

NOT FOR PUBLICATION

FOR UPLOAD

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

Pamela Jean Jackson, individually )  
and as personal representative of )  
the estate of Farah Elan Olinsky, )  
decedent, and as next friend of )  
both Laura Marie LaPointe and Lisa )  
Lynn LaPointe, daughters of )  
decedent, )

Civ. No. 2001-153

Plaintiff, )

v. )

Government of the Virgin Islands )  
through the Honorable Charles )  
Turnbull, Governor, and through the )  
Honorable Franz Christian, )  
Commissioner of the Virgin Islands )  
Police Department, and the )  
Honorable Iver Stridiron, Attorney )  
General of the Virgin Islands, and )  
Alva Swan, Deputy Attorney General )  
of the Virgin Islands, )

Defendant. )

**ATTORNEYS:**

**Jacqueline A. Drew, Esq.**  
St. Thomas, U.S.V.I.  
*For the plaintiffs,*

**Mark D. Hodge, Esq.**  
**Wayne G. Anderson, Esq.**  
St. Thomas, U.S.V.I.  
*For the defendants.*

**MEMORANDUM**

Moore, J.

The Government of the Virgin Islands moves to dismiss plaintiffs' complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, I will grant defendant's motion to dismiss.

## **I. FACTUAL BACKGROUND**

On November 25, 1992, the police were summoned to a traffic accident on Beltjan Road on St. Thomas. There, they found the deceased body of Farah Elan Olinsky ["Olinsky"] on the road after she had apparently been thrown from the car in which she was riding. Although there may have been evidence that alcohol was involved in the cause of the accident, the Government chose not to prosecute the driver of the vehicle or any other occupants. Over the course of the next eight years, Olinsky's mother, Pamela Jean Jackson ["Jackson"], repeatedly contacted the defendants seeking the prosecution of the driver and other occupants. In 2001, after no action had been taken by the Government in response to Jackson's requests, she filed suit on behalf of Olinsky's estate and Olinsky's children alleging, among other things, deprivation of civil rights. This Court has federal

question jurisdiction pursuant to section 22(a) of the Revised Organic Act of 1954<sup>1</sup> and 28 U.S.C. § 1331.

## **II. DISCUSSION**

### **A. Rule 12(b)(6) Standard**

\_\_\_\_\_ In considering the defendants' motion to dismiss under Rule 12(b)(6), the Court "may dismiss [the] complaint if it appears certain the plaintiff cannot prove any set of facts in support of [her] claims which would entitle [her] to relief." See *Bostic v. AT&T of the Virgin Islands*, 166 F. Supp. 2d 350, 354 (D.V.I. 2001) (internal quotations omitted); see also *Julien v. Committee of Bar Examiners*, 34 V.I. 281, 286, 923 F. Supp. 707, 713 (D.V.I. 1996); FED. R. CIV. P. 12(b)(6). The Court accepts as true all well-pled factual allegations, drawing all reasonable inferences in the plaintiff's favor. See *Bostic*, 166 F. Supp. 2d at 354; *Julien*, 34 V.I. at 286-87, 923 F. Supp. at 713.

### **B. Statute of Limitations Has Run**

Any prosecution of the driver of the vehicle, which was entirely within the Government's discretion, had to be filed

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<sup>1</sup> 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2003), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2003) (preceding V.I. CODE ANN. tit. 1).

within three years of the accident.<sup>2</sup> See 5 V.I.C. § 3541(a) (stating that all felonies, except premeditated murder, embezzlement and falsification of public records, have a three-year statute of limitations). As the accident and death occurred on November 25, 1992, the statute of limitations ran on November 26, 1995. As of this date, therefore, plaintiffs were placed on notice that the driver had not been tried, and the statute of limitations on any civil action they might have begun to run. Section 31 of title 5 of the Virgin Islands Code provides, at most, a three-year statute of limitations for plaintiffs' causes of action, see 5 V.I.C. §§ 31(4), (5), which expired on November 27, 1998. As plaintiffs did not file their complaint until August 28, 2001, their action is barred by the statute of limitations and their complaint must be dismissed.<sup>3</sup>

An appropriate order follows.

**ENTERED this 15th day of August, 2003.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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<sup>2</sup> The likely offense would have been negligent homicide by means of a motor vehicle, 20 V.I.C. § 504.

<sup>3</sup> As I find that plaintiffs' complaint is barred by the statute of limitations, I need not address the Government's other arguments.

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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 defendants' motion to dismiss the plaintiffs' complaint is **GRANTED**; and it is further

**ORDERED** that plaintiff's complaint is **DISMISSED**.

**ENTERED this 15th day of August 2003.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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

By: \_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

cc: Hon. G.W. Barnard  
Mrs. Jackson  
Jacqueline A. Drew, Esq.  
Mark D. Hodge, Esq.  
Wayne G. Anderson, Esq.