

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ERNA WILLIAMS

Plaintiff)

CASE NO. ST-10-CV-0000257

ACTION FOR: DAMAGES - CIVIL

vs)

SEABORNE VIRGIN ISLANDS, INC.

Defendant

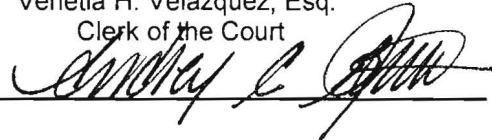
**NOTICE OF ENTRY OF
MEMORANDUM OPINION
AND ORDER**

TO: CHAD MESSIER, ESQ.
ARTURO WATLINGTON, JR., ESQ.
LAW LIBRARY, CLERK OF THE COURT
SUPERIOR COURT JUDGES, SUPERIOR COURT
MAGISTRATES
IT, ORDER BOOK AND LAW CLERKS

Please take notice that on November 04, 2010 a(n) MEMORANDUM
OPINION AND ORDER dated November 03, 2010 was entered by the Clerk in
the above-entitled matter.

Dated: November 04, 2010

Venetia H. Velazquez, Esq.
Clerk of the Court



AUDREY BRIN
COURT CLERK II

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ERNA WILLIAMS,)
)
 Plaintiff,)
)
 vs.)
)
 SEABORNE VIRGIN ISLANDS, INC. and)
 VIRGIN ISLANDS PORT AUTHORITY,) CASE NO. ST-10-CV-257
)
 Defendant.)
)
 _____)

MEMORANDUM OPINION

Pending before the Court is Defendant Virgin Islands Port Authority's ("VIPA") Motion to Dismiss Plaintiff's Complaint. For the following reasons, VIPA's motion will be denied.

ANALYSIS

FED. R. CIV. P. 12(b)(6), made applicable to the Superior Court through SUPER CT. R. 7, provides that upon 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 complaint should be denied if the factual allegations are "enough to raise a right to relief above the speculative level." *Phillips v. County of Allegheny*, 2008 WL 305025, at *6 (3d Cir. 2008). Under the standard of notice pleading, a plaintiff need only "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In reviewing a Rule 12(b)(6) motion to dismiss for failure to state a

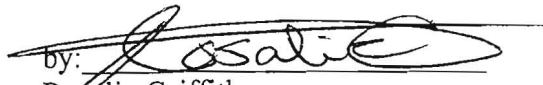
claim, the court is limited to the allegations contained in the pleadings themselves. *Williams v. Kmart Corp.*, 2001 WL 304024, at *2 (D.V.I. 2001). Documents incorporated by reference into the pleadings and documents attached to the pleadings as exhibits are considered part of the pleadings. Fed. R. Civ. P. 10(c). “The inquiry is not whether plaintiffs will ultimately prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims.” *Fin. Trust Co., Inc. v. Citibank, N.A.*, 268 F.Supp.2d 561, 570 (D.V.I. 2003) (quoting *In re Rockefeller Ctr. Props., Inc.*, 311 F.3d 198, 215 (3d Cir. 2002)).

On May 7, 2010, Plaintiff filed a Complaint alleging negligence. VIPA contends that the pleadings do not make an allegation that would establish a claim of premises liability against VIPA. In the Complaint, Plaintiff alleged that “upon Seaborne’s property, which is leased from VIPA ... she stumbled over an impediment and fell, injuring her face, head, chest, and hands.” (Complaint, at page 2). Plaintiff also alleged that “VIPA is responsible for the overall construction, configuration, and use of the ramp and surrounding area leased by Seaborne.” (*Id.*). Based on the allegations, VIPA has been given fair notice of the claims against it. Of course, VIPA may avoid liability by establishing that it does not have control over the premises, did not know of a dangerous condition, or has some other valid defense. However, a determination of the extent of VIPA’s knowledge and control over the premises requires the consideration of discovery material that is not currently before the Court and which could not be considered at this early stage of the proceedings. Moreover, Rule 56(f) permits the Court to deny a motion to dismiss or a motion for summary judgment in order to permit factual discovery.

As a result, VIPA's Motion to Dismiss will be denied without prejudice. An Order consistent with this Opinion shall follow.

Dated: November 3, 2010

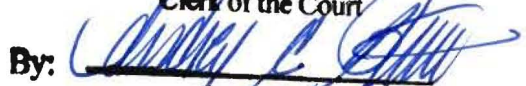
ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court / /

by: 
Rosalie Griffith
Court Clerk Supervisor 11.3.10


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

CERTIFIED A TRUE COPY

Date: 11/4/10
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ERNA WILLIAMS,

Plaintiff,

vs.

SEABORNE VIRGIN ISLANDS, INC. and
VIRGIN ISLANDS PORT AUTHORITY,

Defendant.

CASE NO. ST-10-CV-257

ORDER

UPON CONSIDERATION of the premises, it is hereby

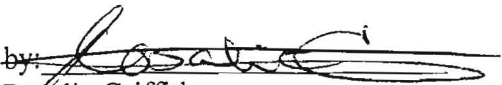
ORDERED that VIPA's Motion to Dismiss is DENIED without prejudice; and it is


ORDERED that the parties shall submit a Rule 26(f) discovery plan and proposed scheduling order on or before November 15, 2010, or the Court will impose an expedited scheduling order of its own design; and it is

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

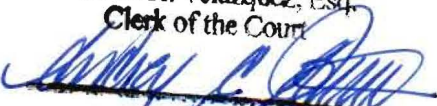
Dated: November 3, 2010

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

by: 
Rosalie Griffith
Court Clerk Supervisor 11/13/10


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

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Venetia H. Velazquez, Esq.
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Court Clerk