

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

RENISHA ALLICK,

Plaintiff,

v.

ANTHONY DECLEMENTE AND VIRGIN ISLANDS
ENTERPRISES INC., D/B/A AVIS RENT A CAR,

Defendants.

SX-10-CV-059

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Virgin Islands Enterprises Inc., d/b/a Avis Rent a Car's (hereinafter, "Avis") Motion to Dismiss For Failure to State a Claim, filed on May 17, 2010. On August 11, 2010, Plaintiff filed a Response to Defendant Avis' Motion to Dismiss.

FACTS

On January 28, 2010, Plaintiff filed a Complaint against Defendants concerning an automobile accident. On or about August 30, 2007, Defendant Anthony Declemente (hereinafter, "Declemente") was operating a vehicle owned by Defendant Avis. Plaintiff alleges that Defendant Declemente negligently operated said vehicle and caused it to collide with Plaintiff, a pedestrian. Plaintiff claims that Defendant Declemente failed to keep a proper look out for pedestrian traffic, failed to maintain proper control of the vehicle, failed to operate the vehicle within the designated speed limit, failed to operate the vehicle in the proper lane, failed to yield the right of way to a pedestrian and failed to exercise the required duty of care. Additionally, Plaintiff also alleges that Defendant Avis negligently entrusted the vehicle to Defendant Declemente because Defendant Avis knew or should have known that Defendant Declemente would operate the vehicle in a manner that was likely to cause serious injury to life,

limb and property on the road and Defendant Avis failed to take the necessary action to ensure that Defendant Declemente would carefully operate the vehicle. Plaintiff claims that, as a direct and proximate result of Defendants' negligence, Plaintiff suffered bodily injuries to head, neck, chest, left elbow, lower back, and various other parts of her body, permanent disfigurement, endured pain of body and mind, loss income and incurred expenses to treat her injuries, all of which will continue in the future.

DISCUSSION

1. Motion to Dismiss For Failure to State a Claim

Court cannot dismiss an action for failure to state a claim upon which relief can be granted unless it appears beyond doubt that plaintiff can prove no set of facts in support of claims as pled which would entitle plaintiff to relief. *Bell v. Chase Manhattan Bank*, 40 V.I. 377 (1999). A motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, tests the sufficiency of the allegations contained in the complaint. *Ditri v. Coldwell Banker Residential Affiliates, Inc.*, 954 F.2d 869, 871 (3d Cir. 1992). In considering whether a complaint should be dismissed for failure to state a claim upon which relief can be granted, court must accept all well-pleaded allegations in complaint as true and view them in light most favorable to plaintiff. *In re Tutu Water Wells Contamination Litig.*, 40 V.I. 279 (1998); *see also Shubert v. Metrophone, Inc.*, 898 F.2d 401, 403 (3d Cir.1990) (“...we must construe all factual allegations in the complaints most favorably to the appellants and affirm the dismissals only if it appears certain that no relief could be granted to them under any set of facts which could be proven.”).

The issue is not whether the plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims. *Matheson v. Virgin Islands Community Bank, Corp.*, 297 F.Supp.2d 819, 825 (D.V.I. 2003). However, if the plaintiff does not nudge his/her claims across the line from conceivable to plausible, the plaintiff's complaint must be dismissed. *Bell Atlantic Corp. v. Twombly*, 540 U.S. 544, 570 (2007) (“...[w]e do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face.”)

2. Negligent Entrustment

Defendant Avis claims that Plaintiff's Negligent Entrustment¹ claim should be dismissed because Plaintiff fails to assert the essential elements of a Negligent Entrustment claim. Defendant Avis cites to *Warrington v. Camacho*, 2007 WL 3124674 (D.V.I.). The plaintiff in *Warrington* alleged that he was injured as a result of the defendant's negligent entrustment of the vehicle to the co-defendant driver. Defendant Avis point out that the plaintiff in *Warrington* failed to assert a specific reason why the entruster should know that it was likely that the driver would be involved in an accident and as a result, the court dismissed the plaintiff's negligent entrustment claim.

¹ Absent contrary local laws, the United States Virgin Islands apply the rules of the common law as expressed in the restatements of law. 1 V.I.C. § 4. Restatement (Second) of Torts (hereinafter, the “Restatement”) § 390 provides that,

To state a claim for negligent entrustment, the plaintiff must allege:

- (1) entrustment of a chattel to a party;
- (2) likelihood that such party because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the entruster should expect to be endangered;
- (3) knowledge or reason to know by the entruster of such a likelihood;
- (4) proximate cause of the harm to plaintiff by the conduct of the trustee.

“Warrington does not allege that there was a likelihood that Camacho’s youth or inexperience would cause Camacho to use the automobile in a manner involving unreasonable risk to persons that Rovira should have expected to be endangered. Warrington also fails to allege that Rovira had knowledge or reason to know that such a likelihood existed. Accordingly, Warrington has failed to state a negligent entrustment claim.” *Warrington*, 2007 WL 3124674 at *1.

Defendant Avis argues that, similar to the plaintiff in *Warrington*, Plaintiff in this case also failed to allege in the Complaint that there was anything about Defendant Declemente that would cause a reasonable person to believe that entrusting a vehicle to Defendant Declemente would result in an unreasonable risk of an accident.² Plaintiff’s Complaint does not allege that Defendant Declemente “is too young, does not know how to drive, is a drunk, etc.” See Defendant Avis’ Motion to Dismiss, at 5. Additionally, Defendant Avis also argues that even if these allegations were made, Plaintiff does not allege in her Complaint that Defendant Avis was aware of Defendant Declemente’s deficiencies at the time Defendant Avis rented the vehicle to Defendant Declemente. Accordingly, Defendant Avis contends that due to Plaintiff’s failure to assert the essential elements of a Negligent Entrustment claim, Plaintiff’s Negligent Entrustment claim against Defendant Avis should be dismissed as it was in *Warrington*.

² In Plaintiff’s Complaint, only the following paragraphs addressed the Negligent Entrustment claim.

12. Pursuant to an agreement between Virgin Islands Enterprises, Inc., and Anthony Declemente, Virgin Islands Enterprises, Inc, entrusted the vehicle to Declemente when it knew or should have known that Declemente would have operated the vehicle in a manner which was likely to cause serious injury to life, limb and property on the Virgin Islands Highway.
13. When Virgin Islands Enterprises, Inc., entrusted the vehicle to Declemente, it failed to take the necessary action to ensure that Declemente would carefully operate the vehicle on the highways of the Virgin Islands.
14. As a direct and proximate result of Defendants’ negligence, Plaintiff Renisha Allick suffered bodily injuries to head, neck, chest, left elbow, lower back, and various other parts of her body, permanent disfigurement, endured pain of body and mind, loss income and incurred expenses to treat her injuries, all of which will continue in the future.

Although Plaintiff asserted that Defendant Avis entrusted "the vehicle to [Defendant] Declemente when it knew or should have know that [Defendant] Declemente would have operated the vehicle in a manner which was likely to cause serious injury to life, limb and property on the Virgin Islands Highway" and that "[Defendant Avis] failed to take the necessary action to ensure that [Defendant] Declemente would carefully operate the vehicle on the highways of the Virgin Islands," Plaintiff did not assert the "likelihood that Defendant Declemente because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom Defendant Avis should expect to be endangered" or "knowledge or reason to know by Defendant Avis of such a likelihood."

CONCLUSION

The Court finds that Plaintiff has stated a claim for Negligent Entrustment against Defendant Avis but does not find Plaintiff's allegations to be sufficiently well-pleaded. The Court will grant Plaintiff leave to amend the Complaint. Accordingly, the Court will deny Defendant Avis' Motion to Dismiss For Failure to State a Claim.

DONE and so ORDERED this 15th day of September, 2010.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: Harlene Jurneul
Deputy Clerk

Dated: 9/20/10

Harold W. L. Willocks
HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This 20th day of Sept 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By: Harlene Jurneul Court Clerk TJ