

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SHIRLEY PACQUETTE,)	
)	
Plaintiff,)	
)	
vs.)	
)	
EUSTACE GRANT, JR., and VIRGIN ISLANDS)	
CARNIVAL COMMITTEE,)	
)	
Defendants.)	CASE NO. ST-08-CV-538
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EUSTACE GRANT, JR.,)	
)	
Third Party Plaintiff,)	
)	
vs.)	
)	
JOANNE DICKENSON, VIRGIN ISLANDS)	
CARNIVAL COMMITTEE and INTERNATIONAL)	
RENTAL and LEASING CORPORATION, d/b/a)	
BUDGET RENT A CAR,)	
)	
Third Party Defendants.)	
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MEMORANDUM OPINION

Pending before the Court is the Virgin Islands Carnival Committee's ("VICC") motion to dismiss Counts I and II of Eustace Grant, Jr.'s Third Party Complaint.¹ For the following reasons, VICC's motion will be granted in part and denied in part.

FACTUAL AND PROCEDURAL HISTORY

On April 26, 2008, at approximately 8:30 p.m., Plaintiff Shirley Pacquette was walking on a public roadway near Lionel Roberts Stadium in order to participate in the St. Thomas Carnival festivities. At that moment, Grant drove down the roadway and his

¹ VICC filed its motion on August 13, 2010, and Grant filed an opposition on September 9, 2010.

vehicle and/or its attached trolley ran over Pacquette's foot, causing injury. On November 6, 2008, Pacquette filed a Complaint against Grant. Grant filed a Third Party Complaint against Joanne Dickenson, VICC, and Budget Rent-A-Car on January 16, 2009. Pacquette then filed an Amended Complaint on September 9, 2010, to add VICC as an additional defendant, which this Court granted on September 16, 2010.

ANALYSIS

Fed. R. Civ. P. 12(b)(6), made applicable to the Superior Court through SUPERIOR CT. R. 7, provides that upon a motion by the pleader, a claim, counterclaim, cross-claim, or third party claim shall be dismissed when there is a "failure to state a claim upon which relief can be granted" to the claimant. A motion to dismiss a portion of the pleadings should be denied if the factual allegations are "enough to raise a right of relief above the speculative level." *Phillips v. County of Allegheny*, 2008 WL 305025, at *6 (3d Cir. 2008); see also *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

In Counts I and II, Grant alleges that VICC is obligated to indemnify Grant for any damages that Pacquette may be awarded against Grant.

"In the Third Circuit, a right of indemnity must be based on an express contract or some special legal relation between parties, or must be implied in law." *Wilkins v. Caribbean Cooling Co., Inc.*, 1991 WL 734426, at *1 (D.V.I. 1991). Indemnity is "implied in law" in order to achieve an equitable result in the instance where an innocent party is held vicariously liable for the actions of the true tortfeasor. See *David's Bridal, Inc. v. The House of Brides, Inc.*, 2010 WL 715437, at *9 (D.N.J. 2010). See also Restatement, Restitution, § 96 (1937) ("a person who, without personal fault, has become subject to tort liability for the unauthorized and wrongful conduct of another, is entitled

to indemnity from the other for expenditures properly made in the discharge of such liability”).

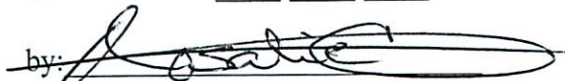
In Count I, Grant alleges that VICC and/or Joanne Dickenson was his principal and that VICC is liable in this case under the theory of *respondeat superior*. Elsewhere in the Third Party Complaint, Grant alleges that he was operating the vehicle at the time of the incident with Dickenson’s permission. Moreover, Grant alleges that VICC was the principal of Dickenson and/or Grant. While Grant’s use of the phrase “and/or” is not a particularly artful way of describing with clarity the relationships of the parties, when the Third Party Complaint is construed in a manner that gives effect to the substance of the pleadings, the Court finds that Grant has adequately alleged an agency relationship between himself and VICC. See *Proper v. Crawford County Correctional Facility*, 2010 WL 3829640, at *2 (W.D. Pa. 2010) (Fed. R. Civ. P. 8(e) directs courts to construe pleadings “so as to do justice”). See also Restatement (Second) of Agency § 219(1) (1957). As a result, VICC’s motion to dismiss Count I will be denied.

In Count II, Grant alleges, essentially, that VICC caused Grant’s vehicle to strike Pacquette because VICC failed to adequately control the Carnival crowd. Grant’s claim for indemnity is therefore based on an implication of law, where it would be inequitable for Grant to be held vicariously liable for the negligent acts of another. Indemnity implied in law, however, requires Grant to demonstrate that he was not personally at fault. While it is a question for the fact finder to determine whether Grant was personally at fault, Grant has failed to allege in his Third Party Complaint that he could be held vicariously liable for the negligent acts of VICC through no fault of his own.

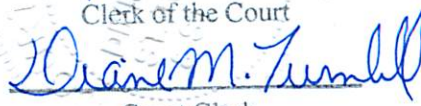
Moreover, the Amended Complaint reveals that Grant's alleged negligent conduct includes: (a) "failing to drive his vehicle in a safe and prudent manner under the conditions then and there existing," (b) "failing to make timely or any application of his brakes," (c) "failing to keep his vehicle under proper control," (d) "failing to keep a proper lookout for Plaintiff," (e) "failing to obey the rules of the road," (f) "failing to keep his vehicle on the roadway," and (g) "failing to have adequate assistance in operating his vehicle." (Amended Complaint, at pages 3 and 4). Pacquette alleges negligent conduct of Grant that is independent of any purported negligence of VICC. If Grant is found liable, his liability could result from his own negligence and not by reason of any negligence committed by VICC. See *Crouch v. Tourtelot*, 350 S.W.2d 799, 805 (Mo. 1961) (third party defendant's liability "must arise solely from its constructive negligence in failing to remedy or prevent the consequences of the primary negligence of the [third party plaintiff]"). As a result, Grant has not stated a claim upon relief can be granted and Count II will be dismissed. An Order consistent with this Opinion shall follow.

Dated: December 3, 2010

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court ___/___/___

by: 
Rosalie Griffith
Court Clerk Supervisor 12/6/10


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY
Date: 12/10/10
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

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ORDER

UPON CONSIDERATION of the premises, it is hereby


ORDERED that Virgin Islands Carnival Committee's motion to dismiss Grant's Third Party Complaint is DENIED with respect to Count I and GRANTED with respect to Count II; and it is

ORDERED that a copy of this Order shall be directed to counsel of record.

Dated: December 3, 2010

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court / /

by: 
Rosalie Griffith
Court Clerk Supervisor 12/6/10


HON. MICHAEL C. DUNSTON
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