

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

SHERWIN A. FLEMING,

Plaintiff,

v.

STEPHANIE E. SCRIBNER and
ROBERT G. SCRIBNER, JR.,

Defendants.

SX-08-CV-621

ACTIONS FOR DAMAGES

JURY TRIAL DEMANDED

ORDER

THIS MATTER is before the Court on Defendant Robert G. Scribner, Jr.'s (hereinafter, "Robert Scribner") Motion to Dismiss, filed on April 12, 2010. On July 20, 2010, Defendant Robert Scribner filed a Motion to Deem Plaintiff Conceded Motion to Dismiss. On August 20, 2010, Plaintiff filed a Response to Defendant Robert Scribner's Motion to Dismiss. Accordingly, it is hereby:

Ordered that Defendant Robert Scribner's Motion to Dismiss For Failure to State a Claim is Denied. It is further:

Ordered that Plaintiff is granted leave to amend the Complaint in regard to the Negligent Entrustment Claim against Defendant Robert Scribner, and re-file the amended Complaint within twenty (20) days of the entry of this Order.

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

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: Sherwin Fleming
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 22nd day of Sept 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By: Venetia Harvey-Velazquez Court Clerk TS

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MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Robert G. Scribner, Jr.'s (hereinafter, "Robert Scribner") Motion to Dismiss, filed on April 12, 2010. On July 20, 2010, Defendant Robert Scribner filed a Motion to Deem Plaintiff Conceded Motion to Dismiss. On August 20, 2010, Plaintiff filed a Response to Defendant Robert Scribner's Motion to Dismiss.

FACTS

On December 29, 2008, Plaintiff filed a Complaint against Defendants concerning an automobile accident. On or about December 21, 2006, Defendant Stephanie E. Scribner (hereinafter, "Stephanie Scribner") was operating a vehicle owned by Defendant Robert Scribner. Plaintiff alleges that Defendant Stephanie Scribner negligently operated said vehicle and caused it to collide with the vehicle Plaintiff was operating. Plaintiff claims that Defendant Stephanie Scribner 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 and failed to yield the right of way. Additionally, Plaintiff also alleges that Defendant Robert Scribner negligently entrusted the vehicle to Defendant Stephanie Scribner because Defendant Robert Scribner knew or should have known that Defendant Stephanie Scribner would operate the vehicle in a manner that was likely to cause

serious injury to life, limb and property on the road and Defendant Robert Scribner failed to take the necessary action to ensure that Defendant Stephanie Scribner would carefully operate the vehicle. Plaintiff claims that, as a direct and proximate result of Defendants' negligence, Plaintiff suffered bodily injuries, damage to his vehicle loss income, total loss of use of the vehicle, expenses in an attempt to repair the vehicle and for substitute transportation, expenses to treat his injuries and pain, suffering and permanent disfigurement.

In an Order dated June 15, 2009, this Court granted Defendant Robert Scribner's Motion to Dismiss in regards to Plaintiff's personal injury claim and denied Defendant Robert Scribner's Motion to Dismiss in regards to Plaintiff's property damage claim.

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 Claim

Defendant Robert Scribner claims that Plaintiff's Complaint contains no reference to, no allegation of agency between Defendant Stephanie Scribner and Defendant Robert Scribner; Defendant Stephanie Scribner was not driving the subject vehicle at the direction or for the benefit of Defendant Robert Scribner. Defendant Robert Scribner argues that Plaintiff's complete failure to include actual allegations of alleged misconduct on the part of Defendant Robert Scriber or any allegation of agency on the part of Defendant Stephanie Scribner to invoke vicarious liability, illustrates that Plaintiff has no plausible claim against Defendant Robert Scribner aside from the Negligent Entrustment claim, which was dismissed by the Court.¹

In his Response, Plaintiff argues that there are sufficient facts in his pleadings to put Defendant Robert Scribner on notice of the Negligent Entrustment claim. Plaintiff points out that, at this stage of the litigation, Plaintiff is not required to establish the merits of his claim in the pleadings. Therefore, Plaintiff requests the Court to deny Defendant Robert Scribner's Motion to Dismiss.

¹ In his Motion to Dismiss, Defendant Robert Scribner incorrectly stated that the Court dismissed Plaintiff's Negligent Entrustment claim against Defendant Robert Scribner.

In its June 15, 2009 Order, the Court did not dismiss Plaintiff's Negligent Entrustment claim. The June 15, 2009 Order stated: "Ordered that Defendant Robert G. Scribner, Jr.'s Motion to Dismiss is Granted in regards to Plaintiff's personal injury claims and Denied in regards to Plaintiff's personal property injury claims." Defendant Robert Scribner argues that Plaintiff did not allege an agency relationship between Defendant Stephanie Scribner and Defendant Robert Scribner to invoke vicarious liability, and therefore, the Court should dismiss Defendant Robert Scribner from this matter. However, Plaintiff is proceeding against Defendant Robert Scribner on a theory of negligent entrustment, not vicarious liability. Hence, there is no need for Plaintiff to allege an agency relationship between Defendants.

Nevertheless, upon reviewing Plaintiff's Complaint, the Court finds that Plaintiff has stated a claim for Negligent Entrustment against Defendant Robert Scribner but does not find Plaintiff's allegations to be sufficiently well-pleaded. The Court will accept all well-pleaded allegations in Plaintiff's Complaint as true and view them in light most favorable to the non-moving party when considering whether a complaint should be dismissed for failure to state a claim upon which relief can be granted. In order to state a claim for Negligent Entrustment, Plaintiff must allege the following elements: (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; and (4) proximate cause of the harm to plaintiff by the conduct of the trustee.² Restatement § 390. In *Warrington v. Camacho*, the Warrington alleged that he was injured as a result of the defendant's negligent entrustment of the vehicle to the co-defendant driver. 2007 WL 3124674 (D.V.I.).

² 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.

The court dismissed Warrington's negligent entrustment claim because 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. *Id.*

"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 (D.V.I., 2007).

Similar to the plaintiff in *Warrington*, Plaintiff in this case also failed to allege in the Complaint that there was anything about Defendant Stephanie Scribner that would cause a reasonable person to believe that entrusting a vehicle to Defendant Stephanie Scribner would result in an unreasonable risk of an accident.³ Although Plaintiff asserted that Defendant Robert Scribner entrusted "the vehicle to Stephanie E. Scribner when he knew or should have known that Defendant Stephanie Scribner 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 "[w]hen Defendant Robert G. Scribner, Jr., entrusted the vehicle to Defendant Stephanie E. Scribner, he failed to take the necessary action to ensure that Defendant Stephanie E. Scribner would carefully operate the vehicle on the highways of the Virgin Islands," Plaintiff did not assert the "likelihood that Defendant Stephanie Scribner because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and

³ In Plaintiff's Complaint, only the following paragraphs addressed the Negligent Entrustment claim.

9. Vehicle License No. CDJ-339 is owned by Defendant Robert G. Scribner, Jr., who assumes responsibility for the torts of Defendant Stephanie E. Scribner.

10. Robert G. Scribner, Jr., entrusted the vehicle to Stephanie E. Scribner when he knew or should have known that Defendant Stephanie Scribner 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.

11. When Defendant Robert G. Scribner, Jr., entrusted the vehicle to Defendant Stephanie E. Scribner, he failed to take the necessary action to ensure that Defendant Stephanie E. Scribner would carefully operate the vehicle on the highways of the Virgin Islands.

others whom Defendant Robert Scribner should expect to be endangered” or “knowledge or reason to know by Defendant Robert Scribner of such a likelihood.”

CONCLUSION

The Court finds that Plaintiff has stated a claim for Negligent Entrustment against Defendant Robert Scribner 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 Robert Scribner’s 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: Kalena Munkub
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: [Signature] Court Clerk II