

I. The Court Lacks Personal Jurisdiction Over Isam and Jamil

Jamil and Isam incorporate by reference their Motion to Dismiss the Second Amended Complaint and Incorporated Memorandum, as if set forth herein so that the law cited therein need not be repeated in full here. Regarding the facts alleged in the Supplemental Complaint, none support the exercise of jurisdiction over Jamil or Isam pursuant to the USVI's long-arm statute. 5 V.I.C. § 4903. The Supplemental Complaint does not allege they have gained any interest in the real property known as Diamond Keturah in St. Croix, U.S. Virgin Islands since the filing of the original Complaint in this matter. Nor are they alleged to have established some form of systematic or continuous contacts in the USVI.

Rather, the Supplemental Complaint is entirely focused on acts allegedly done by Manal Yousef. The Supplemental Complaint's only additional facts regarding Jamil and Isam is an allegation that Jamil and Isam acted as agents for Manal in Sint Maarten. This lone allegation as to each does not give rise to personal jurisdiction over Isam and Jamil under the USVI's long arm statute.

Nor does the Supplemental Complaint satisfy the due process requirement that Jamil and Isam have sufficient minimum contacts with the USVI such that maintaining the lawsuit does not offend "traditional notions of fair play" and "substantial justice." *International Shoe v. Washington*, 326 U.S. 310 (1945). The Supplemental Complaint alleges no facts regarding any forum related activities with respect to Jamil and Isam. Again, the only act alleged that involve Jamil and Isam is an allegation that they acted as an agent for Manal in Sint Maarten. Accordingly, there is no basis to exercise personal jurisdiction over either Jamil or Isam in the USVI as to the Supplemental Complaint.

II. Jamil & Isam Have Not Been Served

Plaintiff has the burden to prove service of process is proper once a defense of insufficient service is raised. *Flemming v. CULUSVJ, Inc.*, Case No: ST-16-CV-501, 2017 WL 933236 at *1-*2 (V.I. Super. Ct. Mar. 7, 2017) (analyzing service of process under similarly worded Fed. R. Civ. P. 12(b)(5)). Pursuant to V.I. R. Civ. P. 12(b)(4) & (5) and V.I. R. Civ. P. 4(f) Jamil and Isam object to the fact that they have not been served with the Supplemental Complaint and the absence of a summons is deficient process.

Proper service is necessary to establish a Court's personal jurisdiction over a defendant. *Chiang v. U.S. Small Business Association*, 331 Fed. Appx. 113, 115 (3d Cir. May 4, 2009). Under Rules 12(b)(4) and 12(b)(5) of the V.I. Rules of Civil Procedure, service of process may be quashed or, and in certain cases, the action dismissed if the process or the service thereof is improper. Service of process under V.I. R. Civ. P. 12(b)(5) may be insufficient if the mode of delivery is invalid, if service is made on an improper person, or if delivery is either never accomplished or not accomplished within 120 days after commencement. The burden of proof lies with the plaintiff to demonstrate sufficient service. When process or service is challenged, the plaintiff must make a prima facie showing that the court's personal jurisdiction is properly exercised. *Grand Entertainment Group, Ltd v. Star Media Sales, Inc.*, 988 F.2d 476 (3d Cir. 1993); *Friedberg v. Barefoot Architect, Inc.*, Civil No. 2013-109, 2014 WL 7450557 at *2 (D. V.I. Dec. 30, 2014). The moving party, however, must set forth with specificity the alleged failure of process or service. See *O'Brien v. R.J O'Brien & Associates, Inc.*, 998 F.2d 1394, 1400 (7th Cir. 1993) (holding that objections to the sufficiency of process must be specific and must identify how plaintiff failed to satisfy service).

Accordingly, both process and the service of process are deficient here because no summons was issued or served with regard to the Supplemental Complaint and the Supplemental Complaint was not served on Jamil or Isam.

III. The Supplemental Complaint Fails to State a Claim

Understandably, the USVI is a notice pleading jurisdiction, but even so alleging no facts does not meet the bar however lowered it may be.

The Virgin Islands is a notice pleading jurisdiction and V.I. Civ. P. Rule 8(a)(2) provides that a pleading that states a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief. *Basic Servs., Inc. v. Gov't of the V.I.*, 71 V.I. 652, 659, 2019 VI 21 .¶ 10 (V.I. 2019); *Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017). The defendant must be put on notice of the claims brought against it. *Mills-Williams*, 67 V.I. at 585; *Oxley v. Sugar Bay Club & Resort Corp.*, No. ST-18-CV-96, 2018 WL 4002726, at *2 (V.I. Super. May 14, 2018).

[A] complaint need not plead facts to support each element of a claim in order to adequately allege facts that put an accused party on notice or to show the pleader is entitled to relief under V.I. R. Civ. P. 8(a)(2)[, b]ut a complaint should provide factual allegations sufficient to **advise the responding party of the transaction or occurrence** on which the claim is based and **identify the claim, reciting its elements**, so as to enable the defendant to respond intelligently and to enable the Court to determine on a motion to dismiss under V.I. R. Civ. P. 12(b)(6) whether the claim is adequately pled.” *Oxley*, 2018 WL 4002726, at *5 (internal quotes and brackets omitted) (emphasis added).

Island Airlines, LLC v. Bohlke, 76 V.I. 47, 59, 2022 VI SUPER 20, ¶¶ 16-17 (V.I. Super. Ct. 2022).

Here, the Supplemental Complaint fails to allege facts to support any claims brought against Jamil and Isam. Paragraph 33 of the Supplemental Complaint merely states that Manal’s agent Jamil has refused to make any payments to attorney Hymes. Paragraph 34 states that Manal refused to direct her agent Isam to turn over financial records.² Both of these allegations are directed at acts of Manal, not Jamil and Isam. Furthermore, these facts alone fail to articulate a

² It is undisputed that Isam is Manal’s older brother so the description of Isam as an agent is misleading and probably intentionally so.

cause of action against either Jamil or Isam for a CICO conspiracy or facts to support the tort of outrage. Accordingly, the Supplemental Complaint must be dismissed against Jamil and Isam because it fails to state a claim upon which relief can be granted.

Respectfully,

Dated: September 16, 2024

/s/ Christopher Allen Kroblin

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 16th day of September, 2024, a true and exact copy of the foregoing **Motion to Dismiss Supplemental Complaint** was electronically filed with the Clerk of the Court using the VIJEFS system, which will send a notification of such filing to the following:

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