

**For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

<b>BASIC SERVICES, INC.</b>	)	<b>S. Ct. Civ. No. 2017-0084</b>
Appellant/Defendant,	)	Re: Super. Ct. Civ. No. 231/2012 (STT)
	)	
v.	)	
	)	
<b>GOVERNMENT OF THE VIRGIN ISLANDS</b>	)	
Appellee/Plaintiff.	)	
	)	

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On Appeal from the Superior Court of the Virgin Islands  
Division of St. Thomas & St. John  
Superior Court Judge: Honorable Denise Francois

Argued: April 9, 2019  
Filed: June 13, 2019

Cite as: 2019 VI 21

**BEFORE:** **MARIA M. CABRET**, Associate Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **DOUGLAS A. BRADY**, Designated Justice.<sup>1</sup>

**APPEARANCES:**

**Robert L. King**  
The King Law Firm, P.C.  
St. Thomas, U.S.V.I.  
*Attorney for Appellant,*

**Su-Layne Walker, Esq.**  
Assistant Attorney General  
St. Thomas, U.S.V.I.  
*Attorney for Appellee.*

**OPINION OF THE COURT**

**BRADY, Designated Justice.**

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<sup>1</sup> Chief Justice Rhys S. Hodge is recused from this matter. Pursuant to 4 V.I.C. § 24(a), this Court designated the Honorable Judge Douglas A. Brady of the Superior Court of the Virgin Islands to sit in his place.

¶ 1 Basic Services, Inc. appeals the Superior Court's grant of the Government's motion for summary judgment and the Superior Court's denial of its cross-motion for summary judgment and motion to amend its complaint. For the reasons below, we affirm the granting of the Government's motion for summary judgment but invalidate one of the grounds that the Superior Court relied on in its reasoning, and affirm the denial of Basic Services' cross-motion for summary judgment and its motions to amend its complaint.

### I. BACKGROUND

¶ 2 The Virgin Islands Department of Education ("VIDOE"), through the Department of Property and Procurement (collectively, the "Government"), publicized a request for proposal to solicit technological services for schools in the St. Thomas–St. John District. (J.A. 91-122.) The request for proposal made clear that a program called the E-Rate Program would partially fund these services. (J.A. 94-95.) The E-Rate Program is administered by the Schools and Libraries Division (the "SLD") of the Universal Service Administrative Company ("USAC") and affords eligible schools and libraries assistance with payment for internet and other technological services. (J.A. 94-95.)

¶ 3 After submitting its proposal, Basic Services won the bidding process and, on April 5, 2005, the Government awarded the company a two-year contract which included a payment schedule under which the Government would pay for 10% of the fees for services rendered by Basic Services, and the E-Rate Program, through USAC, would pay for 90% of those costs. (J.A. 73-89.) The contract also included a two-tier billing process that required the Department of Education to approve the invoices for the services performed by Basic Services before the company could submit them for payment to USAC. (J.A. 86.) The agreement required the

Government to pay its portion of the invoices within 30 days of receipt. (J.A. 86.) The contract also provided that the Government would:

- (i) encumber sufficient funds to pay its portion of the compensation payable to contractor under this Contract;
- (ii) remit payment to Contractor within thirty (30) working days of receipt of contractor's invoice for services performed under this contract; and
- (iii) assist Contractor in securing payment from the SLD for services performed under this Contract, as such assistance may be requested from time to time by contractor.

(J.A. 86.) In 2006, the parties amended the contract to extend the arrangement beyond the two years outlined in the original contract; all of the other terms of the original contract remained the same under the extension. (J.A. 124-49.)

¶ 4 In accordance with the contract, the Government paid Basic Services 10% of the service fees for all work rendered by the company. (J.A. 155-61.) USAC, however, did not honor its 90% obligation. In compliance with the contract, the Government also corresponded with USAC by email and postal mail to ask about the status of the funds, in an effort to assist Basic Services secure payment from USAC. (J.A. 166-70, 163.)

¶ 5 As a result of USAC's nonpayment, Basic Services sued the Government for breach of contract in a complaint filed May 8, 2012. (J.A. 263.) On November 30, 2015, Basic Services moved to amend the complaint to include a claim for quantum meruit. (J.A. 19.) The Government opposed the motion, arguing that as a matter of law, an equitable claim for quantum meruit recovery cannot lie where there is a written contract governing the right to recover the same underlying amounts. It argued that, as a result, permitting Basic Services to amend the original complaint, which was filed in May 2012 based on non-payment for services rendered in 2007, to include a quantum meruit claim in 2015 would be futile. (J.A. 35.) The Superior Court denied Basic Services' motion on the basis that Basic Services moved to amend the complaint after the

September 26, 2014 amendment deadline contained in the proposed scheduling order without providing “good cause why the motion was not filed earlier.” (J.A. 8.) On January 8, 2016, Basic Services filed a renewed motion to amend the complaint, arguing that discovery was still on-going and that the Superior Court was mistaken as to the deadline to which the parties and the court had agreed. (J.A. 40.) The Superior Court denied the renewed motion on the ground that Basic Services’ quantum meruit claim was futile under *Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563 (V.I. 2015). (J.A. 10.)

¶ 6 On August 1, 2017, the Government moved for summary judgment, maintaining that it did not breach the contract because it paid its 10% portion of the service fees, that it approved the invoices necessary for Basic Services to receive payment from USAC, and that there was no triable issue as to those facts. (J.A. 51, 53.) Basic Services opposed the Government’s motion, and cross-moved for summary judgment in a single motion. (J.A. 179.) In opposing the Government’s motion for summary judgment, Basic Services contended that it did not receive payment from USAC because the Government belatedly certified the invoices for payment and that, therefore, the Government “failed to act in good faith and to perform its obligation to aid Basic Services in obtaining payment from SLD [through USAC].” (J.A. 183.) As to its cross-motion, Basic Services argued that the Government was unjustly enriched. (J.A. 185.) It further maintained that the Government did not “act in good faith to aid Basic Services by all reasonable and timely means to obtain payment for the work performed. The VIDOE was bound and required to timely certify invoices for payment without unnecessary delay and not obstruct, delay or act to the detriment of Basic Services. The Government was not entitled to do nothing or to belatedly act.” (J.A. 185.) Basic Services attached to its motion an affidavit from the president of the company, Sherwin Rey, which included the following representations:

(11) That the VIDOE failed to timely accept and approve the invoice for payment until July 2, 2007 and failed to transmit this acceptance and approval to either Basic Services so that it could timely transmit the acceptance document for payment by the E-Rate program or to itself to timely transmit the document for payment.

(12) As a result of the failure of the VIDOE to properly and timely certify acceptance of the work performed under the contract, the approval invoice was not delivered in a timely manner and payment for this invoice was never made by the SLD. Payment was not made because of the failure of the VIDOE to perform as required by the contract.

....

(17) That the VIDOE failed to timely accept and approve the invoice and failed to deliver this acceptance and approval to either Basic Services (so that Basic Services could transmit the acceptance document for payment by the E-Rate program) or to itself timely transmit the document to SLD for payment until June 13, 2008, nearly two years after the date of invoice and long after the final date for submitting the invoice to SLD for payment.

(18) As a result of the failure of the VIDOE to properly and timely acknowledge acceptance of the work performed under the contract, the approval invoice was not delivered in a timely manner and payment for invoice 785-06 was never made by the SLD. Payment was not made because of the failure of the VIDOE to perform as required by the contract.

....

(29) The SDL has failed and refused to provide Basic Services with any reason for its failure to pay invoices previously mentioned except to state that invoice number 1127 - 06 was not submitted before the final date for acceptance of E-rate invoices for that year. (Plaintiff's Exhibit "1").

(J.A. 187-94, 195-202.) The affidavit, however, failed to identify any evidence that supports Rey's statements. (J.A. 187-94, 195-202.) For instance, plaintiff's exhibit 1, referenced in the affidavit, does not support Rey's assertion that there existed a "final date for acceptance" and a "final date for submitting the invoice to SLD." (J.A. 254, 193, 201.) Basic Services also claimed that USAC sent it a denial letter. But the letter from USAC that plaintiff-appellant references merely acknowledges repayment to USAC by Basic Services of improperly disbursed funds. (J.A. 154.)

On October 17, 2017, the Superior Court granted the Government's motion for summary judgment and denied Basic Services' cross-motion for summary judgment. (J.A. 4-7.) Thereafter, Basic Services timely appealed in this Court on November 7, 2017. *See* V.I. R. APP. P. 5(a)(1).<sup>2</sup>

## II. DISCUSSION

### A. Jurisdiction and Standard of Review

¶ 7 This Court has jurisdiction over “all appeals from the [final] decisions of the courts of the Virgin Islands established by local law[.]” 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a). Because the Superior Court's order granting the Government's motion for summary judgment is a final order, we possess jurisdiction over this appeal. *See Joseph v. Daily News Publ'g Co.*, 57 V.I. 566, 581 (V.I. 2012). We review the Superior Court's denial of a motion for leave to amend the pleadings for an abuse of discretion. *See Toussaint v. Stewart*, 67 V.I. 931, 941 (V.I. 2017). Additionally, we exercise plenary review over the grant of a motion for summary judgment and apply the same test that the Superior Court should have used in granting the motion. *Rymer v. Kmart*, 68 V.I. 571, 575 (V.I. 2018).

¶ 8 A movant is entitled to summary judgment if there is no triable issue of material fact. *Rymer*, 68 V.I. at 575 (citing *Machado v. Yacht Haven U.S.V.I., L.L.C.*, 61 V.I. 373, 379-80 (V.I. 2014)). Because summary judgment is a drastic remedy, the grant of a motion for summary judgment is allowed only where the moving party shows that the “pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008). When the party moving for summary

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<sup>2</sup> On April 19, 2018, we granted the Government's “Motion to Strike Footnote One in [Basic Services'] Brief and Pages 270-274 of the Joint Appendix” because the information contained in the footnote and that portion of the original joint appendix developed post-trial and was not a part of the record in the Superior Court.

judgment proffers such support, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in [its] favor.” *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (citations and internal quotation marks omitted). “Affirmative evidence” means “actual evidence” and “not mere allegations.” *Williams*, 50 V.I. at 194. Finally, when considering a motion for summary judgment, this Court must view all the evidence in the light most favorable to the non-moving party. *Machado*, 61 V.I. at 379.

### **B. Pleading Standard**

¶ 9 Basic Services argues that the contract obligated the Government to help it obtain payment from USAC by “mak[ing] its best efforts to assure payment” and “timely approv[ing] and certify[ing] payments,” as well as by refraining from conduct that would jeopardize payment. (Appellant’s Br. 14.) It argues that since the Virgin Islands is a notice pleading jurisdiction, its assertion of a breach of contract claim in its complaint was sufficient, and that the Superior Court erred in holding that Basic Services’ allegation that the Government’s actions or inactions caused USAC’s nonpayment of 90% of the pertinent invoices was not properly before the court.<sup>3</sup>

¶ 10 When this Court adopted the Virgin Islands Rules of Civil Procedure effective March 31, 2017, the rules confirmed that the Virgin Islands is “a notice pleading jurisdiction” pursuant to V.I. R. CIV. P. 8(a), effectively rejecting the heightened pleading standard applicable in the federal courts under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and its progeny in the federal courts. *Accord Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017) (noting that V.I. R. CIV. P. 8 (a) “restores the notice pleading regime that had previously been in effect”). The purpose of the notice

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<sup>3</sup> Basic Services’ complaint does not mention the two-tiered billing process or that USAC was responsible for paying 90% of the submitted invoices. Rather, as to each invoice, the complaint alleges only that the Government failed to pay the total amount due.

pleading standard is to avoid “dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief.” V.I. R. CIV. P. 8 Reporter’s Note; *Mills-Williams*, 67 V.I. 574 at 585.

¶ 11 Here, the Government moved for summary judgment on August 1, 2017 and the Superior Court entered judgment on October 17, 2017. Thus, it was after the Virgin Islands Rules of Civil Procedure took effect that the Government moved for summary judgment. Consequently, the Superior Court entered its judgment granting the Government’s motion and holding that Basic Services did not sufficiently plead that the Government caused USAC’s failure to pay its 90% portion of the service fees after our civil procedure rules took effect. For this reason, we hold that the notice pleading standard under V.I. R. CIV. P. 8(a) applies to this case. Although Basic Services initiated the complaint in this case about five years before our civil procedure rules were in place, this case was still pending in the Superior Court when the civil procedure rules became effective; accordingly, the notice pleading standard applies as its application would not “be infeasible or work an injustice.” *See* V.I. R. CIV. P. 1–1(c) (“[T]he Virgin Islands Rules of Civil Procedure permit their application to pending cases in the Superior Court if doing so would not be infeasible or work an injustice.”).

¶ 12 Here, Basic Services pled that a contract existed between the company and the Government, that it rendered services necessary under the contract, and that the Government acknowledged its satisfactory performance. These pleadings are sufficient to assert the claim that the Government’s obligation of good faith under the contract required it to assist Basic Services in obtaining payment from USAC after certification. *See, e.g., Casaday v. Allstate Ins. Co.*, 232 P.3d 1075, 1080 (Utah App. 2010) (“Even if a complaint is ‘vague,’ ‘inartfully drafted,’ ‘a bare-bones outline,’ or ‘not a model of specificity,’ the complaint may still be adequate so long as it can

reasonably be read as supporting a claim for relief, giving the defendant notice of that claim.”) (internal citations omitted). In its opposition to Basic Services’ motion to amend its complaint, the Government even acknowledged that the complaint sufficiently put it on notice that Basic Services was suing under the theory of breach of contract. Of course, a breach of contract claim may include the breach of the duty of good faith and fair dealing. *See, e.g., Metcalf Const. Co., Inc. v. United States*, 742 F.3d 984, 990 (Fed. Cir. 2014) (“Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement.”) (internal quotation marks omitted). Thus, the Government could have anticipated such a claim based upon the complaint as originally filed. *See id.; Casaday*, 232 P.3d at 1080. Therefore, we conclude that Basic Services’ breach of contract claim covers all foreseeable obligations under the contract, and thus the claim was properly before the Superior Court. *See generally Casaday*, 232 P.3d at 1080. As a result, we hold that the Superior Court erred in finding that Basic Services’ claim that the Government did not act in good faith and that the Government’s actions caused USAC’s nonpayment was not properly before it.

### **C. The Government’s Motion for Summary Judgment**

¶ 13 Basic Services posits that—on the Government’s motion for summary judgment—it had no burden to present evidence “‘demonstrating the Government did not sufficiently seek to have USAC certify pertinent funding requests.’” (Appellant’s Br. 25) (quoting Superior Court Order at J.A. 6.) We disagree.

¶ 14 To support its argument, Basic Services quotes a heading within the Superior Court’s analysis. In its analysis for that heading, the Superior Court reasoned that:

Basic Services has not presented any evidence revealing that the Government acted belatedly. In addition, Basic Services has not explained how the Government’s

alleged belated attempt to cause USAC to pay its 90% portion resulted in USAC not paying its allotment under the two-tier payment plan whatsoever.

(J.A. 6.)

¶ 15 At the time of the summary judgment proceedings in the present case, V.I. R. Civ. P. 56(c)

stated in pertinent part:

**(c) Procedures.**

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must

(A) make a written certification, in good faith, to that effect in the motion or opposition papers; and

(B) support the assertion by:

- (i) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (ii) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

¶ 16 As explained above, the moving party—here the Government—bore the burden to show that the record demonstrates no triable issue of material fact. *See Williams*, 50 V.I. at 191. Since Basic Services claimed that the Government did not satisfactorily act in good faith to ensure that USAC pay its portion of the service fees, on its summary judgment motion the Government was required to show that there is no material fact in dispute concerning the adequacy of its performance of its contract duties in this regard. *See id.* Under Rule 56, the Government could satisfy this burden by identifying support in the record showing that it satisfied all obligations under the contract, including the obligation to help Basic Services obtain payment from USAC—which it did here.

¶ 17 After that showing, the burden shifted to Basic Services to identify affirmative evidence upon which a reasonable jury could return a verdict in its favor. *See Chapman*, 58 V.I. at 436; *Williams*, 50 V.I. at 194. Logically, here, the required showing would be evidence making it a disputed and triable issue about whether the Government failed to help it obtain the funds and whether the Government untimely approved its eligibility for payment. As the non-moving party, Basic Services was required to identify evidence showing that the Government did not adequately help it obtain the funds and jeopardized its ability to obtain payment due to the Government's alleged untimely certification. Procedurally, therefore, the Superior Court was correct that on the Government's summary judgment motion, Basic Services was required to identify and proffer such evidence. *See Chapman*, 58 V.I. at 436. Consequently, we find that the Superior Court committed no procedural error in finding that Basic Services should have identified evidence in the record supporting its claim that the Government's belated certification caused USAC's nonpayment. Since Basic Services failed to carry its burden in response to the Government's motion under Rule 56 to identify facts rendering these issues disputed and triable, it was not error for the Superior Court to grant summary judgment in favor of the Government.

#### **D. Basic Services' Cross-Motion for Summary Judgment**

¶ 18 Basic Services maintains that due to the implied covenants under the contract, it was entitled to summary judgment, rather than the Government. Basic Services argues that the "Denial of Payment Letter by SLD [USAC]" and the affidavit of Sherwin Rey establish that the Government's conduct prevented payment by USAC. (Appellant's Br. 19.) We disagree.

¶ 19 As the plaintiff in this action, to prevail on its cross-motion for summary judgment, Basic Services was required to show that there is no genuine issue of material fact as to the facts that support each element of a breach of contract claim. *See Rymer*, 68 V.I. at 575. The elements of a

breach of contract claim are “(1) an agreement; (2) a duty created by that agreement; (3) a breach of that duty; and (4) damages.” *Phillip v. Marsh-Monsanto*, 66 V.I. 612, 621 (V.I. 2017).

¶ 20 First, there is no triable issue of fact as to whether there existed an agreement between the parties. Both parties agree that there was a contract between them in which Basic Services would provide technological services to schools in the St. Thomas–St. John District under the E-Rate Program. A copy of the contract is a part of the record.

¶ 21 Second, there is no triable issue of fact as to whether the Government had the duty to assist Basic Services with obtaining payment from USAC, and that as a result, the Government also had the implied obligation to avoid acts and omissions that are contrary to such assistance (e.g., acts that jeopardized Basic Services’ chances of receiving payment). The contract plainly provides that the Government would “assist [Basic Services] in securing payment from the SLD [(USAC)] for services performed under th[e] Contract, as such assistance may be requested from time to time by contractor.” (J.A. 86.) That obligation includes the implied covenant of good faith and fair dealing. *See Metcalf Const. Co., Inc.*, 742 F.3d at 991 (“The implied duty of good faith and fair dealing is limited by the original bargain: it prevents a party’s acts or omissions that, though not proscribed by the contract expressly, are inconsistent with the contract’s purpose and deprive the other party of the contemplated value.”); *accord Cobb v. Ironwood Country Club*, 183 Cal. Rptr. 3d 282, 286 (Cal. Ct. App. 2015) (The implied covenant of good faith “operates as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party’s rights to the benefits of the contract.”) (internal quotation marks omitted). Thus, regarding the duties created by the contract, there exists no triable issue of material fact.

¶ 22 However, as to the third and fourth elements of a contract claim—breach of the duty and damages—in supporting its own motion for summary judgment Basic Services only points to the affidavit of Sherwin Rey, the president of the company, to establish that the Government breached the contract and that it suffered damages as a result of that alleged breach. But the affidavit, which states that the Government belatedly certified the payment and the tardiness caused USAC to deny the company payment, is conclusory because it sets forth conclusions that are unsupported by the record. *See, e.g., Fed. Trade Comm'n v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) (A “conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.”); *accord Fed. Trade Comm'n v. MacGregor*, 360 Fed. Appx. 891, 893 (9th Cir. 2009) (unpublished) (holding that two affidavits by a manager and the owner of a company and its corporate shells, which stated that the companies did not “knowingly and intentionally” violate consumer protection laws, were insufficient to create a genuine issue of material fact because the company and its subsidiaries did not offer any evidence to support their statements in the affidavit). “While an affidavit is certainly an appropriate vehicle to establish a fact for summary judgment purposes, the affidavit must set forth facts, not conclusory statements.” *Bancoklahoma Mortgage Corp. v. Capital Title Co.*, 194 F.3d 1089, 1101 (10th Cir. 1999); *see also Bastida v. Aznaran*, 444 S.W.3d 98, 105 (Tex. App. Dallas 2014). When an affidavit sets forth “facts” that are unsupported by the documents in the summary judgment evidence, the affidavit is conclusory. *Paragon Gen. Contractors, Inc. v. Larco Const., Inc.*, 227 S.W.3d 876, 884 (Tex. App. 2007) (“An affidavit is substantively defective when the absence of the referenced papers from the summary judgment evidence leaves the affidavit conclusory.”). Thus, the affidavit of Sherwin Rey, unsupported by documents or facts in the summary judgment record, was fatally conclusory and utterly failed to provide the evidentiary support for Basic

Services' burden, at the outset of its own motion for summary judgment, to show that there is no genuine issue of material fact about whether the Government breached the contract, causing it damages.

¶ 23 Even if Basic Services had properly commenced its cross-motion with a sufficient showing, facts identified by the Government in its submissions opposing summary judgment were more than sufficient to demonstrate triable issues about whether it, in fact, did discharge its duties under the agreement by trying to help Basic Services obtain payment. Email exchanges between the Government and USAC show that the Government requested that USAC state its reasons for the delay in payment, receiving assurances that USAC was “working with the FCC to get final resolution . . . in the near future.” (J.A. 168.) The Government asked USAC for “a target date for resolution,” to which USAC responded that it did “not have a firm date but the matter is being actively worked [on].” (J.A. 166-68.) And the “Denial of Payment Letter” to which Basic Services refers is not in fact a “denial letter.” Rather, the USAC letter acknowledges Basic Services' repayment to USAC for improperly disbursed funds. The record does not reveal any evidence of a deadline by which USAC had to receive approval, certification or any communication to ensure payment. Thus, these facts presented many disputed issues of material fact on plaintiff's claim that the Government breached the contract and that Basic Services suffered damages as a result. The facts show that the Government performed under the contract by satisfying its 10% monetary obligation and by attempting to assist Basic Services secure payment from USAC for services performed. Basic Services presented no evidence to prove that different or greater assistance was required under the contract than the assistance rendered by the Government, or that the Government was a guarantor to payment by USAC. As a result, on these facts and this record,

Basic Services is not entitled to summary judgment, but rather the record supports summary judgment in favor of the Government.

¶ 24 Consequently, we conclude that Basic Services had no right to summary judgment, as the record does not support its claim that the Government's approval of Basic Services' invoices was untimely pursuant to the contract, or that such alleged untimely approval was the cause of USAC's nonpayment. Further, on the claim that the Government did not properly help the company obtain payment, the contract is silent as to how the Government should perform to satisfy its obligation to assist Basic Services. And it appears from the record that the Government did act to assist Basic Services obtain the payment (e.g., the Government approved the payment, although not promptly upon receipt, and corresponded with USAC about the status of the payment). Hence, on this record, the Government appears to have adequately performed under the contract. Thus, we hold that there existed no genuine issue of material fact as to: (1) whether the Government's performance in assisting Basic Services obtain payment was sufficient, and (2) whether the Government should have certified the payment earlier. Therefore, we affirm both the Superior Court's grant of the Government's motion for summary judgment on the breach of contract claim, and its denial of the summary judgment motion by Basic Services.

#### **E. Motions to Amend the Complaint**

¶ 25 Basic Services argues that the Superior Court erred in denying its motion to amend its complaint and its renewed motion to amend its complaint to add a claim for quantum meruit.

¶ 26 Rule 15(a)(2) of the Virgin Islands Rules of Civil Procedure<sup>4</sup> states that in cases not described in V.I. R. CIV. P. 15(a)(1) "a party may amend its pleading only with the opposing party's

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<sup>4</sup> We apply V.I. R. CIV. P. 15(a)(2) since it was in force at the time the motion for leave to amend was before the Superior Court for decision, and since it would not be infeasible or work an

written consent or the court's leave. The court should freely give leave when justice so requires.” 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. *See Reynolds v. Rohn*, 2019 VI 8, ¶¶ 25-27; *see also Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.1. 516, 534 (V.1. 2012). “Appropriate justifications [for deviating from the norm of freely granting leave to amend] 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[.]’” *See Reynolds*, ¶ 25 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

¶ 27 Initially, the Superior Court denied the motion to amend and reasoned that, without good cause, Basic Services missed the deadline for amending the complaint set out in the scheduling order. Basic Services argued that the deadline that the Superior Court mentioned conflicted with the schedule to which the parties and the court had agreed. Ultimately, after Basic Services submitted its renewed motion to amend the complaint, the Superior Court denied Basic Services’ request to amend because the claim of quantum meruit would be futile. The Court reasoned that because a contract existed between the parties, Basic Services could not recover on the equitable remedy of quantum meruit under our decision in *Vanterpool*. In that case, we held that “a contractor may recover in a quantum meruit action against the Government in the absence of a valid contract where the Government was enriched at a contractor’s expense, the Government had

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injustice. *See V.I. R. CIV. P. 1–1(c)* (“[T]he Virgin Islands Rules of Civil Procedure permit their application to pending cases in the Superior Court if doing so would not be infeasible or work an injustice.”). Although the language of V.I. R. CIV. P. 15(a)(2) and former Superior Court Rule 8 differ, case law applies the same standard in reviewing motions to amend under both rules. Thus, even if we were to review the case under former Superior Court Rule 8, the result would be the same.

knowledge of the benefit, and ‘the circumstances were such that in equity or good conscience’ the Government should compensate the contractor for the services provided.” 63 V.I. at 593; *see also Cacciamani v. Rover*, 61 V.I. 247, 252 (V.I. 2014) (“Because unjust enrichment [i.e. quantum meruit] is an equitable remedy, it—like all equitable remedies—is inappropriate where a legal remedy is available.”). Thus, the Superior Court’s futility justification was sound. As a result, we hold that the Superior Court was well within its discretion to deny Basic Services’ request to amend the complaint and therefore the court committed no error.

### III. CONCLUSION

¶ 28 For the reasons discussed above, we affirm the Superior Court’s grant of the Government’s motion for summary judgment but invalidate one of the grounds for which the Superior Court granted the motion. Specifically, we conclude that the Superior Court committed harmless error in reasoning that Basic Services needed to plead its implied covenant claims in its complaint. This is so because V.I. R. CIV. P. 8(a), which provides that the Virgin Islands is a notice pleading jurisdiction, was in effect while this case was still pending. Further, we affirm the Superior Court’s denial of Basic Services’ cross-motion for summary judgment, as Basic Services did not point to any evidence in the record that shows that the Government breached the contract and that Basic Services was entitled to damages resulting from such breach. Lastly, we affirm the Superior Court’s denial of Basic Services’ request to amend its complaint, because the court did not abuse its discretion in finding that the quantum meruit claim would be futile. Thus, we affirm the judgment of the Superior Court.

**Dated this 13<sup>th</sup> day of June, 2019.**

**BY THE COURT:**

/s/ Douglas A. Brady  
**DOUGLAS A. BRADY**  
**Designated Justice**

**ATTEST:**  
**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**