

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

VI TAXI ASSOCIATION,

Plaintiff,

ST-16-CV-551

v.

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

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

Defendants.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER comes before the Court on Plaintiff VI Taxi Association's (hereinafter "VITA" or "Plaintiff") Emergency Motion to Quash *Subpoena Duces Tecum* (hereinafter, "Motion") filed on October 3, 2016. None of the defendants filed a response. For the following reasons, the Court will grant VITA's Motion.

FACTS AND PROCEDURAL HISTORY¹

On September 28, 2016, in a Memorandum Opinion and accompanying Order, this Court granted VITA's Motion for a TRO enjoining The West Indian Company, Limited (WICO) from awarding the 2016-0001 concession agreement to Blue Executive Services & Transportation, LLC d/b/a Best (hereinafter "Best Taxi") until the matter has been resolved. *See Virgin Islands Taxi Ass'n v. The W. Indian Co.*, ST-16-CV-551, 2016 V.I. LEXIS 150, *16 (Super. Ct. Sep. 28, 2016) (unpublished) (explaining that VITA had made a sufficient showing on all four factors and is entitled to the extraordinary remedy of the issuance of a TRO). A hearing on the preliminary injunction was held on October 4, 2016 and is still ongoing. At the October 4, 2016 hearing, the Court granted VITA's oral motion to dismiss Kerry Harrigan. In VITA's Complaint, the allegations

¹ *See Virgin Islands Taxi Ass'n v. The W. Indian Co.*, ST-16-CV-551, 2016 V.I. LEXIS 150, *16 (Super. Ct. Sep. 28, 2016) (unpublished) (provides a more complete factual and procedural history).

against Griffiths include conspiracy, breach of attorney client privilege and/or confidentiality which relate to Griffiths' prior position as legal counsel for VITA. Compl. At ¶¶ 8-15. The issue before the Court is whether to grant VITA's Emergency Motion to Quash *Subpoena Duces Tecum*.

DISCUSSION

VITA moves to quash the *subpoena duces tecum* propounded by Defendants Terri Griffiths (hereinafter "Griffiths") and Kerry Harrigan (hereinafter "Harrigan") on the grounds that the documents requested are not relevant to the claims against Griffiths and Harrigan. Motion at 1. VITA also asserts that the subpoena should be quashed because "it is defective as a Notice of Intent to file subpoena was not filed on opposing counsel before it was served on the recipient." Motion at 2. The *subpoena duces tecum* is seeking:

1. All VI Taxi driver call-in sheets for the WICO dock for the last 12 months;
2. All confidential information identified in Paragraph 7 of Plaintiffs [sic] Complaint;
3. The Shareholder list for VI Taxi Association;
4. The list of active dues-paying taxi drivers (shareholders and association members);
5. VITA's personnel file of Kerry Harrigan.

See Motion, Ex. 1, *Subpoena Duces Tecum* filed September 30, 2016.

A. VITA's Argument is Not Properly Before the Court

VITA argues that the subpoena should be quashed because "it is defective as a Notice of Intent to file subpoena was not filed on opposing counsel before it was served on the recipient." Motion at 2.

The Supreme Court of the Virgin Islands (hereinafter "Supreme Court") mandates that arguments must be fully briefed before the Superior Court to give the court an opportunity to consider, review, and address each argument.² It is not the Court's duty to research legal issues and make a movant's arguments where it has failed

² *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) (The rules that require a litigant to brief and support his arguments ... before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument.).

to do so.³ “Members of the Virgin Islands Bar ... must be cognizant of their responsibility to serve as advocates for their clients, which includes making all necessary legal arguments.”⁴ Rule 11.1(a) of the Local Rules of Civil Procedure (hereinafter “Rule 11.1(a)”) provides this Court with the mechanism to reject improper motions as fatally deficient.⁵ Arguments that are not supported by the appropriate legal authority must be rejected by the court.⁶

Here, VITA’s argument that the subpoena should be quashed because the notice requirement was not satisfied is merely a conclusory statement unsupported by any legal authority. As a result, this argument is not properly before the Court. Therefore, the Court will not address this argument.

B. The Subpoena Violates the Discovery Rules

Pursuant to Superior Court Rule 39(a), discovery in the Superior Court is governed by Federal Rules of Civil Procedure 26 to 37, inclusive. SUP. CT. R. 39(a). Under these rules, “[a] party may not seek discovery from any source before the parties have conferred as required by [Federal] Rule [of Civil Procedure] 26(f), except in a proceeding exempted from initial disclosure under [Federal] Rule [of Civil Procedure] 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.”⁷ Federal Rule of Civil Procedure 45 governs, among other things, the issuance, content, and service of subpoenas, it contains no provision that allows a party to issue subpoenas prior to conferring pursuant to Federal Rule of Civil Procedure 26(f).⁸

³ See *Joseph v. Joseph*, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015) (the Court will not make a movant’s arguments for him when he has failed to do so.) (citations omitted).

⁴ See *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, n. 13 (V.I. 2016).

⁵ See LRCi 11.1(a). See also *Tutu Park, Ltd. v. Harthman Leasing I, LLLP*, 2016 V.I. LEXIS 159, *26 n. 68 (V.I. Super. Ct. Sept. 27, 2016) (citing *Coral World VI*, 2014 V.I. LEXIS 35 at *13 n.38 (reminding parties that under LCRi 11.1, by signing a motion or supporting memorandum, an attorney certifies that the applicable law in this jurisdiction has been cited, including authority for or against the position being advocated by counsel and warning parties that motions not supported by proper legal authority may be struck by the court as fatally deficient). ⁵ The Local Rules of the District Court are made applicable to the Superior Court through Superior Court Rule 7. See SUP. CT. R. 7. This Court has made an independent determination that Rule 11.1(a) serves a valid purpose when applied to the Superior Court and should be applicable where a motion is unsupported by the proper legal authority. See *Vanterpool v. Gov’t of the Virgin Islands*, 63 V.I. 563, 582 (VI. 2015).

⁶ See *Pate v. Gov’t of the Virgin Islands*, 62 V.I. 271, 291 (V.I. Super. Ct. 2015); see also *V.I. Daily News v. PSC*, 45 V.I. 139, 146 (V.I. Terr. Ct. 2002) (finding attorney’s failure to cite binding authority rendered it fatally deficient)).

⁷ See *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 2015 V.I. LEXIS 25, *3-4 (V.I. Super. Ct. Mar. 5, 2015); FED. R. CIV. P. 26(d)(1).

⁸ See *id.* at *4. (internal quotation marks omitted).

As mentioned above, a hearing on the preliminary injunction was scheduled after the Court granted the TRO against WICO. The Court has allowed parties to exchange documents for the limited purpose of presenting evidence at the hearing. The Parties have not yet scheduled a Rule 26(f) conference. Plaintiff's claims, request for temporary restraining order, preliminary injunction, permanent injunction, declaratory judgment, conspiracy, breach of attorney client privilege and/or confidentiality, do not satisfy the criteria for any exceptions allowing them to issue subpoenas before the Rule 26(f) conference.⁹ In addition, the Parties have not stipulated to allowing pre-discovery subpoenas and the Court has not issued an order permitting the Parties to issue subpoenas. Consequently, the subpoena violates the discovery rules.

C. The Subpoena Must Be Quashed

Subpoenas are governed by Superior Court Rule 11 which is supplemented by Federal Rule of Civil Procedure 45.¹⁰ Under Superior Court Rule 11(c), a subpoena may be quashed or modified "if compliance would be unreasonable or oppressive."¹¹

Here, Harrigan was dismissed from the case and the claims against Griffiths do not relate to the TRO. The hearing on the preliminary injunction has nothing to do with Griffiths or the claims against her. The hearing on the preliminary injunction involves VITA, WICO and Best Taxi. Although Griffiths has put her appearance on the record at the hearing, the Court noted on the record that Griffiths is not a party in the hearing on the preliminary injunction. Furthermore, Harrigan is no longer a party because the Court granted VITA's oral motion to dismiss Harrigan on October 4, 2016.

The claims against Griffiths, which include conspiracy, breach of attorney client privilege and/or confidentiality, are related to her prior position as counsel for VITA. It is evident that the requested documents

⁹ FED. R. CIV. P. 26(a)(1)(B).

¹⁰ *Bertrand v. Cordiner Enters., Inc.*, 2011 V.I. LEXIS 62, *8 (V.I. Super. Ct. 2011) ("[t]he Federal Rule supplements, rather than displaces, the Superior Court Rule.").

¹¹ See SUP. CT. R. 11(c).

are irrelevant to the claims against Griffiths and Harrigan is no longer a party in the case. Therefore, it would be unreasonable for the Court to require VITA to propound the subpoenaed documents.

CONCLUSION

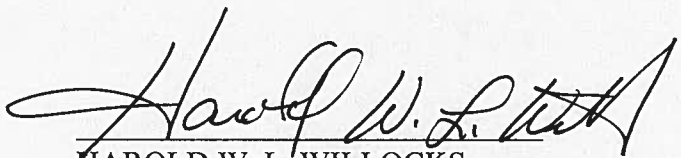
In light of the foregoing, the Court will quash the subpoena. The subpoena violates the discovery rules and compliance would be unreasonable. The Court will issue an Order consistent with this Memorandum Opinion.

Dated: 10-18-16

ATTEST:

Estrella George
Acting Clerk of the Court

By: 
Deputy Clerk


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

Dated: 10/18/16