

DIVISION OF ST. THOMAS AND ST. JOHN

HERMINA SCOTLAND
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

GLORIA ANN HAUGHTON-TAVERNIER,	)	
	)	CASE NO. ST-15-CV-588
Plaintiff,	)	
	)	
vs.	)	ACTION FOR
	)	DAMAGES
SBP INTERNATIONAL PLAZA, LLC and	)	
SBP ST. THOMAS, LLC and ROE	)	
CORPORATIONS 1 through V. Inclusive,	)	
	)	
Defendants.	)	JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on a Motion to Dismiss filed by Defendants SBP International Plaza, LLC and SPB St. Thomas, LLC (collectively “SBP Defendants”) on August 8, 2016, pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons set forth herein, the motion will be denied.

BACKGROUND

Defendant SBP International Plaza, LLC (“SBP International”) and Defendant SBP St. Thomas, LLC (“SBP St. Thomas”) are both limited liability companies formed under the laws of the Virgin Islands. Plaintiff Gloria Ann Haughton-Tavernier (“Tavernier” or “Plaintiff”) is a resident and citizen of the Virgin Islands.

Tavernier alleges that on or about April 16, 2015, she was walking along the “waterfront sidewalk of International Plaza” where she tripped and fell over broken tiles. She alleges that since the fall, she has experienced serious and permanent

injuries and will continue to suffer pain, emotional distress, and mental anguish. She contends that Defendants' negligence in maintaining the exterior tiles on the sidewalk outside of International Plaza caused her fall and resulting severe injuries.

PROCEDURAL HISTORY

Tavernier initiated this matter by filing a complaint on October 30, 2015. Her initial Complaint alleged that SBP Defendants and Roe Corporations are liable for negligence. On December 21, 2015, SBP Defendants filed a Motion to Dismiss Tavernier's Complaint on grounds that Tavernier failed to allege that either defendant owed her a duty of care and that the Complaint impermissibly lumped the Defendants together. SBP Defendants argued that Tavernier could not properly allege that a duty existed because she failed to allege that either defendant owned the sidewalk on which she fell. This Court granted SBP Defendants' Motion to Dismiss Tavernier's Complaint on June 27, 2016. It found that Tavernier failed to allege that either SBP Defendant owed her a duty of care because she had not alleged that either SBP defendant possessed or controlled the premises at issue. But, the Court granted Tavernier leave to amend to cure her deficiency.

Tavernier filed an Amended Complaint on July 14, 2016. SBP Defendants filed a Motion to Dismiss Tavernier's Amended Complaint ("Motion") on August 8, 2016, and Tavernier filed an Opposition to their Motion.

LEGAL STANDARD

SBP Defendants now move to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). SBP Defendants argue that Tavernier's Amended Complaint fails to allege sufficient facts to support a negligence claim. More specifically, they argue that the Court should dismiss Tavernier's Amended Complaint because Tavernier failed to allege that either SBP Defendant owed her a duty of care.

When considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6),¹ the Court must conduct its analysis under the assumption that all facts (as opposed to mere legal conclusions) pleaded by the non-movant are true.² In evaluating the sufficiency of pleadings, courts identify the legal elements of the claimant's cause of action; identify well-pleaded factual allegations; and compare the well-pleaded allegations against the legal elements and assess whether those allegations, if true, would plausibly lead to the conclusion that the claimant is entitled to relief.³ "[W]here there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief."⁴ "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"⁵ When considering if there are facts in the Complaint sufficient to show plausible

¹ Applicable to the Superior Court through Virgin Islands Supreme Court precedent. See e.g. *Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011).

² See, e.g., *Joseph*, 54 V.I. at 650.

³ *Id.* at 649-650.

⁴ *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011).

⁵ *Fleming v. Cruz*, 62 V.I. 702, 710 (V.I. 2015) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 678 (U.S. 2007)).

entitlement to relief, the Court disregards any allegations in the Complaint which are merely “labels and conclusions [or] a formulaic recitation of the elements.”⁶

ANALYSIS

Plaintiff's Amended Complaint states a single cause of action for negligence. To establish a claim for negligence, Tavernier must show: 1) that Defendant owed her a duty of care; 2) that Defendants breached that duty; 3) that Tavernier suffered damages; and 4) that Defendant's breach of duty caused Tavernier's damages.⁷ The Court will only analyze the duty prong of Tavernier's negligence claim because SBP Defendants' current Motion to Dismiss only attacks the Amended Complaint on grounds that it fails to allege a duty on the part of either SBP Defendant. To prove duty for purposes of negligence, a plaintiff must show that the defendant possessed or controlled the premises where the injury occurred.⁸

After excising legal conclusions, Tavernier's Amended Complaint reads, “On or about April 16, 2015, Plaintiff was severely injured after she tripped and fell over broken and uneven tiles on the waterfront side of International Plaza.”⁹ She further alleges, that SBP International “was and is the owner of the premises known as ‘International Plaza.’”¹⁰ Tavernier also alleges that SBP St. Thomas “is the property

⁶ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

⁷ *Machado v. Yacht Haven U.S.V.I., L.L.C.*, 61 V.I. 373, 380 (V.I. 2014).

⁸ *Antilles School, Inc. v. Lembach*, 64 V.I. 400, 413 (V.I. 2016) (internal quotations omitted).

⁹ Pl.'s Amended Compl. ¶ 13.

¹⁰ Pl.'s Amended Compl. ¶ 4.

manager of ‘International Plaza’” and that it is “responsible for the inspection, repairs and maintenance of the tiles described in the Complaint.”¹¹

It is axiomatic that a land owner constitutes a “possessor or controller” of property for purposes of a negligence claim arising from an injury that occurred upon the owner’s property.¹² Consequently, Tavernier’s Amended Complaint successfully alleges that SBP International possessed or controlled the premises in question for purposes of establishing the duty prong of her negligence claim. As such, the Court will deny the current Motion to Dismiss as it pertains to SBP International.

Likewise, Tavernier alleges that SBP St. Thomas functioned as the property management company charged with inspection, repair, and maintenance responsibilities for the premises in question.¹³ Taking Tavernier’s factual allegations as true, SBP St. Thomas controlled or possessed the premises in question for purposes of establishing the duty prong of her negligence claim. Consequently, the Court will deny SBP Defendants’ Motion to Dismiss as it pertains to SBP St. Thomas.

CONCLUSION

The Court finds that Tavernier’s Amended Complaint alleges sufficient factual support for her negligence claim to survive SBP Defendants’ Motion to Dismiss. Consequently, the Court will deny SBP Defendants’ Motion to Dismiss.

¹¹ Pl.’s Amended Compl. ¶ 8.

¹² See e.g. *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 534 (V.I. 2013).

¹³ Pl.’s Amended Compl. ¶ 8.

An Order Consistent with this Memorandum Opinion will follow.

DATED: November 29, 2016



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:



LORI BOYNES TYSON
Court Clerk Supervisor 11/29/16

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GLORIA ANN HAUGHTON-TAVERNIER,
Plaintiff,

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**SBP INTERNATIONAL PLAZA, LLC and
SBP ST. THOMAS, LLC and ROE
CORPORATIONS 1 through V. Inclusive,**

Defendants.

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) **CASE NO. ST-15-CV-588**
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) **ACTION FOR**
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ORDER

THIS MATTER is before the Court on a Motion to Dismiss filed by Defendants SBP International Plaza, LLC and SPB St. Thomas, LLC, on August 8, 2016. For the reasons set forth in the Memorandum Opinion entered on this day, it is hereby

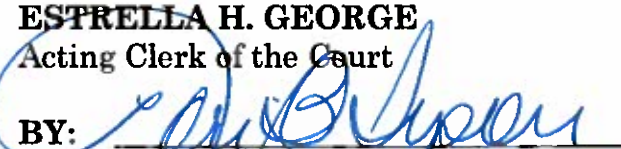
ORDERED that the Motion to Dismiss is **DENIED**;

ORDERED that Defendants shall file their Answer to Plaintiff's Amended Complaint within twenty (20) days of the date of entry of this Order; and it is further

ORDERED that copies of this Order and the Memorandum Opinion shall be directed to counsel of record.

DATED: November 29, 2016

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 
LORI BOYNES TYSON
Court Clerk Supervisor 11/29/16


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands