

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS/ST. JOHN

Plaintiff
ARMELLE MARIE GARARDE BRIN
Vs.
CARDOW JEWELERS
Defendant

CASE NO. ST-10-CV-151
ACTION FOR: WRONGFUL DISCHARGE

NOTICE
OF
ENTRY OF MEMORANDUM
OPINION

TO: LESLIE LEVI PAYTON, Esquire ORDER BOOK, LAW LIBRARIAN
BENNETT CHAN, Esquire IT DIVISION ✓
SUPERIOR COURT JUDGES AND MAGISTRATES Esquire

Please take notice that on SEPTEMBER 9, 2010 a Memorandum Opinion was entered by this Court in the above-entitled matter.

Dated: September 16, 2010

Venetia H. Velazquez Esq.
Clerk of the Superior Court

By: 
KHALLA FRETT
Court Clerk II

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ARMELLE MARIE GARARDE BRIN,)
)
 Plaintiff,)
)
 vs.)
)
 CARDOW, INC. D/B/A CARDOW,) **CASE NO. ST-10-CV-151**
)
 Defendant.)
 _____)

MEMORANDUM OPINION

Pending before the Court is Defendant’s Motion to Dismiss Plaintiff’s Complaint. For the following reasons, Defendant’s motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

On March 26, 2010, Plaintiff filed a Complaint alleging she was wrongfully discharged from her employment. Defendant filed the instant motion on May 13, 2010, and Plaintiff filed an Opposition on June 4, 2010.

ANALYSIS

Fed. R. Civ. P. 12(b)(6), adopted by the Virgin Islands Superior Court through SUPER. CT. R. 7, provides that, upon motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a “failure to state a claim upon which relief can be granted” by the claimant. A motion to dismiss a complaint should be denied if the factual allegations are “enough to raise a right to relief above the speculative level.” *Phillips v. County of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Defendant relies on *Cotto v. Kmart*, Case No. WD-029-98-STX, *Christopher v. Government of the Virgin Islands*, Civil No. 21/1993 (Terr. Ct. St. X, November 24, 1993), and *Williams v. Kmart Corporation*, Civil No. 1992/0102 (Dist. Ct. ST. X. March 5, 2001), for the premise that a claim of constructive discharge is not recognizable under the Virgin Islands Wrongful Discharge Act (“WDA”). However, in *Harley v. Caneel Bay*, 193 F.Supp.2d 833, 841 (D.V.I. 2002), the court found that *Christopher* does not foreclose a claim of constructive discharge, that *Cotto* misinterpreted *Christopher* and was a decision “based on no legal authority,” and that *Williams* erroneously deferred to *Cotto* and *Christopher*. Looking at the statute itself, the WDA states: “[a]ny employee discharged for reasons other than those stated in subsection (a)¹ of this section shall be considered to have been wrongfully discharged...” 24 V.I.C. § 76(c). In *Fraser v. Kmart Corporation*, 2009 WL 1124953, at *6 (D.V.I. 2009), the court interpreted the term “discharge” in Section 76(c) to encompass the concept of constructive discharge. This Court finds *Fraser* persuasive with respect to the idea that a constructive discharge claim is cognizable under the WDA.

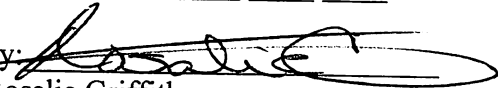
In her Complaint, Plaintiff alleges she was wrongfully discharged from her employment on or about January 27, 2010. In a letter attached to the Complaint, Defendant’s human resources director acknowledges that Plaintiff had submitted her

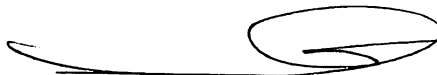
¹ a) Unless modified by union contract, an employer may dismiss any employee: (1) who engages in a business which conflicts with his duties to his employer or renders him a rival of his employer; (2) whose insolent or offensive conduct toward a customer of the employer injures the employer’s business; (3) whose use of intoxicants or controlled substances interferes with the proper discharge of his duties; (4) who wilfully and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer; provided, however, the employer shall not bar an employee from patronizing the employer’s business after the employee’s working hours are completed; (5) who performs his work assignments in a negligent manner; (6) whose continuous absences from his place of employment affect the interests of his employer; (7) who is incompetent or inefficient, thereby impairing his usefulness to his employer; (8) who is

resignation. As a result, Plaintiff has properly alleged a claim under the WDA. See *Harley, supra*, at 841 (employee must resign from employment before alleging he or she was constructively discharged). Whether the circumstances surrounding Plaintiff's resignation constitute a constructive discharge is a factual question that should not be determined at the motion to dismiss stage of the proceedings. See *Searls v. City of Meadville*, 2009 WL 5111799, at *4 (W.D. Pa. 2009) (citing *Brennan v. Norton*, 350 F.3d 399, 419 (3d Cir. 2003)). As a result, Defendant's motion will be denied. An Order consistent with this Memorandum Opinion will follow.

Dated: September 9, 2010

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ___/___/___

by: 
Rosalie Griffith
Court Clerk Supervisor 9/9/10


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

CERTIFIED A TRUE COPY

Date: 9/10/10

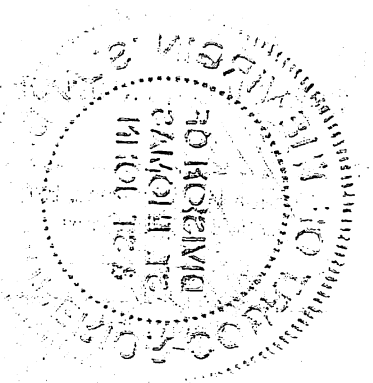
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

dishonest; or (9) whose conduct is such that it leads to the refusal, reluctance or inability of other employees to work with him. 24 V.I.C. § 76(a).

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The first part of the document is a letter from the
 Director of the Bureau of the Census to the
 Commissioner of the Internal Revenue Service.
 The letter is dated August 1, 1964, and is
 addressed to the Commissioner at the Internal
 Revenue Service Building, Washington, D.C.
 The letter discusses the proposed changes in
 the tax laws which will be effective for the
 year 1965. The changes are being made in
 order to simplify the tax laws and to
 reduce the burden on taxpayers. The changes
 are being made in the following areas:
 1. The standard deduction is being increased
 from \$100 to \$150 for single taxpayers and
 from \$200 to \$300 for married taxpayers.
 2. The exemption for dependents is being
 increased from \$150 to \$200.
 3. The exemption for the aged is being
 increased from \$100 to \$150.
 4. The exemption for the blind is being
 increased from \$100 to \$150.
 5. The exemption for the disabled is being
 increased from \$100 to \$150.
 6. The exemption for the severely disabled is
 being increased from \$100 to \$150.
 7. The exemption for the blind spouse is being
 increased from \$100 to \$150.
 8. The exemption for the blind child is being
 increased from \$100 to \$150.
 9. The exemption for the blind grandchild is
 being increased from \$100 to \$150.
 10. The exemption for the blind grandchild
 is being increased from \$100 to \$150.
 The letter also discusses the proposed changes
 in the tax laws which will be effective for
 the year 1966. The changes are being made
 in order to simplify the tax laws and to
 reduce the burden on taxpayers. The changes
 are being made in the following areas:
 1. The standard deduction is being increased
 from \$150 to \$200 for single taxpayers and
 from \$300 to \$400 for married taxpayers.
 2. The exemption for dependents is being
 increased from \$200 to \$250.
 3. The exemption for the aged is being
 increased from \$150 to \$200.
 4. The exemption for the blind is being
 increased from \$150 to \$200.
 5. The exemption for the disabled is being
 increased from \$150 to \$200.
 6. The exemption for the severely disabled is
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