

**FILED**  
February 18, 2020

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

ESTRELLA GEORGE  
CLERK OF THE COURT

SILVER JACKSON,  
  
PLAINTIFF,  
  
v.  
  
UNITED INDUSTRIAL WORKERS OF SEAFARES  
INTERNATIONAL UNION AFL-CIO,  
  
DEFENDANT.

**SX-14-CV-092**

**ACTION FOR DAMAGES FAILURE  
TO REPRESENT**

**ORDER**

THIS MATTER is before the Court on Defendant United Industrial Workers of Seafares International Union AFL-CIO's Motion for Summary Judgment filed on May 18, 2016. The Plaintiff Silver Jackson filed an Opposition on March 1, 2017. In accordance with the Memorandum Opinion of even date, it is hereby

**ORDERED** that Defendant United Industrial Workers of Seafares International Union AFL-CIO Motion for Summary Judgment is **GRANTED**. It is further


**ORDERED** that this matter is **CLOSED**. It is further

**ORDERED** that this Order and the Memorandum Opinion be served on all parties.

**DONE** and so **ORDERED** this 18<sup>th</sup> day of February 2020.

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
Court Clerk Supervisor

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

Dated: 2/18/2020

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

**SILVER JACKSON,**

**PLAINTIFF,**

**v.**

**UNITED INDUSTRIAL WORKERS OF SEAFARES  
INTERNATIONAL UNION AFL-CIO,**

**DEFENDANT.**

**SX-14-CV-092**

**ACTION FOR DAMAGES FAILURE  
TO REPRESENT**

Cited as: 2020 VI SUPER 028 U

**Appearances:**

**Ezart A Wynter, Sr., Esq.**  
Law Office of Ezart A. Wynter Sr., P.C.  
St. Croix, USVI  
*For the Plaintiff*

**John J. Merchant, Esq.**  
United Industrial Workers of the Seafares  
St. Croix, USVI  
*For the Defendant*

**MEMORANDUM OPINION**

**WILLOCKS, Presiding Judge**

**THIS MATTER** is before the Court on Defendant United Industrial Workers of Seafares International Union AFL-CIO (hereinafter "Union") Motion for Summary Judgment (hereinafter "Motion") filed on May 18, 2016. The Plaintiff Silver Jackson (hereinafter "Plaintiff") filed an Opposition (hereinafter "Opposition") on March 1, 2017.

**BACKGROUND**

According to the Complaint, on October 6, 2006, the Plaintiff began working for the Government of the Virgin Islands (hereinafter "Government") with the Department of Human Services (hereinafter "DHS"). (Compl. ¶ 6.) Sometime later the relationship between the Plaintiff and her employer began to deteriorate. As a result, on December 19, 2011, the Plaintiff was informed that her employment would be suspended for one week. (*Id.* ¶ 24.) The Union as

the exclusive bargaining representative for all Government employees, including the Plaintiff, filed a demand for arbitration due to the Plaintiff's termination. (*Id.* ¶ 10.) On June 1, 2012, the Plaintiff learned that the demand for arbitration had been withdrawn without. (*Id.* ¶ 10.) Consequently, the Plaintiff filed the present Complaint alleging that the Union breached the contract and its duty of fair representation under the Collective Bargaining Agreement (hereinafter "CBA") between the parties.

### STANDARD OF REVIEW

¶7 Motions for summary judgment are governed by Virgin Islands Rule of Civil Procedure 56.<sup>1</sup> A motion for summary judgment shall be granted, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."<sup>2</sup> "As to materiality, only those facts that 'might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.'"<sup>3</sup>

¶8 "The moving party bears the initial burden of pointing out to the court that there is no genuine issue of material fact"—or in other words, "an absence of evidence to support the nonmoving party's case."<sup>4</sup> The non-moving party then has the burden of setting out specific facts showing a genuine issue for trial.<sup>5</sup> The court may consider the cited materials and other materials in the record.<sup>6</sup> But "the court may not weigh the evidence or determine the credibility of witnesses."<sup>7</sup> The Court "must consider the record evidence in the light most favorable to the non-moving party."<sup>8</sup> "The court must satisfy itself that the evidence in the summary judgment

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<sup>1</sup> V.I.R. Civ. P. 56.

<sup>2</sup> V.I. R. Civ. P. 56(a); see *Rymer v. Kmart Corp.*, 68 V.I. LEXIS 571, 575 (V.I. 2018) ("A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record."); see also *Walters v. Walters*, 60 V.I. 768, 794 (V.I. 2014) (citations omitted); see also *Martin v. Martin*, 54 V.I. 379, 387 (2010) (citations omitted).

<sup>3</sup> *Rymer*, 68 V.I. LEXIS 575

<sup>4</sup> *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008) (citations omitted).

<sup>5</sup> *Rymer*, 68 V.I. LEXIS 575-76

<sup>6</sup> V.I. R. Civ. P 56(c)(3).

<sup>7</sup> See *Williams*, 50 V.I. at 194-95.

<sup>8</sup> *Rymer*, 68 V.I. LEXIS 576

record supports this relief.”<sup>9</sup> Summary judgment is a “drastic remedy, a court should only grant summary judgment when the pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.”<sup>10</sup>

In the Complaint, the Plaintiff alleges hybrid claims: breach of contract (Count I) and breach of fair representation. The Supreme Court of the Virgin Islands has held that in order to succeed under hybrid claims the plaintiff/employer must establish all the elements for both a breach of contract and breach of duty of fair representation.<sup>11</sup>

## DISCUSSION

### A. Breach of Contract

The Union claims that summary judgment is appropriate because its withdrawal of the Plaintiff’s grievance did not constitute a breach of contract. According to the Union as the exclusive bargaining representative of DHS employees it has the broad discretion to decide how to pursue an employee’s grievance against an employer. (Mot. at 3.) However, the Plaintiff contends that although the Union acknowledges that it abandoned the Plaintiff’s grievance claims there are still genuine issues of material fact as to whether the Union failure to contact the Plaintiff prior to settling her grievance constitutes a breach of contract.

“To succeed on a breach of contract claim, a plaintiff must show that: (1) there was an agreement, (2) a duty was created by that agreement, (3) there was a breach of that duty, and (4) damages resulted.”<sup>12</sup>

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<sup>9</sup> *Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563, 583 (V.I. 2015).

<sup>10</sup> See *Rymer*, 68 V.I. LEXIS 575; see also *Martin*, 54 V.I. at 386.

<sup>11</sup> *Joseph*, 54 V.I. at 655; See *Grisar v. American Federation of Teachers*, 2016 V.I. LEXIS 200 at \*7 (Super. Ct. V.I. Dec. 5, 2016) (citing *Gomez v. Government of Virgin Islands*, 882 F.2d 733, 737 (3d Cir. 1989) (“[A]n employee proceeding under 24 V.I.C. § 361-383 must bring both a claim against the public employer for breach of contract and a claim against the union for breach of fair representation simultaneously. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.”).

<sup>12</sup> *Phillip v. Marsh-Monsanto*, 66 V.I. 612, 621 (V.I. 2017) (citing *Brouillard v. DLJ Mortg. Capital, Inc.*, 63 V.I. 788, 798 (V.I. 2015))

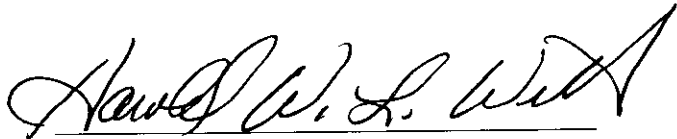
in determining whether to pursue an employee's grievance deciding not to continue with a grievance does not limit one's procedural right when the Union has reasonable basis. Here it is evident that the Union's decision was reasonable given the evidence it obtained during discovery. Moreover, the Union failure to inform the Plaintiff personally does not constitute bad faith as a mere oversight does not rise to a level of unreasonableness to constitute a breach of fair representation. Thus, the Plaintiff has failed to establish that the Union's decision was arbitrary or done in bad faith. Therefore, there is no genuine issue as to any material fact regarding part two of Plaintiff's hybrid claim. As a result, summary judgment in favor of the Union is appropriate, as it has established that there are no genuine issues as to any material facts regarding both hybrid claims.

### CONCLUSION

Having determined that summary judgment is appropriate as to both the claim of breach of contract and breach of fair representation, summary judgment will be granted in favor of the Union. Consequently, the Plaintiff's Complaint shall be dismissed. An order consistent with this memorandum opinion shall follow.

**DONE and so ORDERED** this 18<sup>th</sup> day of February 2020.

**ATTEST:**  
Tamara Charles  
Clerk of the Court

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

By: \_\_\_\_\_  
Court Clerk Supervisor

Dated: \_\_\_\_\_