

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

EVADINE DAVIS,	)	
	)	CASE NO. ST-16-CV-656
Plaintiff,	)	
-vs-	)	
	)	ACTION FOR WRONGFUL
BP CONSULTING VI. LLC, SKYLAR	)	TERMINATION, BREACH OF
RESOURCES LP, SKYLAR CAPITAL	)	CONTRACT AND DAMAGES
ADVISERS, LP, SKYLAR RESOURCES GP,	)	
LLC, and BRISA MAX HOLDINGS VI, LLC,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on the following:

- 1) Defendants' Motion to Dismiss Plaintiff's Complaint, filed on November 28, 2016;
- 2) Plaintiff Evadine Davis's Opposition to Defendants' BP Consulting VI, LLC, Skylar Resources, LP, Skylar Capital Advisers LP, Skylar Resources GP, LLC and Brisa Max Holdings, VI, LLC, Motion to Dismiss Plaintiff's Complaint, filed on December 16, 2016; and
- 3) Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint, filed on January 4, 2017. ¹

The Court will grant in part and deny in part Defendants' Motion to Dismiss Plaintiff's Complaint. With respect to Count I (Wrongful Discharge), the Court finds that Plaintiff's Complaint adequately states a claim for wrongful discharge in accordance with V.I. CODE ANN. tit. 24, § 76. With respect to Count II (Breach of Covenant of Good Faith and Fair Dealing), the Court will grant Defendants' Motion to Dismiss Plaintiff's Complaint because Plaintiff fails to plead fraud or deceit on the part of Defendants. However, the Court will deny Count III (Breach of Contract) because Plaintiff's Complaint adequately states a claim for breach of contract.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Evadine Davis entered into a one (1) year contract to work with Defendant BP Consulting VI, LLC as an Accounting and Administrative Assistant.² The contract required Plaintiff to commence her employment on July 22, 2015 with a salary of Sixty-Two Thousand

¹ Plaintiff Evadine Davis is represented by Attorney Clive Rivers. Defendants are represented by Attorney Gordon C. Rhea.

² Compl. ¶ 8.

Five Hundred Dollars (\$62,500.00) annually plus a bonus of Three Thousand Dollars (\$3,000.00) annually prorated to December 2015.³

Plaintiff was allegedly promised additional benefits, including but not limited to twenty (20) days paid time off and moving expenses from her residence in Georgia to the Virgin Islands.⁴ Plaintiff arrived, started working, and learned that she was working for four (4) additional companies – Skylar Resources LP, Skylar Capital Advisers, LP, Skylar Resources GP, LLC and Brisa Max Holdings, LLC.⁵

Plaintiff alleges that during her tenure at Defendants' employment, she performed her work in a satisfactory manner.⁶ However, Plaintiff was asked to perform certain "demeaning domestic chores for her employer" and she refused to perform such tasks.⁷ In addition, Plaintiff saw certain financial records of the owner, namely a personal tax return.⁸ As a consequence, Plaintiff was dismissed.⁹

On the basis of these allegations, Plaintiff asserts three causes of action in her Complaint filed on November 3, 2016: (1) wrongful discharge pursuant to 24 V.I.C. § 76; (2) breach of contract; and (3) breach of covenant of good faith and fair dealing.

MOTION TO DISMISS STANDARD

"The adequacy of a complaint is governed by Rule 8 of the Federal Rules of Civil Procedure."¹⁰ A complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief."¹¹ To survive a motion to dismiss for failure to state a claim upon which relief can be granted, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim for relief that is plausible on its face.'"¹² All material allegations in the complaint are taken as true, and the Court must construe all facts in a light most favorable to the non-moving party.¹³ However, a plaintiff is obliged to provide "more than labels and conclusions."¹⁴ Determining whether a complaint states "a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."¹⁵ In making the plausibility determination, the Supreme Court of the Virgin Islands instructs that:

³ Compl. ¶ 9.

⁴ Compl. ¶ 10.

⁵ Compl. ¶ 12.

⁶ Compl. ¶ 14.

⁷ Compl. ¶ 15.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Brady v. Cintron*, 55 V.I. 802, 822 (V.I. 2011). Federal Rule of Civil Procedure 8 applies to this proceeding through the operation of Superior Court Rule 7.

¹¹ FED. R. CIV. P. 8(a)(2).

¹² *Ashcroft v. Iqbal*, 559 U.S. 662, 677 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2002)).

¹³ *L'Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 206–170, 2010 WL 924259, at *1 (D.V.I. Mar. 11, 2010) (citing *Christopher v. Harbury*, 536 U.S. 403, 406 (2002)).

¹⁴ *Twombly*, 550 U.S. at 555.

¹⁵ *Iqbal*, 559 U.S. at 679.

First, the court must 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 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.¹⁶

If the remaining facts are sufficient enough for the court to draw a reasonable inference that the defendant is liable based on the elements the plaintiff must plead, then the claim is considered plausible.¹⁷

ANALYSIS

I. Plaintiff's Complaint adequately states a claim for wrongful discharge pursuant to 24 V.I.C. § 76 (Count I).

Defendants argue that Plaintiff's claim for wrongful discharge must fail for two reasons: (1) Plaintiff has not alleged sufficient facts to demonstrate that she is an employee under the statute; and (2) Plaintiff has not alleged conduct which, even if true, would constitute a wrongful discharge on the part of any Defendant.¹⁸ With respect Plaintiff's status as an employee, Defendants argue that Plaintiff has failed to allege that she was employed for at least six calendar months as required by V.I. CODE ANN. tit. 24, § 62. While the Complaint states that her employment began on July 22, 2015, the Complaint does not provide Plaintiff's date of termination.¹⁹ Therefore, Defendants seek to dismiss the Complaint for failure to plead the crucial employment duration element of a claim under the Virgin Islands Wrongful Discharge Act (the "WDA").²⁰ With respect to conduct which would constitute a wrongful discharge, Defendants argue that if a person "wilfully and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer" that person may be discharged lawfully under the WDA.²¹ In other words, whether a task is demeaning is irrelevant to the WDA, however, what is relevant is whether the task is lawful and the domestic tasks Plaintiff was asked to perform are, in fact, lawful.²²

Plaintiff counters that in accordance with the WDA if an employee is not terminated from employment for one of the enumerated reasons, there is a presumption that the employee was

¹⁶ *Brady v. Cintron*, 55 V.I. 802, 822-23 (V.I. 2011) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649-50 (V.I. 2011)).

¹⁷ *Id.*

¹⁸ Defs. Mot. to Dismiss Complaint, 2, Nov. 28, 2016.

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

wrongfully discharged.²³ Plaintiff argues that she performed her work in a competent manner²⁴ and that Defendants never provided Plaintiff with a reason for her termination.²⁵ Plaintiff was treated “so badly by Defendants that she was basically forced off of their premises and out of work.”²⁶ Ultimately, Plaintiff argues she was, in fact, employed by Defendants and thereafter she was wrongfully discharged. Therefore, Plaintiff has a claim for wrongful discharge under 24 V.I.C. § 76.

Section 76 of the Virgin Islands Code provides, in pertinent part, that “[u]nless modified by union contract,” an employer may dismiss any employee for the enumerated reasons in subsection (a) such as in the event that an employee wilfully and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer and if an employee performs her work assignments in a negligent manner.²⁷

“Any employee discharged for reasons other than those stated in subsection (a) of this section shall be considered to have been wrongfully discharged,” provided that the employee was not terminated “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.”²⁸ An employee has no viable claim for wrongful discharge where statutory grounds for discharge were modified by her collective bargaining agreement, as allowed by the WDA.²⁹

In *Rennie v. Hess Oil*, the Supreme Court of the Virgin Islands held that, in order to state a claim for wrongful discharge, the plaintiff needs to plead that Defendants were her employer and that Defendants wrongfully discharged her.³⁰ Therefore, Plaintiff need not anticipate in her Complaint any affirmative defenses Defendants might raise in its answer, such as the permissible grounds for discharge set forth in the statute.³¹

Similarly, in *Joseph v. Sugar Bay Club & Resort, Corp.*, the Supreme Court of the Virgin Islands relied on *Rennie v. Hess Oil* in reversing the Superior Court’s decision and order dated March 17, 2014.³² The Supreme Court held that Plaintiff Lamont Joseph (“Joseph”) had sufficiently stated a claim for wrongful discharge by pleading that (1) Joseph was employed by Defendant and (2) Defendant terminated Joseph on or about July 16, 2013.³³ Therefore, the Superior Court erred in dismissing Joseph’s claim for wrongful discharge.³⁴

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ 24 V.I.C. § 76 (a).

²⁸ 24 V.I.C. § 76 (c).

²⁹ *Allard v. Hess Oil V.I. Corp.*, 43 F. Supp. 2d 551, 40 V.I. 197 (D.V.I. 1999).

³⁰ *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 533 (V.I. 2015).

³¹ *Id.*

³² *Joseph v. Sugar Bay Club & Resort, Corp.*, No. 2014-0048, 2015 V.I. Supreme LEXIS 4, at *1 (V.I. Feb. 17, 2015).

³³ *Id.*

³⁴ *Id.*

In the instant case, Plaintiff asserts that she was employed by Defendants. Second, Plaintiff argues that she was wrongfully terminated because she was “asked to perform certain demeaning domestic chores for her employer” and “she refused.”³⁵ In addition, Plaintiff “saw certain financial records of the owner, namely his personal tax return.”³⁶ Such reasons fall outside of the ones articulated in subsection (a) of section 76 and, as such, the Court finds that Plaintiff has stated a claim for wrongful discharge. Therefore, the Court will deny Defendants’ Motion to Dismiss Plaintiff’s Complaint with respect to wrongful discharge (Count I).

II. Plaintiff’s Complaint fails to adequately state a claim for breach of covenant of good faith and fair dealing (Count II).

Defendants argue that Plaintiff failed to adequately state a claim for breach of covenant of good faith and fair dealing. Specifically, Defendants argue that the Complaint should be dismissed for the following reasons: 1) Plaintiff makes the conclusory allegation in her Complaint that the mere fact of Plaintiff’s termination can form the basis for a claim for breach of covenant of good faith and fair dealing; and 2) Plaintiff makes no allegation of fraud or deceit on behalf of Defendants.

In opposition, Plaintiff argues that a contract existed between the parties.³⁷ With respect to fraudulent conduct, Plaintiff argues that Defendants engaged in conduct that was deceitful and otherwise inconsistent with the purpose of the agreement or the reasonable expectations of the parties.³⁸ Plaintiff argues that by having to work for other companies and being required to engage in tasks unrelated to accounting or administrative assistance, Defendants engaged in a form of deception.³⁹ Further, she contends that she had no reasonable expectation that she would be assigned menial tasks as part of her employment.⁴⁰

The Supreme Court of Virgin Islands has held:

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement . . . the 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. Fraud means an intention to deceive,” while deceit in this context involves “[t]he act of intentionally giving a false impression.”⁴¹

³⁵ Compl. ¶ 15.

³⁶ Compl. ¶ 15.

³⁷ Compl. ¶ 8.

³⁸ Pl. Opp., 5, Dec. 16, 2016.

³⁹ *Id.* at 6.

⁴⁰ *Id.*

⁴¹ *Chapman v. Cornwall*, 58 V.I. 431, 442 (V.I. 2013) (internal citations and quotations omitted).

Plaintiff makes three main arguments in the Complaint with respect to a claim for breach of covenant of good faith and fair dealing. First, Plaintiff argues that Defendants entered into an employment agreement with Plaintiff, which has an “implied covenant of good faith and fair dealing by which the Defendants promised to give full cooperation to Plaintiff in the performance of the employment agreement and to refrain from an act which would prevent or impede Plaintiff from performing all conditions of the agreement to be performed by her and her ability to earn a living.”⁴² Second, Plaintiff argues that Defendants breached the implied covenant of good faith and fair dealing with regard to Plaintiff by terminating her without just cause.⁴³ Third, Defendants caused Plaintiff to suffer severe emotional distress, loss of wages, and benefits which would have been received, had Defendants not wrongfully terminated her.⁴⁴

However, Plaintiff fails to allege any act in the Complaint that amount to fraud or deceit on the part of the employer. Accordingly, the Court will grant Defendants’ Motion to Dismiss Plaintiff’s Complaint with respect to breach of covenant of good faith and fair dealing (Count II).

III. Plaintiff’s Complaint adequately states a claim for breach of contract (Count III).

Defendants assert several arguments with respect to Plaintiff’s breach of contract claim. First, Plaintiff has not provided any factual support for the allegation that a contract existed between the parties.⁴⁵ Second, the alleged employment contract must be supported by a writing under the Statute of Frauds and, as such, the Complaint must state facts that support a conclusion that such a writing exists.⁴⁶ Third, Plaintiff has not set out any facts to support the contention that Defendants breached a duty owed to her, even if a contract existed.⁴⁷ Fourth, the Complaint does not set out any facts demonstrating that Plaintiff suffered damages as a result of the alleged breach by Defendants.⁴⁸

Plaintiff counters that there was a contract between the parties. There was an offer and acceptance of employment along with written terms of employment.⁴⁹ Plaintiff argues there was a duty created by the employment contract because Plaintiff was engaged in employment for Defendants in exchange for a yearly salary and other benefits.⁵⁰ Therefore, Defendants had a duty to comply with its terms of employment and to treat Plaintiff in a courteous and professional manner.⁵¹

⁴² Compl. ¶ 19.

⁴³ Compl. ¶ 20.

⁴⁴ Compl. ¶ 21.

⁴⁵ Def. Mot to Dismiss, 2, Nov. 28, 2016.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Plaintiff’s Opposition, 7, Dec. 16, 2016.

⁵⁰ *Id.*

⁵¹ *Id.*

Having conducted a *Banks* analysis, the Superior Court of the Virgin Islands determined in *Merchants Commercial Bank v. Oceanside Village, Inc.* that to establish a breach-of-contract claim, a party must plead that a (1) contract existed, (2) that there was a duty created by that contract, (3) that such duty was breached, and (4) that the party suffered damages as a result.⁵²

With respect to the first element—whether a contract existed—Plaintiff alleges that she was “given” a one year contract to work with BP Consulting VI, LLC as an Accounting and Administrative Assistant.⁵³ Plaintiff also appears to argue that the contract for one year was “defined by various written and verbal communications.”⁵⁴ To the extent there was a written contract between Plaintiff and Defendants, Plaintiff has adequately pleaded the existence of a contract.

However, the Court finds that any verbal contract is void because it does not satisfy the Statute of Frauds. It is well established in the Virgin Islands that an employment contract is subject to the Statute of Frauds, pursuant to V.I. CODE ANN. tit. 28, § 244 and must comport with the requirements set forth therein to be deemed valid and enforceable.⁵⁵ An agreement not to be performed within one year is void unless there is a memorandum of the agreement in writing.⁵⁶ This applies to employment contracts for a duration of one year or more.⁵⁷ Given that Plaintiff alleges the existence of a written agreement, the Court finds that Plaintiff’s Complaint satisfies the first element for a breach of contract.

With respect to second element—duty created by the contract—Plaintiff asserts that in exchange for Plaintiff’s performance, Defendants promised to pay Sixty-Two Thousand Five Hundred Dollars (\$62,500.00) annually plus a bonus of Three Thousand Dollars (\$3,000.00) annually prorated to December 2015.⁵⁸ Defendants also promised additional benefits, including but not limited to twenty (20) days paid time off and moving expenses from her residence in Georgia to the Virgin Islands.⁵⁹ Such factual allegations give rise to a duty created by the contract. Therefore, Plaintiff has met her burden with respect to this element.

With respect to the third element—that such duty was breached—Plaintiff asserts that “Defendants breached the employment agreement between the parties by forcing her from her job without cause.”⁶⁰ By alleging the manner of the breach of her employment agreement by Defendants Plaintiff has met her burden with respect to the third element for a breach of contract.

With respect to the fourth element—that the party suffered damages as a result—Plaintiff asserts that “as a direct result and proximate result of this breach, Plaintiff suffered damages and

⁵² *Merchs. Commercial Bank v. Oceanside Vill., Inc.*, 64 V.I. 3, 14-15 (V.I. Super. Ct. 2015).

⁵³ Compl. ¶ 8.

⁵⁴ Compl. ¶ 24.

⁵⁵ *Cooper v. Vitracco, Inc.*, 8 V.I. 112 (D.V.I. 1970).

⁵⁶ 28 V.I.C. § 244(1).

⁵⁷ *Guye v. Lutheran Soc. Servs. of the V.I.*, 2011 V.I. LEXIS 92, *12 (V.I. Super. Ct. Feb. 10, 2011).

⁵⁸ Compl. ¶ 9.

⁵⁹ Compl. ¶ 10.

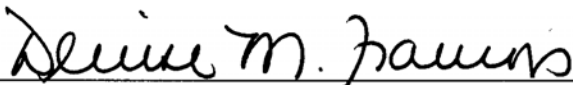
⁶⁰ Compl. ¶ 26.

will continue to suffer damages in the future as alleged above.”⁶¹ Plaintiff claims she suffered lost wages and loss of benefits.⁶² The Court finds that Plaintiff’s Complaint adequately states a claim for breach of contract. Therefore, the Court will deny Defendants’ Motion to Dismiss Plaintiff’s Complaint with respect to breach of contract (Count III).

CONCLUSION

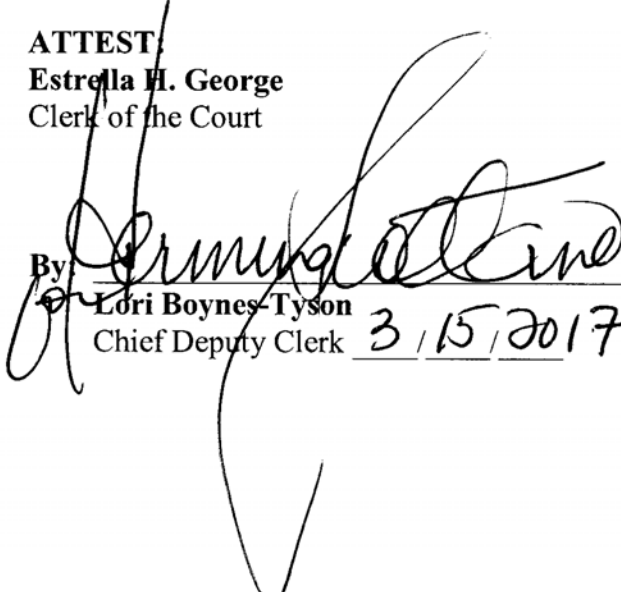
The Court will grant in part and deny in part Defendants’ Motion to Dismiss Plaintiff’s Complaint. With respect to Count I (Wrongful Discharge), the Court finds that Plaintiff’s Complaint states a claim for wrongful discharge in accordance 24 V.I.C. § 76. With respect to Count II (Breach of Covenant of Good Faith and Fair Dealing), the Court will grant Defendants’ Motion to Dismiss Plaintiff’s Complaint, however, the Court will deny Defendants’ Motion with respect to Count III (Breach of Contract).

DATED: 3/15/2017



DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court

By 

Lori Boynes-Tyson
Chief Deputy Clerk 3/15/2017

⁶¹ Compl. ¶ 27.

⁶² Compl. ¶ 22.