moving party must present

²¹ *Chapman v. Cornwall*, 58 V.I. 431, at *5 (V.I. May 15, 2013) (citing *Pennick v. V.I. Behavioral Serv., Inc.*, No.2006-0060, 2012 WL 593137, at *3 (D.V.I. App. Div. Feb. 22, 2012) (internal quotation marks and citations omitted) (unpublished) and *Francis v. Pueblo Xtra Intern., Inc.*, 412 Fed. Appx. 470, 475 (3d Cir.2010). Although Plaintiff correctly points out that the Supreme Court did not conduct a *Banks* analysis in *Chapman*, and this Court is not bound by otherwise binding precedent that does not perform a *Banks* or *Banks*-like analysis, *Gov’t v. Connor*, S. Ct. Civ. No. 2013-0095, 2014 WL 702639, at *3 and n.1 (V.I. Feb. 24, 2014) (citations omitted), the Court sees no reason to – and is not required to – deviate from the Supreme Court’s decision.

²² *Greene*, 557 F. App’x at 201 (citing *Jang v. Boston Scientific Scimed, Inc.*, 729 F.3d 357, 365 (3d Cir.2013)).

²³ Plaintiff’s August 15, 2014, Opposition to Defendant’s Motion to Dismiss and For Summary Judgment, p. 15.

²⁴ *Lord v. Goddard*, 54 U.S. 198, 211, 14 L. Ed. 111 (1851)

²⁵ DECEIT, BLACK’S LAW DICTIONARY (9th ed. 2009). The terms “fraud” and “deceit” are not mutually exclusive.

²⁶ *Etienne*, 2001 WL 1568598, at *2 (citing to *Matsushita*, 475 U.S. at 587-588).

evidence that amounts to “more than a scintilla, but may amount to less than a preponderance.”²⁷ Plaintiff fails to establish how he was intentionally misled by the Defendant. Although Edwards also requests additional time to discover evidence of the reasonable expectations of the parties, he fails to state, even once,²⁸ what expectations he had that negated those found in Marriott’s Handbook or Conditions of Employment.²⁹ Thus Plaintiff fails to state a claim upon which relief can be granted.

B. PLAINTIFF FAILED TO ESTABLISH A PRETEXTUAL REASON FOR HIS DISCHARGE, LET ALONE ONE AMOUNTING TO FRAUD OR DECEIT ON THE PART OF THE DEFENDANT.

Although Plaintiff’s own admissions support a conclusion that his termination was within the realm of the parties’ reasonable expectations, Plaintiff argues that he was terminated for pretextual reasons unrelated to the October 10, 2013, incident.³⁰ Edwards claims that “Defendant systematically sets up employees for termination on pretextual grounds once the employee has achieved a high level of seniority and the pay commensurate to that seniority.”³¹ However, Plaintiff has failed to “set forth specific facts showing that a genuine issue of material fact exists and that a reasonable factfinder could rule in its favor”³² in his numerous submissions to the Court.³³ Plaintiff does not support his allegation with even a scintilla of evidence – let alone enough to support a claim for fraud or deceit. Edwards does not provide a single name,

²⁷ *Modern Day Construction*, 2013 WL 2996549, at *2 (quoting *Wheatley*, 2012 WL 203480 at *2).

²⁸ This amount is less than a scintilla.

²⁹ Additionally, Plaintiff admits to being an at-will employee, and, as discussed above, at-will employees can be terminated at any time, without cause, as long as the termination is not in violation of the Virgin Islands Wrongful Discharge Act.

³⁰ Plaintiff’s August 15, 2014, Opposition to Defendant’s Motion to Dismiss and For Summary Judgment, p. 2.

³¹ *Id.*

³² *Wheatley*, 2012 WL 203480 at *2 (quoting *Crossley*, 2011 WL 1107868, at *3) (in turn quoting *Ridgewood*, 172 F.3d at 252).

³³ April 16, 2014, Complaint; May 23, 2014, Amended Complaint; August 15, 2014, Response to Defendant’s Statement of Undisputed Facts in Support of Defendant’s Motion for Summary Judgment and Counterstatement of Undisputed Facts; August 15, 2014, Opposition to Defendant’s Motion to Dismiss and for Summary Judgment.

date, witness or document in support of his alleged pretextual firing, nor evidence of the Defendant's "standard practice". As a result, Plaintiff has failed to meet his burden.

C. PLAINTIFF FAILS TO ESTABLISH HOW HIS OWN ACTIONS WERE THE RESULT OF FRAUD OR DECEIT ON THE PART OF THE DEFENDANT.

"Plaintiff alleges that the [Defendant] allowed Asner Bellvue to harass [Plaintiff] to the point where he got so frustrated [that Plaintiff] had a physical altercation [with Bellvue]."³⁴ Even if Plaintiff could establish that "Defendant willfully ignored the serious harassment of the Plaintiff by another employee,"³⁵ Plaintiff admits to having an altercation with a co-worker on Marriott's premises in violation of the Defendant's Conditions of Employment. Edwards fails to even allege that he was coerced by his employer to push Bellvue or that he acted in self-defense. Instead, Edwards states that he lost his temper after years of animosity between himself and his co-worker.³⁶ The Court is unable to fathom – and Plaintiff fails to establish – how Plaintiff's own actions are a result of any deceit or fraud on the part of the Defendant.

III. PLAINTIFF'S PRIMA FACIE TORT CLAIM IS INDISTINCT FROM HIS OTHER TORT CLAIMS.

In Count III, Plaintiff argues, in the alternative, that "the wrongful conduct of Defendant harmed Plaintiff and has caused [him] to suffer emotional distress and financial loss for which the [Defendant] is responsible."³⁷ Marriott argues that Edwards "does not allege any factual underpinning for his prima facie tort claim" and that the "prima facie tort claim clearly is duplicative of, and indistinct from, the other claims alleged in the Complaint".³⁸ Plaintiff responds that Count III is "pled as an alternative claim for relief" and "if all other counts are

³⁴ Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment, p. 18.

³⁵ *Id.*

³⁶ Plaintiff's May 23, 2014, Amended Complaint, pp. 2-3.

³⁷ Plaintiff's May 23, 2014, Amended Complaint, para. 45.

³⁸ Defendant's July 1, 2014, Memorandum in Support of Motion to Dismiss and for Summary Judgment, p. 11.

dismissed, Plaintiff has pled facts showing a wrong that falls within the ambit of prima facie tort that requires a factual determination by the jury.”³⁹ Marriott asserts that Plaintiff’s “prima facie tort claim is far from ‘distinct’ as it is based on the identical factual underpinnings of his other tort claims.”⁴⁰

A prima facie tort is a general tort,⁴¹ and “prima facie tort claims typically provide relief only where the defendant’s conduct ‘does not come within the requirements of one of the well-established and named intentional torts.’”⁴² In the Virgin Islands, claims that are “insufficiently ‘distinct’ from plaintiffs’ other, more established tort claims” are dismissed.⁴³ While Plaintiff is correct that alternative claims are permissible under FED. R. CIV. P. 8(d)(2), Plaintiff fails to

³⁹ Plaintiff’s August 15, 2014, Opposition to Defendant’s Motion to Dismiss and For Summary Judgment, p. 20.

⁴⁰ Defendant’s September 5, 2014, Reply in Support of [Defendant’s] Motion to Dismiss and For Summary Judgment, p. 6. The parties are singularly reminded of the requirements of LRCi 56.1(a)(2): Reply briefs are not an opportunity to reiterate arguments already before the Court but instead are to be limited to any additional facts raised, which benefits both the parties and the Court.

⁴¹ *Moore v. A.H. Riise Gift Shops*, 659 F. Supp. 1417, 1426 (D.V.I. 1987).

⁴² *Glenn v. Dunlop*, 423 F. App’x 249, 255 (3d Cir. 2011) (quoting RESTATEMENT (SECOND) OF TORTS § 870 cmt. a.). The Third Circuit only performed a partial *Banks*-like analysis discussing prima facie torts. However, while this Court is not required to follow otherwise binding precedent that was predicated solely on 1 V.I.C. § 4, *Connor*, S.Ct. Civ. No. 2013-0095, at *3 (citation omitted) and n. 1 (citations omitted), it sees no reason to deviate from the Third Circuit’s basic application of the requirements to establish a prima facie tort. Secondly, the term “prima facie tort” basically refers to the creation of a new, or expansion of an existing, tort; thus, performing a *Banks* analysis on what could conceivably be an immeasurable concept would be fruitless. See RESTATEMENT (SECOND) OF TORTS § 870, Reporter’s Note; PRIMA FACIE TORT, BLACK’S LAW DICTIONARY (9th ed. 2009). And, lastly, because the Superior Court has concurrent authority with the Virgin Islands Supreme Court to shape Virgin Islands common law, *Id.* at *3, citing *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967, 977-978 (V.I. 2011), this Court may recognize and even create new torts and other causes of action to further the interests of justice. See, for example, *Quinones v. United States*, 492 F.2d 1269, 1278 (3d Cir. 1974) (“New and nameless torts are being recognized constantly, and the progress of the common law is marked by many cases of first impression, in which the court has struck out boldly to create a new cause of action, where none had been recognized before When it becomes clear that the plaintiff’s interests are entitled to legal protection against the conduct of the defendant, the mere fact that the claim is novel will not of itself operate as a bar to the remedy”).

⁴³ *Glenn v. Dunlop*, 423 F. App’x 249, 255 (3d Cir. 2011) (citing to *Moore v. A.H. Riise Gift Shops*, 659 F.Supp. 1417, 1426 (D.V.I. 1987); *Gov’t Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 955 F.Supp. 441, 463 (D.V.I. 1997)). This is also in line with our jurisdiction’s recognition of the gist of the action doctrine, which “is designed to maintain the conceptual distinction between breach of contract claims and tort claims” and that, “[a]s a practical matter, the doctrine precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims.” *Pediatric Screening, Inc. v. TeleChem Intern., Inc.*, 602 F. 3d 541, 548 (3d Cir. 2010) (quoting *eToll, Inc. v. Elias/Savion Adver., Inc.*, 811 A.2d 10, 14 (2002)). The doctrine prevents parties from unfairly seeking a second bite at the same apple.

argue what “new” tort he intends to pursue and fails to plead any facts to support a claim for another tort in addition to and distinct from the claims already alleged.

IV. EDWARDS’ TERMINATION WAS NOT IN VIOLATION OF THE VIRGIN ISLANDS WRONGFUL DISCHARGE ACT.

Plaintiff states in Count V that his discharge was in violation of the Virgin Islands Wrongful Discharge Act and that “he had a statutory right to continued employment with Defendant so long as he did not engage in the conduct prescribed by [Section 76 of the Wrongful Discharge Act]”;⁴⁴ but Defendant argues that the Wrongful Discharge Act “should not be used as a means of thwarting an employer’s nondiscriminatory efforts to insist on higher standards.”⁴⁵ Edwards responds that “his discharge was wrongful because Defendant was arbitrary in its application of the Wrongful Discharge Act in that it chose to selectively enforce the lawful bases of discharge and because Plaintiff alternatively pleads that the Defendant systematically terminates employees with over 20 years’ experience”.⁴⁶ Marriott replies that “the evidence shows that [Defendant] terminated [Plaintiff] for a lawful reason, i.e., for willfully violating its reasonable rule prohibiting associates from hitting or pushing others on company premises.”

“The [Wrongful Discharge Act] provides that an employer can lawfully fire an employee for one of nine enumerated reasons” and, “as a result, the WDA amounts to a ‘statutory abrogation of the common law rule of at-will employment applicable in the Virgin Islands.’”⁴⁷ “[A]n employer is prohibited from firing an employee for any reason not listed” in Section 76(a),

⁴⁴ Plaintiff’s May 23, 2014, Amended Complaint, para. 54.

⁴⁵ Defendant’s July 1, 2014, Memorandum in Support of Motion to Dismiss and for Summary Judgment, p. 15 (quoting *Diaz-Velez v. Culusvi, Inc.*, 2012 WL 2332285, at *4 (D.V.I. June 14, 2012) (further citations omitted).

⁴⁶ Plaintiff’s August 15, 2014, Opposition to Defendant’s Motion to Dismiss and For Summary Judgment, p. 21.

⁴⁷ *Maynard*, 675 F.3d at 228-29 (3d Cir. 2012) (citing 24 V.I.C. § 76(a) and quoting *Kretzer v. Hess Oil V.I. Corp.*, 218 F.Supp.2d 724, 728 (D.V.I. 2002)).

and “[a] presumption exists ‘that an employee has been wrongfully discharged if discharged for any reason other than those listed in Section 76(a).’”⁴⁸

While the parties appear to rely on the analytic outline provided by the District Court of the Virgin Islands in *Rajbahadoorsingh v. Chase Manhattan Bank, NA*,⁴⁹ that case is not binding upon this Court. *Rajbahadoorsingh* created a burden-shifting framework whereby “a plaintiff must first establish a prima facie case of wrongful discharge... [which] requires a showing that: ‘(1) he was an employee; (2) of a covered employer; (3) he was discharged; and (4) the discharge was wrongful.’ The employer then bears the burden of production ‘to articulate some legitimate, statutorily-approved reason for the plaintiff’s discharge.’”⁵⁰ While this Court is free to adopt this framework under the power it shares concurrently with the Supreme Court of the Virgin Islands to create local law, it declines to make such a blanket adoption at this time. In *Maynard v. Rivera*,⁵¹ a matter that is binding upon this Court, the Third Circuit Court of Appeals expressed reservations in adopting this framework, and the Virgin Islands Supreme Court has yet to address the subject. However, like the Third Circuit in *Maynard*, this Court need not resolve the issue here. The parties do not dispute that Edwards was an employee;⁵² that Marriott was a covered employer;⁵³ and that the Plaintiff was discharged.⁵⁴ Plaintiff presents not an iota of evidence that his discharge was pretextual. Nor does he offer either statutory or case law in support of his argument that Defendant was required to also terminate Bellvue, who, unlike Plaintiff, has

⁴⁸ *Id.* (quoting *Gonzalez v. AMR*, 549 F.3d 219, 222 (3d Cir.2008)).

⁴⁹ 168 F.Supp.2d 496 (D.V.I. 2001).

⁵⁰ *Maynard*, 675 F.3d at 228-29 (quoting *Rajbahadoorsingh*, 168 F.Supp.2d at 504-505).

⁵¹ 675 F.3d 225, 228-29 (3d Cir. 2012).

⁵² Plaintiff’s Response to Defendant’s Statement of Undisputed Facts in Support of Defendant’s Motion for Summary Judgment, para. 1.

⁵³ Defendant’s Reply in Support of [Its] Motion to Dismiss and for Summary Judgment, p. 7.

⁵⁴ Plaintiff’s Response to Defendant’s Statement of Undisputed Facts in Support of Defendant’s Motion for Summary Judgment, para. 26.

denied any dischargeable conduct in this matter.⁵⁵ (And, even if the coworker admitted to or was found to have committed a terminable infraction, the parties acknowledge that an employee *may* – not *must* – be terminated for workplace violence.⁵⁶) Instead, Defendant proffers – and Plaintiff admits to – conduct that falls within the fourth reason of Section 76(a), which permits the termination of an employee “who willfully and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer”.⁵⁷ The Court finds that Defendant’s rule that it may terminate, without warning, employees who push someone while on Defendant’s property is reasonable, and Plaintiff admits to willfully disobeying this rule. Therefore, Edwards’ termination was not in violation of the Virgin Islands Discharge Act.

V. NEITHER DEFENDANT’S ACT OF EXERCISING ITS RIGHT TO TERMINATE PLAINTIFF FOR AN INFRACTION THAT PLAINTIFF ADMITS TO COMMITTING NOR DEFENDANT’S EXERCISE OF ITS LEGAL RIGHT TO REMOVE THE PLAINTIFF FROM ITS PROPERTY CONSTITUTE OUTRAGEOUS ACTS TO SUPPORT PLAINTIFF’S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

In Count VI, Plaintiff states that Defendant’s “actions were so outrageous in character and extreme in degree as to be regarded as atrocious and utterly intolerable in a civilized society.”⁵⁸ Marriott argues that “it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress,” and, as such, Plaintiff’s claims are “insufficient as a matter of law”.⁵⁹ Edwards responds that “Defendant not only terminated his employment but then had him removed from his more profitable taxi location to a much less profitable taxi

⁵⁵ *Id.* at paras. 11-14.

⁵⁶ *Id.* at paras. 4, 6-8.

⁵⁷ It appears that the termination may also be appropriate under 76(a)(9): “[C]onduct is such that it leads to the refusal, reluctance or inability of other employees to work with him.”

⁵⁸ Plaintiff’s May 23, 2014, Amended Complaint, para. 63.

⁵⁹ Defendant’s July 1, 2014, Memorandum in Support of Motion to Dismiss and for Summary Judgment, pp. 19-20 (quoting *Govt. Guar.*, 955 F.Supp. at 452.

location, both actions that severely limited [Plaintiff's] ability to support his family, which is conduct that is so odious in as to be considered extreme and outrageous.”⁶⁰ Defendant replies that it was “[Defendant's] own acts, which violated [Defendant's] policies, [that] affected his ability to support his family.”⁶¹

“Applying a *Banks* analysis, the Court finds that Restatement (Second) of Torts § 46 reflects the common law of this jurisdiction.”⁶² Plaintiff must demonstrate that “the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community,” such that “the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’”⁶³ Again, Edwards has admitted to striking a coworker while on Defendant's property in violation of Marriott's Conditions of Employment, and Plaintiff acknowledges that he was aware that this was, at the employer's discretion, a terminable offense. In similar matters that have addressed the application of Restatement (Second) of Torts § 46 to a dismissal, courts have found that, if the employer had the right to dismiss an employee for certain actions or inactions, a claim for intentional infliction of emotional distress cannot lie simply because the employee was terminated.⁶⁴ Similarly, even if the Defendant did not have the right to remove Plaintiff from its

⁶⁰ Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment, p. 23.

⁶¹ Defendant's September 5, 2014, Reply in Support of [Defendant's] Motion to Dismiss and For Summary Judgment, p. 9.

⁶² A *Banks* analysis – and acceptance of – Restatement (Second) of Torts § 46 was conducted in *Joseph v. Sugar Bay Club & Resort, Corp.*, ST-13-CV-491, 2014 WL 1133416, at *3 (V.I. Super. Mar. 17, 2014). Binding precedents have also acknowledged that the Virgin Islands recognizes a claim for intentional infliction of emotional distress and application of Restatement (Second) of Torts § 46 to the claim. For example, *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 251 (3d Cir. 2010) (on appeal from D.V.I.); *Berry v. Jacobs IMC, LLC*, 99 F. App'x 405, 410 (3d Cir. 2004) (on appeal from D.V.I.).

⁶³ Restatement (Second) of Torts § 46, cmt. d.

⁶⁴ For example, *Flibotte v. Pennsylvania Truck Lines, Inc.*, 131 F.3d 21, 27 (1st Cir. 1997), cert. denied 523 U.S. 1123, 118 S.Ct. 1806, 140 L.Ed.2d 945 (1998); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1068 (9th Cir.

property, the Court finds that calling Plaintiff's VITA supervisor to advise him that Plaintiff was no longer welcome on Defendant's property does not constitute outrageous conduct. Plaintiff's claim for intentional infliction of emotional distress does not survive summary judgment.

VI. BECAUSE THERE MAY BE AN ISSUE OF MATERIAL FACT, THE PARTIES SHALL PROVIDE ADDITIONAL BRIEFING REGARDING PLAINTIFF'S CLAIM FOR TORTIOUS INTERFERENCE WITH A BUSINESS RELATION.

In Count VII, Edwards states that "Defendant has no control over the taxi stand [on its Property] or the drivers who run fares from that taxi stand" and that "Defendant has no right to bar taxi drivers from the taxi stand [on Plaintiff's property]."⁶⁵ Defendant argues that Plaintiff "has not pled sufficient facts to support the existence of... any employment contract between him and VITA... that obligated VITA to station him out of its taxi stand on [Defendant's property]."⁶⁶ Plaintiff responds that "[i]f the interest of the other has already been consolidated in a binding legal obligation of a contract... that interest will normally outweigh the actor's own interest in taking that established right from him".⁶⁷ Defendant replies that "[n]o reasonable jury could conclude that [Defendant's] conduct was improper."⁶⁸

"It has long been held that a stranger to a contract may be liable in tort for intentionally interfering with the performance of the contract."⁶⁹ Edwards makes his claim for tortious interference under Restatement (Second) of Torts § 766.⁷⁰ To support a claim for tortious

2002); *Childers v. Chesapeake & Potomac Tel. Co.*, 881 F.2d 1259, 1266 (4th Cir. 1989); *Rush v. United Technologies, Otis Elevator Div.*, 930 F.2d 453, 456 (6th Cir. 1991).

⁶⁵ Plaintiff's May 23, 2014, Amended Complaint, paras. 66-67.

⁶⁶ Defendant's July 1, 2014, Memorandum in Support of Motion to Dismiss and for Summary Judgment, pp. 19.

⁶⁷ Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment, p. 25 (quoting RESTATEMENT (SECOND) OF TORTS § 767).

⁶⁸ Defendant's September 5, 2014, Reply in Support of [Defendant's] Motion to Dismiss and For Summary Judgment, p. 11.

⁶⁹ *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126, 791 P.2d 587, 589 (1990) (citing *Lumley v. Gye* (1853) 2 El. & Bl. 216 [118 Eng.Rep. 749]; *Imperial Ice v. Rossier* (1941) 18 Cal.2d 33, 112 P.2d 631, and cases cited).

⁷⁰ Plaintiff's August 15, 2014, Opposition to Defendant's Motion to Dismiss and For Summary Judgment, p. 24.

interference with business relations with a third party pursuant to Section 766, the movant must establish that (1) the accused intentionally (2) and improperly interfered (3) with the performance of a contract between the movant and a third party (4) by inducing or preventing a third party from performing the contract.⁷¹ Section 766 requires that the third party fail to perform in the entirety. Because Plaintiff states that he continues to work with the VITA under the same contract, his claim is actually one for intentional interference with another's performance of his own contract pursuant to Restatement (Second) of Torts § 766A. To support a claim under Section 766A, movant must establish that (1) the accused intentionally (2) and improperly interfered (3) with the performance of a contract between the movant and a third party (4) by preventing the movant from performing the contract or causing his performance to be more expensive or burdensome.^{72,73}

Summary judgment "cannot be entered unless the movant has established [both] its right[] to a judgment with such clarity as to leave no room for controversy and [that] the other

⁷¹ *Benjamin v. Thomas Howell Grp.*, No. CIV.1996-071, 2002 WL 31573004, at *3 (D.V.I. App. Div., Apr. 22, 2002) aff'd sub nom. *Benjamin v. Gen. Accident Ins. Co. of Puerto Rico*, 90 F. App'x 434 (3d Cir. 2004) (citing RESTATEMENT (SECOND) OF TORTS § 766 (1979) and *Government Guar. Fund of Fin. v. Hyatt Corp.*, 35 V.I. 356, 369, 955 F.Supp. 441, 452 (D.V.I. 1997)).

⁷² *Barefoot Architect, Inc. v. Bunge*, 632 F.3d 822, 834 (3d Cir. 2011) (citing RESTATEMENTS (SECOND) OF TORTS § 766A). The Third Circuit and the Appellate Division did not conduct a *Banks* analysis in *Benjamin* or *Barefoot* before applying the Restatement (Second) of Torts. Although the Virgin Islands Supreme Court stated in *Connor*, 2014 WL 702639, n.1, that the Superior Court "need not consider itself foreclosed from adopting a different common law rule" than those cited by otherwise binding authority, the Superior Court need not do a *Banks* analysis here. As discussed, the Superior Court has concurrent authority with the Virgin Islands Supreme Court to shape Virgin Islands common law, *Id.* at *3, citing *Banks*, 55 V.I. at 977-978, and this Court sees no reason to deviate from the Third Circuit and Appellate Division's application of RESTATEMENTS (SECOND) OF TORTS §§ 766 and 766A. The Court finds the elements set forth in *Benjamin*, *Barefoot* and the RESTATEMENTS (SECOND) OF TORTS §§ 766 and 766A, as well as other portions of the Restatement clarifying or expanding upon these elements, to be the appropriate common law rules based on the unique characteristics and needs of the Virgin Islands.

⁷³ "Distinguish the two sections thusly: § 766 allows a plaintiff to recover if a third party fails entirely to perform (because such nonperformance actually harms the plaintiff, whereas simply making a third party's life more difficult does not necessarily injure anyone else), while § 766A allows the plaintiff to recover if he himself was forced either to fail to perform under a contract or to perform under more expensive or burdensome circumstances (because the plaintiff's nonperformance or extra expense actually harms him)." *Barefoot*, 632 F.3d at 834.

party is not entitled to recover under any discernable circumstances.”⁷⁴ “To rebut a summary judgment motion, the non-moving party may cite to any documentation in the record to demonstrate that the moving party has failed to meet its burden, and to demonstrate that issues of material fact exist.”⁷⁵ Plaintiff alleges that he can establish that a contract existed between himself and the VITA⁷⁶ that secured his right to placement at the taxi stand on Defendant’s property,⁷⁷ a right held with and without the approval of the property owner,⁷⁸ and that Defendant intentionally and improperly interfered with Plaintiff’s contract with the VITA by demanding that Plaintiff be removed from Defendant’s property.⁷⁹ Edwards, then, claims to identify or have evidence that may raise a genuine issue of material fact.⁸⁰

The Court affords the parties additional briefing to address Count VII, Tortious Interference with a Business Relation pursuant to Section 766A and other relevant citation, as well as to present evidence in support or in negation of whether and how the Defendant is clearly and contractually bound to the VITA to honor the VITA’s placement of drivers at taxi stand(s) operated on Defendant’s property, even over the Defendant’s objections and/or property rights. Although only the Superior Court is required to conduct *Banks* analyses,⁸¹ litigants are reminded

⁷⁴ *Etienne*, 2001 WL 1568598 at *2 (quoting *Bottle v. Industrious*, 26 V.I. 83, 85 (Terr. Ct. 1991)).

⁷⁵ *Gumbs-Heyliger v. CMW & Associates Corp.*, No. CV 2012-078, 2014 WL 3360152, at *2 (D.V.I. July 9, 2014) (citing FED. R. CIV. P. 56(c) and *Barefoot Architect, Inc. v. Bunge*, 632 F.3d 822, 826 (3d Cir.2011)).

⁷⁶ Plaintiff’s August 15, 2014, Opposition to Defendant’s Motion to Dismiss and For Summary Judgment, p. 24.

⁷⁷ *Id.* at 25.

⁷⁸ *Id.* at 26.

⁷⁹ *Id.* at 27.

⁸⁰ Although Plaintiff’s declaration lacks the specificity requirement of FED. R. CIV. P. 56(d), the Court will allow additional briefing in the interests of judgment and finality of claims.

⁸¹ Pursuant to the Virgin Islands Supreme Court’s holding in *Banks*, parties – and indeed, this Court – can no longer automatically and uncritically rely on non-binding authority when discussing the best common law for the Virgin Islands. 55 V.I. at 979; *Connor*, 2014 WL 702639, at *n. 1. *Connor* also recognized 1 V.I.C. § 4, which allowed for application of the Restatements of Law in the absence of local laws to the contrary, as repealed by the Virgin Islands Legislature’s 2004 adoption of 4 V.I.C. § 21, which established the Virgin Islands Supreme Court. The only decisions binding upon this Court are those rendered by the Virgin Islands Supreme Court; the Third Circuit Court of Appeals, when serving as the de facto court of last resort in the Virgin Islands; and the Appellate Division of the District Court of the Virgin Islands. *Najawicz*, 2013 WL 1095416; *Connor*, 2014 WL 702639; *Simon v. Joseph*, 59

to be conscientious in citing binding authority within our jurisdiction. The parties should be prepared to address: (1) whether any cited authority is binding upon this Court or presented as persuasive authority; and (2) if persuasive, why the Court should adopt this view as the “appropriate... rule based on the unique characteristics and needs of the Virgin Islands” and the parties.⁸²

CONCLUSION

Edwards admits to being an at-will employee, and at-will employees may be terminated at any time, without cause, as long as the termination is not in violation of the Virgin Islands Wrongful Discharge Act or in bad faith. The Court finds that, because Plaintiff admits to pushing a coworker on Defendant’s property in violation of Defendant’s Conditions of Employment, neither the Wrongful Discharge Act nor the covenant of good faith and fair dealing were violated in this instance.

Even if, as Plaintiff argues, the at-will employment created a contractual relationship between the parties, Plaintiff admits that he was aware that pushing another person while on

V.I. 611 (2013). All other holdings, including decisions rendered by courts outside of the Virgin Islands, as well as the Restatements, law review commentaries, and pre-*Banks* common law decisions of the Virgin Islands Supreme Court, Third Circuit and Appellate Division, are merely persuasive. *Connor*, 2014 WL 702639; *Simon*, 59 V.I. 611. As a result, “the Superior Court, when considering a question not foreclosed by prior precedent... must perform a three-part analysis as set forth in *Banks*.” *Connor*, S.Ct. Civ. No. 2013-0095, at *3. A *Banks* analysis involves:

- (1) assertion of “whether any... local courts have considered the issue and rendered any decisions upon which litigants may have grown to rely;”
- (2) determination of the “position taken by a majority of courts from other jurisdictions;” and
- (3) identification of “the best rule for the Virgin Islands”.

Id. Additionally, this Court “possesses, in the absence of binding precedent... concurrent authority with [the Virgin Islands Supreme Court] to shape Virgin Islands common law,” and it need not even follow otherwise binding precedent that was predicated solely on 1 V.I.C. § 4. *Connor*, 2014 WL 702639, at n. 1.

⁸² See VIRGIN ISLANDS RULES OF PROFESSIONAL CONDUCT R. 211.3.1, Meritorious Claims and Contentions (“A lawyer shall not... assert or controvert an issue... unless there is a basis in law and fact for doing so... which includes a good faith argument for an extension, modification or reversal of existing law”) and *Cacciamani and Rover Corp. v. Banco Popular De Puerto Rico*, S. Ct. Civ. No. 2013-0063, 2014 WL 4262098, n. 2 (V.I. Aug. 29, 2014) (citing *Benjamin v. Coral World V.I., Inc.*, Super. Ct. Civ. No. 294/2013 (STT), 2014 WL 2922306, n. 38 (V.I. Super. Ct. June 12, 2014)) (warning litigants that simply citing the Restatements and other non-binding authorities may result in finding the motions to be insufficient).

Marriott's property could result in discharge without warning. Therefore, the termination was within the reasonable expectations of the parties.

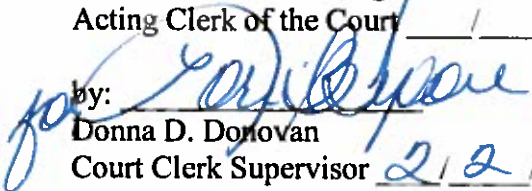
Defendant's motion for summary judgment is granted as to Counts I, II, III, V, and VI. Because the Court finds there may be issues of material fact regarding Count VII, Tortious Interference, the Court affords the parties an opportunity for additional briefing on this issue. An appropriate order is issued herewith.

Dated: January 29, 2015



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

Attest: Estrella H. George
Acting Clerk of the Court _____

by: 

Donna D. Donovan

Court Clerk Supervisor

2/2/15