

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

**DAVID WILLIAMS,**

**PLAINTIFF,**

**V.**

**ANGELO GALIBER, M.D.; KEN OKOLO, M.D.;  
FRANK ABEDNEGO; AND MILIDAN ZAMORA,**

**DEFENDANTS.**

**SX-16-CV-277**

**ACTION FOR ABUSE OF PROCESS,  
INTERFERENCE WITH CONTRACT**

**CITE AS: 2019 VI SUPER 34**

**Appearances:**

**Eszart Wynter, Esq.**

Law Offices of Eszart A. Wynter, Sr., P.C.

Frederiksted, St. Croix, USVI

*For Plaintiff, David Williams*

**Tana McPherson, Esq.**

Office of the Attorney General

Christiansted, St. Croix, USVI

*For Defendants*

**MEMORANDUM OPINION and ORDER**

**WILLOCKS, Administrative Judge**

¶1 **THIS MATTER** is before the Court on Defendant Galiber's Motion to Dismiss (hereinafter "Motion"), filed June 1, 2016. Defendants Okolo, Abednego, and Zamora joined in the Motion on June 10, 2016. The Plaintiff filed a Motion in Opposition (hereinafter "Opposition") on or about July 19, 2016. This was followed by the Defendants' Reply on July 20, 2016.

**BACKGROUND**

¶2 The Plaintiff filed suit on April 21, 2016, alleging that he was improperly demoted and fired from his position at Governor Juan F. Luis Hospital due to the actions of the Defendants in various capacities.<sup>1</sup>

---

<sup>1</sup> See generally Compl.

## MEMORANDUM OPINION &amp; ORDER

Page 2 of 6

¶3 Defendant Galiber argues for dismissal of the Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure<sup>2</sup>, on the grounds that the Plaintiff has “fail[ed] to exhaust the grievance and arbitration provisions of [a] Collective Bargaining Agreement, pursuant to Section 301 of the Labor Management Relations Act....”<sup>3</sup> According to Defendant Galiber, the Plaintiff “alleges in essence that he was suspended, demoted, and/or constructively discharged from his position as (non-physician) Director of Imaging Services by the wrongful conduct of [the Defendants].”<sup>4</sup> Defendant Galiber further claims that “Plaintiff’s employment was governed by a Collective Bargaining Agreement.”<sup>5</sup> The Collective Bargaining Agreement (hereinafter “CBA”) “explicitly includes certain employees and supervisors employed at [Governor Juan F. Luis] Hospital....”<sup>6</sup> Defendant Galiber claims that there is a “strong preference for arbitration of labor disputes,”<sup>7</sup> and that the Plaintiff’s claims, as outlined in the Complaint, are essentially labor disputes governed by the CBA.<sup>8</sup>

¶4 In that he “was informed that the [sic] he was not a member of the Union” and that his position response, the Plaintiff claims as Director of Imaging Services at Governor Juan F. Luis Hospital (hereinafter “Hospital”) was determined by Defendants Galiber and Abednego to be “an exempt position and not opened to the Grievance Process.”<sup>9</sup> The Plaintiff also claims that the standard for a 12(b)(6) motion is inapplicable to this case for several reasons.

¶5 First, the Plaintiff asserts that the Hospital is not a named defendant, and therefore the named Defendants do not have standing to bring a defense of failure to exhaust the grievance procedure in the CBA.<sup>10</sup> The Plaintiff also asserts that 12(b)(6) dismissal is inappropriate because the Defendants

---

<sup>2</sup> Though the Federal Rules of Civil Procedure are no longer controlling in the Superior Court, Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure is substantially similar, if not identical, to its federal counterpart, allowing this Motion to be disposed of under the local rule.

<sup>3</sup> Mot. 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Mot. 2.

<sup>8</sup> Mot. 3.

<sup>9</sup> Mot. in Opp’n to Mot. to Dismiss 1.

<sup>10</sup> *Id.* at 3-4.

have not asserted that the Complaint is deficient.<sup>11</sup> Third, Plaintiff reiterates his belief that his position was never covered by the Steelworkers Union and the grievance procedure of the CBA does not apply.<sup>12</sup>

## DISCUSSION

### *A. Failure to State a Claim Upon Which Relief Can be Granted*

¶6 At the core of the Plaintiff's Opposition is the standard for dismissal under Rule of Civil Procedure 12(b)(6)<sup>13</sup>. At the time the Motion was filed in 2016, the standard to survive a motion to dismiss for failure to state a claim upon which relief can be granted involved a three-part test.<sup>14</sup> First, the Court was to examine the elements of the Plaintiff's claims. Then, the Court would "identify allegations that, because they are no more than conclusions, are not entitled to the assumptions of truth."<sup>15</sup> Finally, the Court needed to determine whether the well-pleaded complaints could "plausibly give rise to an entitlement of relief."<sup>16</sup>

¶7 However, the three-part test was superseded by statute when the Virgin Islands Rules of Civil Procedure came into force in March 2017.<sup>17</sup> The Virgin Islands "is a notice pleading jurisdiction," a standard which replaces the plausibility standard adopted with regard to the Federal Rules of Civil Procedure. V.I. R. Civ. P. 8(a).<sup>18</sup> Notice pleading means that a Complaint is sufficient when it "adequately alleges facts that put an accused on notice of claims brought against it."<sup>19</sup> In this case, the Court finds that the Complaint is sufficiently well-pleaded to put the Defendants on notice of the claims

---

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> The parties cite to Rule 12(b)(6) of the Federal Rules of Civil Procedure, but reliance on the Federal Rules is no longer appropriate. The adoption of the Virgin Islands Rules of Civil Procedure, effective March 2017, makes clear that the Virgin Islands Rules supersede the Federal Rules in cases involving territorial law. However, with regard to Rule 12(b)(6), the Federal Rules and the Virgin Islands rules are the same, or so substantially the same, that the Court may apply the Virgin Islands Rules of Civil Procedure without prejudicing any party.

<sup>14</sup> See *Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471 (2013).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *In re Adoption of the V.I. Rules of Civil Procedure*, 2017 V.I. Supreme LEXIS 22 (V.I. 2017).

<sup>18</sup> See *Mills-Williams v. Mapp*, 67 V.I. 574 (2017).

<sup>19</sup> *Brathwaite v. H.D.V.I. Holding Co.*, 2017 V.I. LEXIS 76 \*, \*4 (V.I. S. Ct. 2017).

against them. As the Plaintiff points out, failure to state a claim upon which relief can be granted is the wrong standard to apply to a defense that grievance procedures have not been followed. For that reason, the Motion to Dismiss must be denied.

*B. Subject Matter Jurisdiction*

¶8 However, the Plaintiff has also brought to the Court's attention that the Defendants should have moved for dismissal for lack of subject matter jurisdiction,<sup>20</sup> which the Court may review at any time *sua sponte*. A case is not properly before any court that lacks subject matter jurisdiction.<sup>21</sup> In this case, whether the Court has jurisdiction depends on whether the CBA applies to this matter. The CBA will only apply to this matter if three elements are met: 1) the CBA applies to the Plaintiff and his position at the Hospital; 2) the CBA applies to the Plaintiff's claims against the Defendants; and 3) the CBA covers the Plaintiff's dispute as against the Defendants.

¶9 The CBA applies to "[t]he employees of the Governor Juan F. Luis Hospital and Medical Center" among other government entities.<sup>22</sup> Though the CBA submitted by the Defendant Galiber as an exhibit to the Motion to Dismiss is incomplete, it clearly states which employees are covered by the agreement.<sup>23</sup> Furthermore, the most recent employment agreement between the Plaintiff and the Hospital, dated October 7, 2014, and attached to the Plaintiff's Complaint as part of "Exhibit I" also states that it is effective for one year and is "subject to Collective Bargaining Agreement."<sup>24</sup> Therefore, the CBA applies to the Plaintiff and his position as Director of Imaging Services.

¶10 The CBA defines a grievance "as a complaint, dispute or controversy between the parties as to the interpretation, violation, application or performance of [the CBA]."<sup>25</sup> The Plaintiff's claims in this

---

<sup>20</sup> Mot. in Opp'n to Mot. to Dismiss 3.

<sup>21</sup> See V.I. R. Civ. P. 12(h)(3) (stating that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action).

<sup>22</sup> CBA, Art. I, §1(B).

<sup>23</sup> See *id.*

<sup>24</sup> Exhibit I, Employment Agreement 2-3.

<sup>25</sup> CBA, Art. XII, §1.

matter are for: 1) abuse of process; 2) intentional interference with contractual relationship; 3) tortious interference with a contractual relationship; 4) intentional interference with prospective economic advantage; and 5) negligent interference with prospective economic advantage.<sup>26</sup>

¶11 Only abuse of process can clearly be construed as a grievance related to the “interpretation, violation, application or performance” of the CBA because it specifically alleges that the “Plaintiff was denied the process in the Collective Bargaining Agreement....”<sup>27</sup> The other claims are all economic torts that can exist and be prosecuted with complete separation from the CBA because the contract the Plaintiff claims has been interfered with is not the CBA, but rather the Employment Agreement in Exhibit I. On the other hand, the economic torts seem to stem from the Plaintiff’s complaint that the Defendants abused the grievance process, which is, itself, part of the CBA. Fortunately, the Court need not address this issue because the Plaintiff’s case is not against his employer, the Hospital, or the Government of the Virgin Islands. Rather, the Plaintiff has sued his former colleagues.

¶12 As the Plaintiff has pointed out, a party or entity generally may not seek the enforcement of a contract to which it was not a party.<sup>28</sup> The cover page of the CBA states that it is a “Collective Bargaining Agreement Between the Government of the Virgin Islands and The United Steelworkers (USW) on Behalf of The Supervisors Unit Local 9488 St. Thomas/St. John and Local 9489 St. Croix. The CBA was not made between the Plaintiff and the Government of the Virgin Islands, the Governor Juan F. Luis Hospital and Medical Center, or the named Defendants. The Plaintiff’s claims are only against the Defendants, his former colleagues, and not any entity that is a promisee or signor under the CBA. Therefore, the CBA does not apply to the Plaintiff’s dispute with the Defendants, even if the CBA would have covered the Plaintiff’s claims if they had been brought against the Government of the Virgin Islands or the Hospital.

---

<sup>26</sup> See generally Compl.

<sup>27</sup> Compl. ¶ 91.

<sup>28</sup> Mot. in Opp’n to Mot. to Dismiss 3-4. See *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548 (S. Ct. 2012) (stating that “[n]ormally, only a promise under a contract can sue to enforce its promises.” (citation omitted)).

**CONCLUSION**

¶13 For the above reasons, the CBA does not govern this matter. The Court therefore has the subject matter jurisdiction to hear this case. Accordingly, it is hereby:

**ORDERED** that the Defendants' Motion to Dismiss is **DENIED**; and it is further

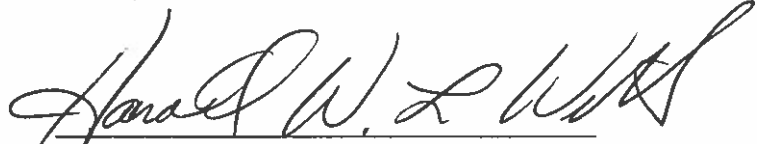
**ORDERED, ADJUDGED, and DECREED** that the Collective Bargaining Agreement between the Government of the Virgin Islands and the United Steelworkers, on behalf of the Supervisors Unit Local 9488 St. Thomas/St. John and Local 9489 St. Croix, does not govern this matter and cannot compel the Plaintiff to engage in mandatory arbitration with the Defendants.

**DONE and so ORDERED** this 8<sup>th</sup> day of March, 2019.

**ATTEST:**  
Estrella H. George  
Clerk of the Court

By: 

Dated: 3/8/19

  
HAROLD W.L. WILLOCKS  
Administrative Judge of the Superior Court