

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

VIRGIN ISLANDS TAXI ASSOCIATION,

PLAINTIFF,

v.

**THE WEST INDIAN COMPANY, LIMITED;
BLUE EXECUTIVE SERVICES AND
TRANSPORTATION, LLC D/B/A/ BEST TAXI;
KERRY HARRIGAN; AND TERRI GRIFFITHS,**

DEFENDANTS.

SX-16-CV-551

**ACTION FOR DAMAGES,
DECLARATORY JUDGMENT,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY AND
PERMANENT INJUNCTION**

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Terri Griffiths' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), filed on October 7, 2016. To date, no responses have been filed.¹

BACKGROUND²

On September 21, 2016, Plaintiff Virgin Islands Taxi Association (hereinafter, "VITA") filed a complaint (hereinafter, "Complaint") against Defendant The West Indian Company, Limited's (hereinafter, "WICO"), Defendant Blue Executive Services and Transportation, LLC d/b/a Best Taxi (hereinafter, "Best Taxi"), Defendant Kerry Harrigan, and Defendant Terri Griffiths. The Complaint did not allege any specific causes of actions against Defendants, but sought declaratory judgment and injunctive relief. As to Defendant Terri Griffiths, Plaintiff VITA specifically sought the following declaratory relief: (1) that Defendant Terri Griffiths be prohibited from representing or having anything to do with Best Taxi and may not represent or consult with them as legal counsel or otherwise or any

¹ The Court is not prohibited from ruling on a motion without a response in opposition or reply when deemed appropriate. LRCi 7.1(e)(3); *see also*, *Hodge v. V.I. Water & Power Auth.*, 55 V.I. 460, 463 (Super. Ct. Dec. 22, 2011); *In re Refinery Dust Claims*, SX-06-CV-78, 2016 V.I. LEXIS 48, *12 (Super. Ct. May 3, 2016) (unpublished).

² This memorandum opinion recites the factual background only to the extent necessary to explain the present issues and the bases of the Court's decision.

other company in competition with the Plaintiff VITA; (2) that Defendant Terri Griffiths be found to have violated Virgin Islands Supreme Court Rule 211.1.9, and as such, this matter should be referred to the Supreme Court Disciplinary Counsel; and (3) that Terri Griffiths is required to return to Plaintiff VITA all information in her position without keeping any copies of the same. (Compl., p. 5-6) In addition, Plaintiff VITA also specifically sought to enjoin Defendant Terri Griffiths from representing any party whose interests are adverse to Plaintiff VITA. (Compl., p. 6)

On October 7, 2016, Defendant Terri Griffiths filed this instant Motion.

STANDARD OF REVIEW³

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

³ Defendant Terri Griffiths cited to Rule 12(b)(6) of the Federal Rules of Civil Procedure as the applicable rule for her motion to dismiss for failure to state a claim. In *Vanterpool v. Government of the Virgin Islands*, 2015 V.I. Supreme LEXIS 23, *16 (V.I. 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

In her Motion, Defendant Terri Griffiths argued that “Plaintiff asserts a nebulous claim of unfair competition based on the alleged release of confidential information in violation of her professional responsibility under Superior Court Rule⁴ 211.1.9.” (Motion, p. 1) Defendant Terri Griffiths further argued that “Plaintiff fails to particularize the specifics of the alleged improper conduct or a legal basis for supporting its claim.” (Id., at p. 3) Thus, Defendant Terri Griffiths requested the Court to dismiss the claims against her with prejudice. (Id.)

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. 2015) (internal citation and quotation marks omitted). The adequacy of the complaint is governed by the general rules of pleadings set forth in Federal Rule of Civil Procedure 8⁵ and the principles espoused in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Fleming*, 62 V.I. at 710. The primary purpose behind the pleading requirements is to “give

⁴ The Court believes this was a clerical error and instead, it should read “Supreme Court Rule.”

⁵ Federal Rule of Civil Procedure 8 (hereinafter, “Rule 8”) applies in the Superior Court pursuant to Superior Court Rule 7. 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) (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.

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 failed to allege any specific causes of actions against Defendant Terri Griffiths in its Complaint. Plaintiff VITA simply alleged that: (1) Defendant Terri Griffiths, while serving as legal counsel for Plaintiff VITA previously, Defendant Terri Griffiths “obtained confidential information concerning [Plaintiff VITA] including profitability, margins, costs of doing business, insurance costs and the like”;⁶ (2) Plaintiff VITA learned that “Defendant Terri Griffiths was revealing attorney-client information and had taken actions that were not in the best interest of [Plaintiff VITA] in violation of Supreme Court Rules”;⁷ (3) Defendant Terri Griffiths took Plaintiff VITA’s files and converted them into her own;⁸ (4) Defendant Terri Griffiths and others have formed [Defendant] Best Taxi to compete with [Plaintiff VITA];⁹ (5) Defendant Terri Griffiths conspired with others to improperly provide the taxi franchise for the WICO cruise ship dock to Defendant Best Taxi, a company formed in part by Defendant Terri Griffiths;¹⁰ (6) “but for undue influence and corruption and improper use of confidential information by [Defendants] Terri Griffiths and Kerry Harrigan, [Defendant Best Taxi] would not have been selected as the bid recipient”;¹¹ and (7) “[a]s a result of the actions of Defendants [Terri] Griffiths and [Kerry] Harrigan, confidential information as to [Plaintiff VITA] has been published and it and its drivers have sustained damages.”¹² Due to the

⁶ (Compl. ¶ 8)

⁷ (Compl. ¶ 9)

⁸ (Compl. ¶ 10)

⁹ (Compl. ¶ 12)

¹⁰ (Compl. ¶ 15)

¹¹ (Compl. ¶ 21)

¹² (Compl. ¶ 24)

vagueness and ambiguity of the pleading, the Court is mystified by what cause of action is alleged against Defendant Terri Griffiths.

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 said allegations.”

Henry v. Hovenssa, LLC, SX-15-CV-568, 2016 V.I. LEXIS 55, *14 (Super. Ct. May 19, 2016) (unpublished). Here, the Court finds Plaintiff VITA's Complaint to be so vague and ambiguous that it failed to provide Defendant Terri Griffiths with reasonable notice of the nature and extent of the allegations against it.

As the Court noted in *Henry*, 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. 2016 V.I. LEXIS 55, at *14. The Complaint, in its current form, prevents the Court from making out the viable legal theories on which Plaintiff VITA wishes to proceed against Defendant Terri Griffiths. As such, it is impossible for the Court to undertake the necessary three-step analysis to determine whether Plaintiff VITA's Complaint states a plausible claim for relief against Defendant Terri Griffiths.

Nevertheless, at this early stage in the proceedings, the Court will give Plaintiff VITA an opportunity to amend its Complaint.

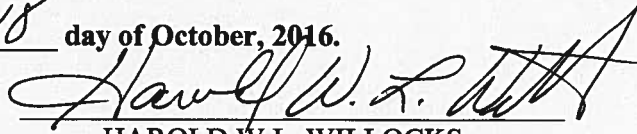
CONCLUSION

Based on the foregoing, the Court will deny Defendant Terri Griffiths' motion to dismiss and grant Plaintiff VITA leave to file an amended complaint. An Order consistent with this Memorandum Opinion shall follow.

DONE and so ORDERED this 18 **day of October, 2016.**


ATTEST:

Estrella H. George
Acting Clerk of the Court



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

By:


Court Clerk Supervisor

Dated:

18/10/16