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VERONICA HANDY, ESQUIRE
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**IN THE SUPREME COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH PARIS, JR.,)	
)	
)	
Appellant/ Defendant,)	SCT-CIV-2020-0096
)	
V.)	Re :Super Ct. Civ. No.011/2014(STX)
)	
)	
CLAYTON NURSE,)	
)	
)	
Appellee/ Plaintiff.)	
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**APPEAL FROM THE
SUPERIOR COURT OF THE VIRGIN ISLANDS**

APPELLANT'S BRIEF

Dated: November 30, 2020

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STATEMENT OF SUBJECT MATTER and APPELLATE

JURISDICTION

This Court has jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law.” 4 V.I.C. § 32(a).

STATEMENT OF RELATED CASES AND PROCEEDINGS

Appellant is not aware of any other related case, except Appellant was charged in a criminal case entitled People of the Virgin Islands v. Joseph Parris, Jr., criminal no. SX-12-CR-127, regarding the physical altercation between the parties, which was dismissed on February 4, 2015. There is no case or proceeding pending or about to be presented before this Court or any other court, state or federal. This case has not been previously before this Court.

STATEMENT OF ISSUES PRESENTED

1. Whether a compulsory complaint tolls the statute of limitations on a tort action, filed before, and served beyond the statute of limitations.

STANDARD OF REVIEW

The standard of review for this Court's examination of the Superior Court's application of law is plenary, while the trial court's findings of fact are reviewed for clear error. Boynes v. Transportation Servs. Of St. John, 60 V.I. 458 (V.I. 2014) (citing St. Thomas–St. John Bd. of Elections v. Daniel, 49 V.I. 322, 329 (V.I.2007)).

STATEMENT OF THE FACTS

Appellee, Clayton Nurse, filed his civil complaint on January 27, 2014, and served Appellant, Joseph Parris, Jr., on January 31, 2014, two days beyond the applicable statute of limitations. (JA32-34). Appellant filed his Answer and Counterclaim and Cross-claim on February 12, 2014, i.e., in advance of the expiration of the twenty-day period stated in the summons and applicable rules of procedure. (JA 35-41). Appellee Nurse complaint sought damages in connection with a January 29, 2012, incident in which he alleged Appellant, Parris, assaulted him with a machete, while Parris was in the employ of St. Croix Financial Group, Inc. (SCFC). Appellee, Clayton Nurse's Complaint alleged assault and battery against Appellant, Parris, and negligent hiring, supervision, and retention against SCFC. Appellant Parris Counterclaim sought damages against Appellee, Nurse, alleging Nurse did in fact assaulted and battered Appellant with a machete in the same incident, resulting in damages to Appellant.

Appellee Nurse filed a motion to dismiss Appellant Parris' counterclaim on the basis the counterclaim was barred by the applicable statute of limitations. (JA42-64). Appellant filed an opposition to the motion to dismiss. (JA 65-67). The Superior Court entered a Memorandum Opinion and Order May 05, 2016, granting Appellee's motion to dismiss finding that Appellant's claim was barred

by the two -year statute of limitations for personal injury claims. (JA 24-31). Appellant appeals from that decision following the closing of the case. (JA 20-21).

STATEMENT OF THE CASE

This is an appeal of the dismissal of a counterclaim filed outside the two-year statute of limitations for damages alleged to have been caused by the plaintiff, Appellee Nurse, assaulting and battering Appellant on January 29, 2012. The action was filed by Appellee Nurse on January 24, 2014, and served on Appellant, Parris on January 31, 2014, two days after the two-year statute of limitations. Appellant filed his Answer and Counterclaim on February 13, 2014. The Appellee, Nurse filed a motion to dismiss the counterclaim. (JA42-64). Appellant filed an opposition to the motion to dismiss. (JA65-67). The Superior Court entered and Memorandum Opinion and Order dismissing the counterclaim. (JA24-31). Appellant, Parris appeals from that decision. (JA20-21).

The case also had a third party, St. Croix Financial Center, Inc., who was a co-defendant and cross-defendant in the matter as the owner of the property where the incident happened. The third party, SCFC, is not relevant to the single issue on appeal.

ARGUMENT

I. It Is Sound Policy to toll or suspend the statute of limitation where Plaintiff commenced an action based on tort against a compulsory counterclaim.

This Court exercises plenary review of the Superior Court's application of law. Boynes v. Transportation Servs. Of St. John, 60 V.I. 458 (V.I. 2014).

Appellant's counterclaim was compulsory because it arose out of the same occurrence where the parties are essentially accusing the other as the aggressor in the physical altercations where, both parties armed with machetes, inflicted serious bodily injuries to the other. See F. R. Civ. P. 13(a)(1)(A). The altercation took place on Green Key Marina's property, resulting in SCFC being sued as owner.

The statute of limitation on a tort claim is two years. 5 V.I.C. §31(5). The physical altercation occurred between Appellee Nurse and Appellant Parris on January 29, 2012. Appellant was served with summons and complaint on January 31, 2014. Federal Rule of Civil Procedure 13(a) does not mention a limitation on filing a compulsory counterclaim. The Rule simply states that "a pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim: (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and (B) does not require adding another party over whom

the court cannot acquire jurisdiction.” F. R. Civ. P 13(a). There is no question the Answer and Counterclaim were timely filed. (JA35-41).

A *Banks* Analysis Weighs In Favor of Tolling the Limitation period for Compulsory Complaint.

An analysis pursuant to Banks v. Int’l Rental & Leasing Corp., 55 V.I. 967 (V.I. 2011), weighs in favor of tolling or suspending the statute of limitations on a compulsory counterclaim, especially where the initial complaint was filed before the statute of limitation, but served after the expiration of the limitation. Banks analysis requires the balancing of three non-dispositive factors: (1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions, and (3) which approach represent the soundest rule for the Virgin Islands. Banks, 55 V.I. at 980; Government of the Virgin Islands v. Connor, 60 V.I. 597, 603 (V.I. 2014).

Both the Superior Court and Appellee Nurse consider the issue one of first impression. They both also recognized the case of James v. Antilles Gas Corp., 43 V.I. 37 (Super. Ct. 2000)(adopting a “majority rule” pursuant 1 V.I.C.§4), where the Superior Court, after examining other jurisdictions and authorities, found that the statute of limitations for a third-party defendant’s counterclaim was toll by the filing of the third-party complaint because “the issue [was] the same; whether the

negligence of either or both parties proximately caused [the injury].” *Id.* at 47. The James court further points out that “although there is some conflict on the subject, the majority view appears to be that the institution of plaintiff’s suit tolls or suspends the running of the statute of limitations governing compulsory counterclaims.” James, 43 V.I. at 44-45 (citing Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, §1419, at 151 (2nd ed. 1990)). The James case satisfies the first factor enumerated in Banks, that is, a particular rule has been previously adopted by a Virgin Islands court.

Again, both the lower court and Appellee Nurse agree that the position adopted by the Superior Court in James is indeed the majority view. Hence, the second factor in Banks is met, that is, the position taken by the majority view from other jurisdictions agrees with the James court.

The position of the Appellee Nurse and the Superior Court is not a fair, sound or common-sense approach at resolving legitimate disputes in that it encourages chicanery, or loopholes in the law, instead of promoting ethical considerations in promoting a party’s right to seek redress for an intentional tort in court, such as is the case. Encouraging a party to file an action on the eve of the expiration of the statute of limitation, and then serve the opposing party, who may have a compulsory counterclaim growing out to the same event, outside of the

limitation period, does not promote justice, fairness, nor the policy behind the statute of limitations. As the lower court stated, “goals of the statute of limitations –encouraging timely resolution of disputes, preserving evidence, and preventing the filing of stale claims—while preserving the basic interest of every defendant in having a fair chance for their claims to be heard in court.” (JA29). If Appellee Nurse did not anticipate a counterclaim, he could have initiated his claim much earlier and serve Appellant within the limitation period.

Also, Appellant’s counterclaim cannot be considered stale since it was filed days away from the filing the case, and in response thereto. It grew out of the same occurrence, a fight. Both parties blamed the other for their bodily injuries. “The basic interest of every defendant in having a fair chance for their claims to be heard in court” should include his right to file a compulsory counterclaim, especially given the facts and circumstance of the case. Id.

Neither is there any prejudice to the party who initiated the action because he knew or should have known the defendant would assert a counterclaim once faced with the plaintiff’s claim.

For the reasons herein stated, Appellant prays this Honorable Court reverse the lower court’s May 5, 2016 Memorandum and Order, and reinstate Appellant’s counterclaim against Appellee.

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

Undersigned counsel hereby certifies that he is a member in good standing of Superior Court of the Virgin Islands and of the Supreme Court of the Virgin Islands.

Dated: November 30, 2020 /s/ Martial A. Webster
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, TYPE STYLE
REQUIREMENTS AND WORD COUNT**

- A. This brief complies with the type-volume limitation of V.I.R. App. P. Rule 22(f) because the brief does not exceed 7,800 words.
- B. This brief complies with the typeface requirements and the type requirements of V.I.R. App. P. Rule 15(a) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2007 in 14-point type face in Arial Style.
- C. I hereby certify that the text of the hard copy brief and the electronic brief are identical and the brief contains 2,049 words.

Dated: November 30, 2020 /s/ Martial A. Webster
Martial A. Webster, Sr., Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 30th day of November 2020 that a copy of **APPELLANT'S BRIEF** was e-served through the Clerk of the Supreme Court through the VISCEFS and via U.S. Mail, postage prepaid to

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