

FILED

February 25, 2022 03:24 PM

SX-2012-CV-00370

TAMARA CHARLES
CLERK OF THE COURT

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

WALEED HAMED, as the Executor of the Estate
of **MOHAMMAD HAMED**,

Plaintiff/Counterclaim Defendant,

v.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED,** and
PLESSEN ENTERPRISES, INC.,

Counterclaim Defendants.

Case No. SX-2012-CV-00370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

WALEED HAMED, as the Executor of the Estate
of **MOHAMMAD HAMED**, *Plaintiff*,

v.

UNITED CORPORATION, *Defendant*.

Consolidated with
Case No. SX-2014-CV-00287

WALEED HAMED, as the Executor of the Estate
of **MOHAMMAD HAMED**, *Plaintiff*,

v.

FATHI YUSUF, *Defendant*.

Consolidated with
Case No. SX-2014-CV-00278

FATHI YUSUF, *Plaintiff*.

v.

MOHAMMAD A. HAMED TRUST, *et. al.*,
Defendants.

Consolidated with
Case No. ST-2017-CV-00384

KAC357 Inc., *Plaintiff*.

v.

HAMED/YUSUF PARTNERSHIP, *Defendant*.

Consolidated with
Case No. ST-2018-CV-00219

ORDER

THIS MATTER is before the Court on Plaintiff Hamed's Motion for a Second Rule 53 Reference to Special Master Ross, filed November 30, 2021. Defendant Yusuf filed his Opposition December 21, 2021. Plaintiff filed his Reply December 23, 2021, for the first time seeking in the alternative leave to amend his First Amended Complaint. With leave of Court, Defendant Yusuf filed his Sur-Reply February 14, 2022. The premises considered, the Court will deny the Motion and will also deny Plaintiff leave to further amend his First Amended Complaint.

LEGAL STANDARDS

Virgin Islands Rule of Civil Procedure 53(a)(1), outlines the scope of special master appointment as follows:

- (1) Scope. Unless a statute provides otherwise, a court may appoint a master only to:
 - (A) perform duties consented to by the parties;
 - (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:
 - (i) some exceptional condition; or
 - (ii) the need to perform an accounting or resolve a difficult computation of damages; or
 - (C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available judge or magistrate judge.

Regarding the sufficiency of a party's pleading, the Virgin Islands is a notice pleading jurisdiction. V.I. Civ. P. Rule 8(a)(2) provides that a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief. *See Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017). The pleading must be put the defendant on notice of the claims brought against him. *Id.*; *see also 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).

Virgin Islands Rule of Civil Procedure 15 addresses amended and supplemental pleadings. Relevant to this matter, after a pleading has been amended once, and it is prior to trial, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The

court should freely give leave when justice so requires.” V.I. R. Civ. P. 15(a)(2).

“Amendments are within the sound discretion of the Superior Court and, as a result, the Superior Court may deny a request to amend so long as it articulates a sound justification. Appropriate justifications include, but are not limited to, ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment[.]’” *Basic Servs., Inc. v. Gov’t of the V.I.*, 2019 VI 21, ¶ 26 (V.I. 2019) (citing *Reynolds v. Rohn*, 2019 VI 8, ¶¶ 25-27 (V.I. 2019); *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 534 (V.I. 2012)). A court may be seen to have abused its discretion when its decision “rests on a clearly erroneous fact, an errant conclusion of law, or an improper application of law to fact.” *Smith v. Henley*, 67 V.I. 965 (V.I. 2017) (citing *Stevens v. People*, 55 V.I. 550, 556 (V.I. 2011)).

“And while parties should be afforded liberal freedom to amend, to satisfy this Court’s ‘strong preference for trial courts to decide doubtful cases on their merits rather than dismiss them for a failure to strictly follow purely procedural rules,’ ‘[l]iberality in pleading does not bestow on a litigant the privilege of neglecting her case for a long period of time.’ *Powell v. FAM Protective Servs., Inc.*, 72 V.I. 1029, ¶ 21 (V.I. 2020) (quoting *Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (V.I. 2011); *Davies v. Payless Cashways, Inc.*, 661 F.2d 1022, 1025 (5th Cir. 1981)). However, “prejudice to the opposing party or the trial court [is] ‘the most important factor in determining whether leave to amend should be freely given,’ and [the Virgin Islands Supreme Court] has expressly held that ‘passage of time, without more, does not require that motion to amend a complaint be denied.’” *Davis v. UHP Projects, Inc.*, 74 V.I. 525, ¶ 19 (V.I. 2021) (quoting *Toussaint v. Stewart*, 67 V.I. 931, 949-50 (V.I. 2017)) (citing *Stouffer v. Commonwealth*, 562 A.2d 922, 923 (Pa. Commw. Ct. 1989)).

DISCUSSION

The Court finds, as did the Master, that the claim for which reference is sought - wrongful dissociation - has not been adequately pled and, therefore, referral to the Special Master is improper. Plaintiff’s characterization of the claims contained in the First Amended Complaint runs directly counter to its plain language and the Court’s July 21, 2017 Memorandum Opinion and Order Granting Motion to Strike Jury Demand. *See* First Amended Complaint; *Hamed v. Yusuf*, 69 V.I. 168, 177 (V.I. Super. 2017).

In that Opinion, the Court found that “Hamed has not presented any claim for ‘damages,’ but rather an equitable action for accounting pursuant to 26 V.I.C. § 75(b)(2)(iii).” *Id.* Plaintiff argues that in his Amended Complaint he did plead a claim for wrongful disassociation, a claim

for damages pursuant to 26 V.I.C. § 122(c) (“[a] partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation.”). Yet, the Court determined otherwise in its 2017 Opinion and Order, finding that Plaintiff sought only equitable relief, holding *de facto* that no claim for wrongful dissociation had been pled.

Plaintiff correctly notes that the Virgin Islands is a notice pleading jurisdiction. Yet, Virgin Islands Civil Procedure Rule 8(a)(2) still requires a short plain statement of a claim showing that the pleader is entitled to relief, sufficient to put the defendant on notice of the claims brought against it. *See Mills-Williams*, 67 V.I. at 585.¹ Plaintiff is also correct that notice pleading does not require him to have a “crystal ball” to foresee all possible developments that may occur in of a cause of action. In this matter, Hamed asks the Court to reverse itself on the issue of what claims he has pled to find that the Amended Complaint did indeed include a short plain statement of the claim of wrongful dissociation, showing that he is entitled to that relief, sufficiently putting Yusuf on notice of that claim against him. The Court is not convinced by Plaintiff’s argument, finds no reason to depart from its earlier determination, and concurs with the Special Master that nothing in the Amended Complaint puts Defendant Yusuf on notice that he faces a claim for damages for wrongful dissociation.

Next, the Court considers Plaintiff’s argument that he should be allowed to amend the complaint to add a claim of wrongful dissociation if the Court finds one not adequately pled. Defendant Yusuf opposes amendment of the Complaint for the reasons outlined in his Sur-Reply. As Plaintiff has already amended the complaint once, the complaint can only be amended a second time with the court’s leave. V.I. R. Civ. P. 15(a)(2). While the standard for granting leave to amend a complaint is extremely liberal, the Court has discretion deny leave to amend for a variety of reasons, including, without limitation, “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment . . .”. *Basic Servs., Inc.*, 2019 VI 21, ¶ 26 (internal citations omitted).

The Court will exercise its discretion to deny leave to amend. The Court finds that the delay in seeking leave to amend is undue. The Amended Complaint was filed almost 10 years ago. To the extent there were questions whether the Amended Complaint could be read to include an implicit claim for wrongful dissociation, those questions were conclusively answered by the Court’s July 2017 decision characterizing all claims as equitable in nature, striking the prayer for jury trial. No amendment was then sought.

¹ The First Amended Complaint was filed prior to the 2017 adoption of the Virgin Islands Rules of Civil Procedure, when the pleader under the applicable Federal Rule 8(a)(2) standard was required to allege specific facts which, if established, plausibly entitled the pleader to relief. Nonetheless, the Court applies the current more liberal notice pleading standard, in accord with V.I. R. Civ. P. 1-1(c)(2), as it does not find that applying that standard here would be infeasible or would work an injustice.

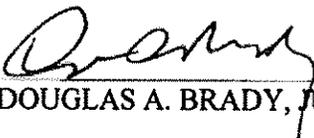
If the requested amendment were permitted at this juncture, this extended and complex proceeding would change immeasurably. The parties and Special Master have diligently litigated and processed hundreds of accounting claims of each partner in winding up the partnership over the course of several years. By his present Motion, Plaintiff notes that "this case is far down the road and almost all of the major ("B") claims have been heard or will be heard in early 2022." Motion, at 5. As that winding up process heads to conclusion, Plaintiff now seeks to litigate a newly refined statutory damages claim that could and should have been presented at the outset of the case when issues relating to the existence and dissolution of the partnership were exhaustively addressed. To permit that claim ten years into the case would prejudice Defendants and burden the Court, inevitably adding multiple additional years and complexity to the litigation.

Given the posture of the case, its duration, Plaintiff's delay in asserting the wrongful dissociation claim despite notice it had not been adequately pled, and the inevitable prejudice to Defendants and burden on the Court that litigation of the new claim would entail, in its discretion, the Court will deny Plaintiff leave to amend. Accordingly, it is hereby

ORDERED that Plaintiff Hamed's Motion for a Second Rule 53 Reference to Special Master Ross **DENIED**. Additionally, it is

ORDERED that Plaintiff's request in the alternative for leave to amend his Amended Complaint to add a claim of wrongful dissociation **DENIED**.

DATED: February 25, 2022


DOUGLAS A. BRADY, JUDGE

ATTEST: TAMARA CHARLES
Clerk of the Court

By:


Court Clerk Supervisor TD

FILED

March 02, 2022 03:26 PM
SX-2012-CV-00370
TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
District of St. Croix

MOHAMMAD HAMED BY HIS AUTH.
AGENT WALEED HAMED,
Plaintiff

Case Number: **SX-2012-CV-00370**
Action: **Damages**

v.

FATHI YUSUF et al,
Defendant.

NOTICE of ENTRY
of
Order

To: Joel H. Holt, Esq.
CARL J. HARTMAN, III, Esq.

NIZAR A. DEWOOD, Esq.
GREGORY H HODGES, Esq.
JEFFREY B.C. MOORHEAD, Esq.
MARK W. ECKARD, Esq.

Please take notice that on **February 25, 2022**
a(n) Order Denying Plaintiff's Motion
dated February 25, 2022 was/were entered
by the Clerk in the above-titled matter.

Dated: March 02, 2022

Tamara Charles
Clerk of the Court

By:



Sharisse Bascombe
Court Clerk II