**NOT FOR PUBLICATION FOR UPLOAD**

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

| | | |
|---|---|---|
| **Brenda A. Sells-Lawrence,** | ) | |
| | ) | |
| Plaintiff, | ) | Civ. No. 1999-133 |
| | ) | |
| v. | ) | |
| | ) | |
| **Chase Manhattan Bank, N.A. and Chase Agency Services, Inc.,** | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

**ATTORNEYS:**

**Pedro K. Williams, Esq.,**
St. Thomas, U.S.V.I.
*For the plaintiff,*

**Charles E. Engeman, Esq.**
**David J. Comeaux, Esq.**
St. Thomas, U.S.V.I.
*For the defendants.*

**MEMORANDUM**

Moore, J.

Plaintiff Brenda Sells-Lawrence ["Sells-Lawrence" or "plaintiff"] has moved to reconsider and clarify this Court's order of September 28, 2000, granting defendant Chase Manhattan Bank, N.A. and Chase Agency Services, Inc.'s [collectively "Chase"] motion to dismiss and for summary judgment. Chase concedes that this Court must reconsider the September 28th order in regard to the Virgin Islands Wrongful Discharge Act ["WDA"], but has supplemented its motion for summary judgment, which plaintiff opposes. For the reasons stated below, this Court will

grant plaintiff's motion to reconsider and grant Chase's supplemental motion for summary judgment.

## I. Factual and Procedural Background

On December 17, 1996, plaintiff began working for Chase as an Assistant Treasurer/Agent Assistant. Following a background check, Chase discovered that Sells-Lawrence had entered into a pre-trial diversion program in 1992 stemming from a credit card theft charge in Crawford County, Pennsylvania. Upon learning of plaintiff's entry into the pre-trial diversion program on April 22, 1997, Chase immediately terminated plaintiff's employment. Sells-Lawrence subsequently filed suit against Chase in the Territorial Court, alleging claims of wrongful termination under the Virgin Islands Wrongful Discharge Act, 24 V.I.C. § 76, breach of contract, defamation and self-defamation. Chase then successfully removed the case to this Court on the ground of diversity jurisdiction. After a hearing in this Court on February 18, 2000, I granted Chase's motion to dismiss plaintiff's claim under the WDA on the ground that the National Labor Relations Act ["NLRA"], 29 U.S.C. §§ 151-166, preempted the WDA and granted its motion for summary judgment on plaintiff's claims of defamation, self-defamation and breach of contract.

On October 4, 2000, plaintiff filed a motion to reconsider and clarify the Court's ruling on her WDA claim in light of the Third Circuit Court of Appeals' ruling in *St. Thomas-St. John Hotel & Tourism Ass'n v. Government of the Virgin Islands*, 218 F.3d 232 (3d Cir. 2000) that the NLRA did not preempt the WDA.[1] Although Chase concedes that the Court must reconsider its ruling on plaintiff's WDA claim,[2] it filed a supplemental motion for summary judgment on June 1, 2001, wherein it argued that plaintiff's WDA claim is preempted by federal banking law, namely 12 U.S.C. § 1829. This Court has diversity jurisdiction under section 22(a) of the Revised Organic Act of 1954[3] and 28 U.S.C. § 1332.

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[1] Plaintiff's motion for reconsideration only addresses the Court's ruling on her WDA claim. Plaintiff does not provide any basis upon which I can consider her non-WDA claims.

[2] As it is now clear that the WDA is not preempted by the NLRA, *see St. Thomas-St. John Hotel & Tourism Ass'n v. Government of the Virgin Islands*, 218 F.3d 232, 245 (3d Cir. 2000), there is no need to delve into a lengthy discussion on the merits of plaintiff's motion to reconsider. Suffice to say, that the Court will grant her motion and vacate this Court's February 28, 2000, ruling on the WDA claim.

[3] 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp.2001), *reprinted in* V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2001) (preceding V.I. CODE ANN. tit. 1).

## II. DISCUSSION

### A. Summary Judgment Standard

Summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue respecting any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); *see also Sharpe v. West Indian Co.*, 118 F. Supp. 2d 646, 648 (D.V.I. 2000). Since the defendants' motion presents only the legal question of whether federal law preempts territorial law, this matter is ripe for summary judgment. *See Spink v. General Accident Ins. Co.*, 36 F. Supp. 2d 689, 692 (D.V.I. 1999).

### B. Plaintiff's WDA Claim is Preempted by 12 U.S.C. § 1829

Chase argues that 12 U.S.C. § 1829(a)(1)(A)(iii) preempts plaintiff's WDA claim because Chase, as a federally insured depository institution, was mandated under federal law to terminate Sells-Lawrence upon the discovery that she had entered into a pretrial diversion program. It is well-established that there are three instances where federal law preempts state law. *See St. Thomas-St. John Hotel & Tourism Ass'n*, 218 F.3d at 238 (listing the three methods of preemption). First, when a federal statute explicitly displaces state law, state law is said to be

expressly preempted. *See* U.S. CONST. art. VI, cl. 2.; *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992). Second, federal law will preempt state law when federal law "so thoroughly occupies a legislative field as to make reasonable the inference the Congress left no room for the States to supplement it." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (defining field preemption). Finally, federal law preempts state law "when a state law makes it impossible to comply with both state and federal law or when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *See St. Thomas-St. John Hotel & Tourism Ass'n*, 218 F.3d at 238 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (describing conflict preemption)). Therefore, this Court must look to the relevant statute to determine whether federal law preempts the application of the Virgin Islands Wrongful Discharge Act to plaintiff's case.

Section 1829 of the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1835a, states:

> Except with the prior written consent of the [Federal Deposit Insurance Corporation] . . . any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or *has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense*, may not . . . otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and . . . any

> insured depository institution *may not permit any person referred to [above] to engage in any conduct or continue* any relationship prohibited under such subparagraph.

12 U.S.C. § 1829(a)(1)(A)(iii), (a)(1)(B) (emphasis added). Although Congress did not expressly state that section 1829 preempts the WDA, Congress clearly and unambiguously has prohibited an insured bank, such as Chase, from allowing any individual who has entered into a pretrial diversion program because of a charge involving dishonesty to work or continue to work at that bank. In short, it would frustrate Congressional intent to allow the plaintiff to use a territorial statute to obtain reinstatement to her job where section 1829 specifically has precluded such employment. Therefore, as it is impossible for Chase to comply with both section 1829 and the WDA, section 1829 takes precedence.

Sells-Lawrence advances two arguments to defeat Chase's motion for summary judgment. First, she argues that she did not intend to deceive or mislead Chase when she filled out her employment application because she had a good faith belief that her record was expunged due to her completion of the pretrial diversion program. (Mem. of Law in Supp. of Pl's Opp. to Def.'s Supplemental Mot. for Summ. J. at 3-5.) Plaintiff's good faith belief, however, is irrelevant to the matter at hand. When plaintiff filled out her application, her record had not been

expunged; it was not expunged until June 11, 1997, approximately two months after Chase discharged her. (Def.'s Mem. in Supp. of Supplemental Mot. for Summ. J., Ex. 4.) Since plaintiff's record still showed she had entered into a pretrial diversion program, federal law prohibited Chase from continuing her employment.[4]

In plaintiff's second argument, Sells-Lawrence makes the circular contention that Chase cannot use section 1829 to justify its action since it also violated the section by allowing her to work at the bank. This argument is also without merit. First of all, Chase did not knowingly employ an individual prohibited under section 1829 from working at a bank. Plaintiff marked "No" on her employment application when asked whether she had "ever been convicted of, pleaded guilty or, no contest to, entered into a pre-trial diversion or similar program concerning any criminal offense . . . including, but not limited to, crimes of dishonesty . . . ." (Def.'s Mem. in Supp. of Supplemental Mot. for Summ. J., Ex. 2.) Chase did not find out that plaintiff had in fact entered into a pretrial diversion program until after her background check, at which point it lawfully terminated her employ as mandated by section 1829. Secondly, the language of section 1829 contemplates that a bank may allow a person to start

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[4] According to defendant, Chase offered to reinstate plaintiff effective on the date of June 11th expungement, but plaintiff refused the offer and instead pursued her lawsuit. (Def.'s Reply in Supp. of Supplemental Mot. for Summ. J. at 4 n.3.)

work before the completion of the background check. Section 1829(a)(1)(B) declares that a bank may not permit an individual prohibited from working pursuant to section 1829(a)(1)(A) "to engage in any conduct or *continue any relationship*" with the bank. This subsection covers a situation where the bank discovers, after hiring a person, that she has violated section 1829 and requires that the bank discharge this person. Such is the case here. Upon learning of plaintiff's violation, Chase terminated her employment in compliance with section 1829. Therefore, as Sells-Lawerence fails to establish any reason why section 1829 should not preempt her WDA claim, this Court will grant Chase's supplemental motion for summary judgment.

## III. CONCLUSION

Section 1829 of the Federal Deposit Insurance Act preempts the WDA because compliance with both statutes would frustrate the purpose and objective of Congress in enacting section 1829. Therefore, this Court will reaffirm its order of September 28, 2000, dismissing plaintiff's WDA claim, but on the different ground that it is preempted by 12 U.S.C. § 1829(a)(1)(A)(iii).

**ENTERED this 12th day of March, 2002.**

**For the Court**

**_____/s/_____**
**Thomas K. Moore**
**District Judge**

**ATTEST:**
**WILFREDO MORALES**
**Clerk of the Court**

**By:_____/s/_____**
**Deputy Clerk**

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**Pedro K. Williams, Esq.,**
St. Thomas, U.S.V.I.
*For the plaintiff,*

**Charles E. Engeman, Esq.**
**David J. Comeaux, Esq.**
St. Thomas, U.S.V.I.
*For the defendants.*

**ORDER**

For the reasons set forth in the foregoing Memorandum of even date, it is hereby

**ORDERED** that plaintiff's motion to reconsider the wrongful discharge portion of this Court's order of September 28, 2000 (Docket No. 16) is **GRANTED;** and it is further

**ORDERED** that defendants' supplemental motion for summary judgment (Docket No. 26) is **GRANTED** and this Court's order of September 28, 2000, dismissing plaintiff's Wrongful Discharge Act claim is reaffirmed.

**ENTERED this 12th day of March, 2002.**

**For the Court**

**_____/s/_____**
**Thomas K. Moore**
**District Judge**

**ATTEST:**
**WILFREDO MORALES**
**Clerk of the Court**

**By:_____/s/_____**
**Deputy Clerk**

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