

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

EVERETT HENRY,

PLAINTIFF,

SX-15-CV-568

v.

**HOVENSA, LLC AND PINNACLE SERVICES,
LLC,**

DEFENDANTS.

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Pinnacle Services, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(2),¹ filed on March 14, 2016 (hereinafter, "Motion").² Plaintiff did not file an opposition.

BACKGROUND

Plaintiff is a resident of St. Croix, U.S. Virgin Islands. Compl., ¶ 2. Defendant Hovensa, LLC (hereinafter, "Hovensa") is a limited liability corporation incorporated in the U.S. Virgin Islands with its principal place of business in St. Croix. Id. at ¶ 3. Defendant Pinnacle Services, LLC's (hereinafter, "Pinnacle") is a limited liability corporation with its principal place of business in St. Croix. Id. at ¶ 4. Plaintiff alleged that he sustained physical injuries while working on one of Defendant Hovensa's

¹ Defendant Pinnacle's Motion stated: "Pinnacle Services LLC. ("Pinnacle") by and through its attorneys...moves the Court pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for an Order dismissing it from this action on the grounds the Complaint fails to state a cause of action and is time barred." Federal Rule of Civil Procedure 12(b)(2) is a lack of personal jurisdiction defense and 12(b)(6) is a failure to state a claim upon which relief can be granted defense. The Court believes there was a clerical error in Defendant Pinnacle's Motion, and instead, it should have read "moves the Court pursuant to Rule 12(b)(6)..." since Defendant Pinnacle's memorandum of law in support of its Motion only discussed Plaintiff's failure to state a claim, and contained zero discussion regarding the Court's lack of personal jurisdiction over Defendant Pinnacle. Thus, the Court will treat Defendant Pinnacle's Motion to Dismiss as arising under Federal Rule of Civil Procedure 12(b)(6). See *Chavayez V. Buhler*, 2009 V.I. Supreme LEXIS 26, 31 (V.I. June 25, 2009) ("Even if a motion is titled as arising under Rule 60, it is the function of the motion, not the caption, [that] dictates which Rule applies[.]" (internal quotation marks omitted)).

² On March 10, 2016, Plaintiff and Defendant Pinnacle filed a stipulation for extension of time—until March 14, 2016—for Defendant Pinnacle to respond to Plaintiff's Complaint. The Court will sign off on the stipulation contemporaneously with this Memorandum Opinion and the accompanying Order.

tugs on July 10, 2013. *Id.* at ¶¶ 6-11. In response, Defendant Hovensa sent Plaintiff to see Dr. Alejandro Cebedo at Defendant Pinnacle. *Id.* at ¶ 12.

Plaintiff complained about the advice and treatment he received from Dr. Cebedo, and alleged that he continued to suffer extreme pain as the result of Dr. Cebedo sending him back to work. *Id.* at ¶¶ 14-17. Subsequently, Plaintiff sought diagnosis and treatment from other doctors—Dr. Gary Jett, Dr. Janice Victor, and Dr. Weslaw C. Dawiskiba. *Id.* at ¶¶ 19-23.

On July 13, 2014, Plaintiff was terminated from his employment by Defendant Hovensa. Plaintiff claimed that Defendant Hovensa terminated him “in retaliation for his having an on the job injury and indicating he intended to file a Jones Act claim.” *Id.* at ¶¶ 25-26. Plaintiff further claimed that Defendant Hovensa “refused to provide him the same severance as the other workers terminated at or near the same time unless he waived his Jones Act claim related to this accident.” *Id.* at ¶ 26.

On November 24, 2015, Plaintiff filed a lawsuit against Defendant Hovensa and Defendant Pinnacle. Plaintiff’s Complaint alleged: (1) Count One - a negligence claim against an unspecified defendant; (2) Count Two - a claim for Dr. Alejandro Cebedo’s failure to treat Plaintiff with the standard of care against an unspecified defendant; (3) Count Three - a misrepresentations claim against both Defendant Hovensa and Defendant Pinnacle; and (4) Count Four - a breach of duty of good faith and fair dealings claim against Defendant Hovensa.³ Plaintiff asked for compensatory and punitive

³ Plaintiff did not plead any claims by name in his Complaint.

Count I

29. The Plaintiff sets forth paragraph 1 through 28 as if fully set forth herein.

30. Defendant were [sic] negligent.

31. As a result, Plaintiff suffered injuries and damages as set out herein.

Count II

32. The Plaintiff sets forth paragraph 1 through 31 as if fully set forth herein.

33. Defendant through Dr. Alejandro Cebedo failed to treat Plaintiff with the standard of care.

34. As a result, Plaintiff suffered injuries and damages as set out herein.

Count III

35. The Plaintiff sets forth paragraph 1 through 34 as if fully set forth herein.

damages along with costs, fees, pre-judgment interest, post-judgment interest and other relief as the Court deems fair and just. In response, Defendant Pinnacle filed this instant Motion.

STANDARD OF REVIEW⁴

A defendant may move to have the plaintiff's claim dismissed for failure to state a claim upon which relief can be granted. In *Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471 (V.I. 2013), the Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") instructed that the courts must undertake a three-step analysis to determine whether a complaint states a plausible claim for relief:

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 [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.

The claim is considered plausible 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 pled.

Brady, 55 V.I. at 822-23. All the facts alleged in the pleadings and the inferences to be drawn from

36. Defendants made representations to Plaintiff that it knew or should have known were false.

37. Plaintiff reasonably relied on those representations.

38. As a result, Plaintiff suffered injuries and damages as set out herein.

Count IV

39. The Plaintiff sets forth paragraph 1 through 38 as if fully set forth herein.

40. Defendant Hovensa breached its duty of good faith and fair dealings.

41. As a result, Plaintiff suffered injuries and damages as set out herein.

⁴ Defendant Pinnacle filed his motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In *Vanterpool v. Government of the Virgin Islands*, S. Ct. Civ. No. 2013-0072, 2015 V.I. Supreme LEXIS 23, *16 (V.I. Aug 10, 2015), the Supreme Court of the Virgin Islands cautioned that "the Federal Rules of Civil Procedure should represent rules of last resort rather than first resort and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from [the Supreme] Court reveals the absence of any other [applicable] procedure." Since there are precedents from the Supreme Court regarding motion to dismiss for failure to state a claim, the Court will use the standard of review set forth in said precedents.

those facts must be viewed in the light most favorable to the non-moving party. *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 566 (V.I. April 12, 2012).

DISCUSSION

Defendant Pinnacle argued that Plaintiff's Complaint failed to state a cause of action against it. More specifically, Defendant Pinnacle pointed out that: (1) Count One does not allege any negligence by Defendant Pinnacle; (2) Count Two does not allege any wrongdoing by Defendant Pinnacle; (3) the vague allegation contained in Count Three is not sufficient to state a cause of action against Defendant Pinnacle; and (4) Count Four is against Defendant Hovensa only. Defendant Pinnacle also argued that Plaintiff's Complaint is untimely—given that Plaintiff was injured on July 10, 2013 but he did not file the Complaint until November 2, 2015, after the two-year statute of limitation have ran.⁵

I. The Inadequacy of Plaintiff's Complaint

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Fleming v. Cruz*, 62 V.I. 702, 710 (V.I. June 16, 2015) (internal citation omitted) (internal quotation marks omitted). The adequacy of the Complaint is governed by the general rules of pleadings set forth in Federal Rule of Civil Procedure 8⁶ and the principles espoused in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v.*

⁵ "The allegation that Dr. Cebedo failed to meet the 'standard of care' test is an allegation of medical malpractice which has a two-year statute of limitation." Motion, at 2.

⁶ Federal Rule of Civil Procedure 8 (hereinafter, "Rule 8") applies in the Superior Court pursuant to Superior Court Rule 7. As noted above, the Court is cognizant that "the Federal Rules of Civil Procedure should represent rules of last resort rather than first resort and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from [the Supreme] Court reveals the absence of any other [applicable] procedure." *Vanterpool*, 2015 V.I. Supreme LEXIS at *16.

Rule 8 provides the general rules of pleading, including but not limited to, rules pertaining to the plaintiff's claim for relief and the defendant's response thereto. Although the Supreme Court has previously applied Rule 8 to determine the adequacy of the pleading, the Supreme Court has yet to decisively recognize the applicability of Rule 8 in this jurisdiction post-*Vanterpool*.

Judges, magistrates, and attorneys in the Superior Court have come to rely on the provisions of Rule 8, and thus, the practice of complying with the pleading requirements set forth under Rule 8 have become routine and expected within the Superior Court. See e.g., *Nibbs v. Gov't of the V.I.*, ST-13-CV-520, 2015 V.I. LEXIS 120 (Super. Ct. Sep. 30, 2015)

Iqbal, 556 U.S. 662 (2009). *Fleming*, 62 V.I. at 710. The primary purpose behind the pleading requirements is to “give reasonable notice [to the adverse party] of the allegations in the complaint sought to be placed in issue.” *George v. Wenhaven, Inc.*, ST-12-CV-34, 2012 V.I. LEXIS 66, *8 (Super. Ct. Sept. 28, 2012) (unpublished); *see also, Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (V.I. 2011) (The Virgin Islands is a “notice pleading” jurisdiction.); *Benjamin v. Bennerson*, ST-11-CV-220, 2012 V.I. LEXIS 7, n. 21 (Super. Ct. Feb. 13, 2012) (“the notice pleading standard requires that the plaintiff give the defendant fair notice of the nature of her claim”)

Here, Plaintiff’s Complaint is essentially a “shotgun pleading”—which is defined as “a complaint that, in each count, incorporates all the preceding paragraphs of the complaint, making it virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.” *Bell v. Radcliffe*, ST-13-CV-392, 2014 V.I. LEXIS 119 (Super. Ct. April 30, 2014) (unpublished) (internal citation omitted) (internal quotation marks omitted). Due to the vagueness and ambiguity of the pleading, the Court is mystified by what is alleged in Counts One, Two and Three⁷ and against which defendant.

a. Count One

For Count One, Plaintiff simply incorporated all the preceding paragraphs of the Complaint and alleged that “Defendant were [sic] negligent.”⁸ The incorporation of all prior paragraphs in the Complaint makes it difficult to identify and isolate the allegations relevant to Count One. What is even more troubling is that the Complaint is unclear whether the allegations under Count One are

(unpublished); *George v. Wenhaven, Inc.*, ST-12-CV-034, 2012 V.I. LEXIS 66 (Super. Ct. Sep. 28, 2012) (unpublished); *Adams v. North West co., Inc.*, SX-14-CV-236, 2015 V.I. LEXIS 123 (Super. Ct. Oct. 6, 2015) (unpublished). The Court believes it is good practice to continue applying the general rules of pleading set forth under Rule 8 to avoid confusion and ensure consistency with regard to the pleading requirements in the Superior Court. Thus, applying Rule 8 here is not a “mechanistic and uncritical reliance” of the Federal Rules of Civil Procedure.

⁷ The Court need not address Count Four here since Count Four is alleged solely against Defendant Hovensa.

⁸ *Supra*, n. 3.

asserted against Defendant Pinnacle, Defendant Hovensa, or both. Thus, Count One fails to give Defendant Pinnacle reasonable notice of the nature of Plaintiff's claim.

b. Count Two

Similarly for Count Two, Plaintiff simply incorporated all the preceding paragraphs of the Complaint and alleged that "Defendant through Dr. Alejandro Cebedo failed to treat Plaintiff with the standard of care."⁹ Again, the Complaint is unclear whether the allegations under Count Two are asserted against Defendant Pinnacle, Defendant Hovensa, or both. And again, the incorporation of all prior paragraphs in the Complaint makes it difficult to identify and isolate the allegations relevant to Count Two. Thus, Count Two fails to give Defendant Pinnacle reasonable notice of the nature of Plaintiff's claim.

Moreover, Plaintiff did not specify what legal theory of liability he is proceeding under. Plaintiff placed the Court and Defendant Pinnacle in the untenable position of having to guess at what claim is being asserted. The Court cannot discern the applicable statute of limitations to determine whether Plaintiff's claim is timely or untimely. It appears that Defendant Pinnacle believes that it is being sued for medical malpractice and argued that the two-year statute of limitation has expired.¹⁰ Whether that is a correct assumption or not, it is unfair for Defendant Pinnacle to defend against such an uncertain accusation.

c. Count Three

Similarly for Count Three, Plaintiff simply incorporated all the preceding paragraphs of the Complaint and alleged that "Defendants made representations to Plaintiff that it knew or should have known were false" and that "Plaintiff reasonably relied on those representations."¹¹ While the

⁹ *Supra*, n. 3.

¹⁰ *Supra*, n. 5.

¹¹ *Supra*, n. 3.

Complaint makes it clear that Count Three is asserted against both Defendants, the incorporation of all prior paragraphs in the Complaint, again, makes it difficult to identify and isolate the allegations relevant to Count Three. Furthermore, Count Three could be read to allege either negligent misrepresentation or intentional misrepresentation. Claims for fraud or intentional misrepresentation may be required to be pled with particularity.¹² See e.g., *Bennerson*, 2012 V.I. LEXIS at *5 (the court found that the plaintiff did not particularly plead her claims for fraud and misrepresentation). Thus, Count Three fails to give Defendant Pinnacle reasonable notice of the nature of Plaintiff's claim.

Plaintiff's Complaint is so impermissibly vague and ambiguous that it prevents the Court from making out the viable legal theories on which Plaintiff wishes to proceed and against which defendant. For the foregoing reasons, it is impossible for the Court to undertake the necessary three-step analysis to determine whether Plaintiff's Complaint states a plausible claim for relief against Defendant Pinnacle.

II. A More Definite Pleading

Superior Court Rule 31 provides that, "[u]pon application by any party on notice, the court may order the filing and serving of a more certain and definite pleading" and that "Rule 12(e) of the Federal Rules of Civil Procedure shall govern such applications." Federal Rule of Civil Procedure 12(e) provides that a party "may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response."

While Defendant Pinnacle did not raise such an objection—that the pleading is so vague and ambiguous that it fails to provide the defendant with a meaningful opportunity to reply—and request

¹² Federal Rule of Civil Procedure 9(b) (hereinafter, "Rule 9") requires fraud and mistake allegations to be stated with particularity. Rule 9 would be applicable to the Superior Court via Superior Court Rule 7. However, the Supreme Court has yet to decisively recognize the applicability of Rule 9 in this jurisdiction post-*Vanterpool*.

for a more definite statement, the Court has the inherent authority to consider it *sua sponte* in its discretion, particularly in this matter where Defendant Pinnacle asked the Court to dismiss the pleading for failure to state a claim. Even if such authority is not inherent in Superior Court Rule 31 or Federal Rule of Civil Procedure 12(e), it is surely within the Court's authority to flesh out the issues in order to move the case forward efficiently and orderly.

A pleading should not be drafted in a manner which requires the Court or the opposing party to guess as to its nature. Under Federal Rule of Civil Procedure 8(b)(1), a defendant is required:

- (A) state in short and plain terms its defenses each claim asserted against it; and
- (B) admit or deny the allegations asserted against it by an opposing party.

In other words, the pleading has to be written in such a way that it gives the defendant notice of the allegations against him/her so the defendant has a meaningful opportunity to reply to said allegations.

Here, neither the Court nor Defendant Pinnacle can decipher Plaintiff's Complaint. Defendant Pinnacle's puzzlement over what is alleged against it is evident in its Motion:

Plaintiff in Count I states that "Defendant were [sic] negligent." Presumably this should be Defendants, but nowhere does it allege any negligence by Pinnacle...

...

Count II alleges that Dr. Cebedo failed to treat Plaintiff with "the standard of care." Once against, this is not an allegation of any wrong doing by Pinnacle.

...

Count III says that Defendants, plural, "made representations to Plaintiff that it knew or should have known were false." There is no specific allegations against Pinnacle.

It is the duty of the drafting attorney—not the Court and not the opposing counsel—to plead a plausible claim for relief against the defendant. Here, Plaintiff's Complaint is so vague, ambiguous and conclusory, that it fails to provide Defendant Pinnacle with reasonable notice of the nature and extent of the allegations against it. And as noted above, it is difficult for the Court to determine the applicable statute of limitations without more clarity and facts from Plaintiff.

At this juncture, the Court believes that the appropriate resolution is to *sua sponte* order Plaintiff to amend his complaint to provide more definite statements rather than granting Defendant Pinnacle's Motion.

CONCLUSION

After due consideration of Plaintiff's Complaint and the arguments advanced by Defendant Pinnacle in its Motion to Dismiss for Failure to State a Claim, the Court will deny Defendant Pinnacle's Motion and *sua sponte* order Plaintiff to amend his complaint to provide more definite statements. An Order consistent with this Memorandum Opinion shall follow.

DONE and so ORDERED this 19 day of May, 2016.

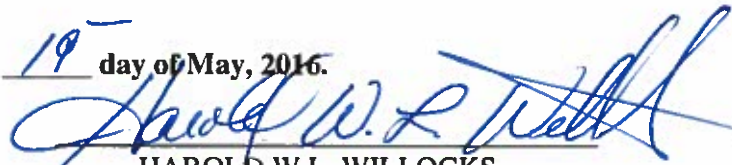
ATTEST:

Estrella H. George
Acting Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 5/19/16



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