

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

JUNITO BERRY, a minor by and through	)	
his next of Kin, KEITH BERRY,	)	
	)	
Plaintiff,	)	
	)	Civil No. 2010-105
v.	)	
	)	
KMART CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

APPEARANCES:

Julie G. Evert, Esq.

Law Offices of Julie Evert
St. Thomas, VI
For Junito Berry,

Richard F. Farrelly, Esq.

Law Offices of Birch DeJongh & Hindels PLLC
St. Thomas, VI
For the defendant Kmart Corporation.

ORDER

GÓMEZ, J.

Before the Court is the motion of Junito L. Berry ("Junito Berry") to dismiss this case with prejudice and to order the release of certain funds.

Junito Berry was born to Keith Berry and Aneskaly Christopher (collectively the "Berrys") on June 27, 1999.

On May 8, 2010, Junito Berry was severely injured when he slipped on water, fell, and cut his ear on a table in a Kmart Corporation store located at Tutu Park Mall in St. Thomas, Virgin Islands.

On September 20, 2010, Junito Berry, by and through his next of kin, Keith Berry, brought this negligence action against Sears Holding Corporation. Thereafter, the parties entered a stipulation that Kmart Corporation be substituted as a party defendant for Sears Holding Corporation.

On May 18, 2011, the Berrys, as next of kin of Junito Berry, filed a motion to appoint Ann E. Berry as guardian for the minor plaintiff Junito Berry. See Petition to Appoint Guardian, ECF No. 18. The Berrys so moved so that the Guardian could enter into a settlement on Junito Berry's behalf and create and oversee a bank account in which the net settlement proceeds would be held until Junito Berry attained the age of majority. *Id.*

On June 11, 2011, the Magistrate Judge approved Ann E. Berry as Guardian. See Order, June 7, 2011, ECF No. 20. The Magistrate Judge also ordered that "no disbursements shall be made from the settlement fund without prior authorization from the Court, including the final disbursement when the minor attains the age of majority." *Id.*

On August 23, 2011, Anne E. Berry filed a motion with the Court indicating that she approved the terms of the settlement agreement on behalf of Junito Berry.

On September 19, 2011, the Court entered an order approving the settlement agreement between Junito Berry, a minor, and Kmart Corporation. See Order, September 19, 2011, ECF No. 46, at 2. The Court also ordered Ann E. Berry, as Guardian for Junito Berry, to deposit the net proceeds of the settlement in a bank account. *Id.* The Court did not close the case at that time.

On September 29, 2011, Junito Berry filed a stipulation of dismissal. In that filing, Junito Berry and Kmart Corporation agreed to dismiss this action with prejudice subject to the Court retaining jurisdiction to enforce the parties' settlement agreement.

On October 18, 2011, Ann E. Berry filed a notice with the Court. See Notice of Inventory, ECF No. 49. That notice stated that the net proceeds of the settlement were deposited in a Certificate of Deposit at First Bank, Waterfront Branch, Account #719-7198128582. See *id.* at 1.

Junito Berry now asks the Court to authorize Ann E. Berry to make the final disbursement from the settlement fund pursuant to its order that "no disbursements shall be made from the settlement fund without prior authorization from the Court,

including the final disbursement when the minor attains the age of majority." Order, June 7, 2011, ECF No. 20.

The premises considered, it is hereby

ORDERED that Junito L. Berry's motion is **GRANTED**; it is further

ORDERED that this case is hereby **DISMISSED** with prejudice; and it is further,

ORDERED that the Clerk of the Court shall **CLOSE** this case.

S_____
CURTIS V. GÓMEZ
District Judge