

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

BRAD ROBBINS,	)	
	)	
Plaintiff,	)	CASE NO. ST-12-CV-90
	)	
vs.	)	ACTION FOR
	)	PERSONAL INJURY
PORT OF \$ALE, INC., MOJO'S RUM & SURF	)	AND DAMAGES
SHACK, LLC, THE ROCK NIGHT CLUB &	)	
LOUNGE, LLC, and ASHANA N. POWELL,	)	JURY TRIAL
	)	DEMANDED
Defendants.	)	
	)	
THE ROCK NIGHT CLUB & LOUNGE, LLC,	)	
	)	
Third Party Plaintiff,	)	
	)	
vs.	)	
	)	
INTERSCOPE SECURITY, INC., and	)	
COMMERCIAL SECURITY SERVICES LTD.,	)	
INC.,	)	
	)	
Third Party Defendants.	)	

MEMORANDUM OPINION

Plaintiff Brad Robbins brought this tort action against Defendants after being injured by Defendant Ashana Powell in a fight in the Port of \$ale mall parking lot in March 2010. The matter is before the Court upon Defendant The Rock Night Club & Lounge, LLC's ("The Rock") Motion for Summary Judgment on Robbins' claims against it. For the reasons set forth below, the Court will grant The Rock's motion.

FACTS

The facts of this case arise out of an incident on March 1, 2010, when Plaintiff Brad Robbins was having beers with friends Jack Ervin and Jessie Dinisio at The Rock, a bar in the Port of Sale mall on St. Thomas. Robbins was a regular patron of The Rock, and would often go to the bar in the afternoons after finishing work.¹ On this particular day, Robbins arrived at The Rock sometime between 5:00 and 5:20 p.m.² After 40 minutes or so at the bar, Robbins noticed two women arguing with one another at another part of the bar.³ Robbins recognized one of the women in the argument as Ashana Powell, Defendant herein. Robbins did not recognize the other woman but she would later be identified as Rebecca Seybold.⁴ After a drink at the bar Seybold and her two friends, Maria Cavalli and Pauline Gerber, were leaving when Seybold had stopped to talk with Powell—who up until that point, was sitting alone and “doing her own thing”⁵—about “being a bad dog owner.”⁶ Powell got up from her place and moved to another spot in the bar, but Seybold persisted, at one point or another pointing her finger in Powell’s face.⁷ A verbal argument ensued.⁸

¹ Feb. 12, 2013 Dep. of Brad Robbins (“Robbins 2013 Dep.”) 31:22-33:20, Ex. A to The Rock’s Mot. for Summ. J. (“Mot.”).

² *Id.* 35:13-17.

³ *Id.* 35:18-22.

⁴ *Id.* 42:22-25; Compl. ¶ 10.

⁵ Feb. 13, 2013 Dep. of Jessie Dinisio (“Dinisio Dep.”) 24:17-23, Ex. D to Mot.

⁶ Pl. [Cavalli]’s Resp. to Def. The Rock Night Club & Lounge, LLC’s First Set of Interrog. (“Cavalli’s Resp.”) 6, Ex. C to Mot. This was apparently because Powell had taken a lost dog that Seybold had found.

⁷ *Id.*; Dinisio Dep. 24:6-16.

⁸ Robbins 2013 Dep. 42:11-25.

Not long after the argument ensued, punches were thrown, and the fight became physical. Robbins testified that Seybold was pushed into him as he stood drinking at the bar.⁹ Robbins then grabbed Seybold to prevent her from going back after Powell.¹⁰ The Rock's security guard, Robert "Jojo" Finch, intervened and helped to separate Powell and Seybold from each other, and then escorted Powell out of The Rock.¹¹ Seybold's friends left the bar,¹² and Robbins then let go of Seybold and began trying to calm her down.¹³ After Seybold "calmed down," Robbins and Ervin freed her and she too left the bar.¹⁴

After The Rock's security guard escorted Powell out of the bar, he walked Powell to her car "a few doors down" from The Rock."¹⁵ Powell got into her car, and the security guard convinced her to call 911 to ask for police help.¹⁶ He watched Powell "[get] on the phone" to do so."¹⁷

After the fight in the bar ended and the four women left or were escorted out, Robbins and Ervin returned to their place at the bar.¹⁸ Robbins alleges that not long after that, "an older lady that was standing outside The Rock," yelled into the bar and

⁹ *Id.* 43:9-20.

¹⁰ *Id.* 43:17-22.

¹¹ *Id.* 48:14-19.

¹² *Id.* 48:3-19; Cavalli's Resp. 6.

¹³ Robbins 2013 Dep. 48:20-49:6.

¹⁴ *Id.* 50:14-51:16.

¹⁵ *Id.* 48:14-19; Jan. 11, 2013 Dep. of Robert Finch ("Finch Dep.") 27:10-23, Ex. E to Mem.

¹⁶ Finch Dep. 27:14-16.

¹⁷ *Id.* 28:16-25; *see also* Jan. 10, 2013 Dep. of Adelbert D. Molyneaux, Jr. ("Molyneaux Dep.") 41:13-20, Ex. J to Mem.

¹⁸ Robbins 2013 Dep. 52:1-4.

specifically yelled to him, “Brad, she is in the car, she is trying to run them over.”¹⁹ Robbins testified that he didn’t know this woman’s name and that he didn’t recall seeing her in The Rock that day.²⁰ Robbins and Ervin ran outside and around the corner away from The Rock to a drive-thru area next to the building.²¹ There they found a silver car parked with nobody inside.²² In the Port of Sale parking lot, Robbins spotted Seybold and Powell again engaged in an argument.²³ The Rock faced the dock area abutting Port of Sale mall.²⁴ The area of the parking lot where the argument was happening was on the other side of the building in which The Rock was located,²⁵ approximately halfway between the lot-facing side of The Rock’s building and Mojo’s.²⁶

Afraid that Powell “was going to kill this little girl,”²⁷ Robbins and Ervin approached Powell and Seybold and began trying to separate the two. He and Ervin

¹⁹ *Id.* 52:11-22.

²⁰ *Id.* 53:9-22.

²¹ *Id.* 55:7-10; Dinisio Dep. 36:1-8; Aff. of Don Davis and Attached Map (the “Map”), Ex. Q to Mot.

²² Robbins 2013 Dep. 55:7-24. In his 2013 deposition, Robbins testified that nobody was in the car when he and Ervin ran out of The Rock and approached the car. However, in his 2016 deposition he stated, “So, Jack and I went out and Powell had gotten in her car and the girls had walked through the bank drive thru and she took off in her car after them, going through the bank drive thru the wrong way and she was screaming she is going to run them over so we ran out again.” 42:2-6. And Robbins also denies in his 2013 deposition that he knew who the driver of the car was:

A: . . . and was trying to run somebody over, I assumed it was one of the girls.

Q: But did you have an assumption of which one was the driver and which one –

A: No, I had no idea. *Id.* 55:1-5.

However, none of these different versions creates a genuine issue of material fact.

²³ *Id.* 55:25-56:1.

²⁴ Davis Aff. ¶5 and Map.

²⁵ *Id.*

²⁶ Robbins 2013 Dep. 57:1-17; see Davis Aff. and Map. Mojo’s was another establishment located in an open area across the parking lot from the lot-facing side of The Rock’s building.

²⁷ Robbins 2013 Dep. 58:13-14.

grabbed Seybold and pulled her over toward a vehicle and tried to calm her down.²⁸

Powell continued pacing the area around Seybold, the verbal argument continuing.²⁹

At some point, the fight became physical again. Powell lunged at Cavalli and sliced her face with the shard of a broken beer bottle. Cavalli would later lose her eye as a result. Powell again lunged at another of the women with the broken bottle. Robbins, who had placed himself between Powell and the other women, put his arm up to try to block the attack. Powell sliced his arm with the glass, putting a deep cut into Robbins' arm. Robbins, now severely injured and needing to stop the bleeding from his arm, returned to The Rock. He suffered a deep laceration in his arm approximately three to four inches in length, which required exploration and repair of tendons, arteries, and nerves.³⁰ Robbins alleges that he suffered permanent disfigurement and impairment in his hand and arm because of the attack, and has continued to suffer pain, emotional distress, and trauma.³¹

²⁸ *Id.* 58:4-24.

²⁹ *Id.* 59:22-61:2.

³⁰ Transcript of Record at 234, *People of the V.I. v. Powell*, ST-10-CR-097, Testimony of Dr. Bryon Bacot, Ex. F to Mem.

³¹ The facts cited above include no disputed material facts. The Court, as it must at the summary judgment stage, credits Robbins' version of the events when supported by proper proofs. However, the Court also notes that Robbins claims certain "undisputed facts" in his memorandum that are not supported by any sworn statement or are contradicted by the evidence on the record, including Robbins' own testimony. The most striking misrepresentations are:

1. Robbins alleges that he was "injured after being requested to and forced to assist in breaking up the fight," in the parking lot. In fact, the record does not reflect that Robbins was "forced" to assist in the parking lot fight by The Rock or anyone else, or that he was requested by The Rock to assist in breaking up either fight; Robbins himself testified that a woman yelled into The Rock and called for him to come out, that only that one person asked him to, and that he did not associate her with The Rock. Robbins 2013 Dep. 145:5-18, 32:21-25.
2. Robbins claims that he "was summoned out to the parking lot area between Mojos and The Rock to help with stopping the ongoing or second altercation," yet there is no testimony on the record that he was called out of the bar by any agent of The Rock, and there is no testimony that he was

Robbins brought this action against The Rock and the other Defendants, seeking compensatory, consequential, and punitive damages. Robbins alleges The Rock negligently failed to protect him from Powell's attack.

LEGAL STANDARDS

Summary judgment is a "drastic remedy," *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), which should only be granted if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law,"

"summoned" to the parking lot area at all. Robbins himself testified that he "didn't have any obligation" to assist in breaking up the fight in the parking lot. Robbins 2016 Dep. 46:1-15.

3. Robbins complains that The Rock used deposition testimony offered by Robbins in a related case in the District Court of the Virgin Islands where Cavalli sued over her lost eye, yet Robbins' attorney himself informed a witness in a 2012 deposition that, "in the interest of saving everybody hopefully some time, we are going to just do all the depositions together," Nov. 13, 2012 Dep. of Cornel Esprit, 115:8-16, apparently quite content that the parties would be cross-referencing deposition testimony. Also, even without an agreement or consent, rules of evidence permit the use of prior inconsistent statements.
4. Robbins claims that, in the parking lot area, "The Rock's security guard released Ashana Powell," allowing her to, "end[] up with a broken beer bottle" However, that is not an undisputed fact. Robbins himself testified that, "*if I remember right*," "Jojo [The Rock's security guard] came out," and, "started helping me with [Powell]," and that at some point, "[s]omehow, Jojo let her up and she went back to her car." Robbins 2016 Dep. 44:6-13 (emphasis added). And The Rock's security guard testified in his deposition that he did not go to the parking lot, "once I was able to get [Powell] to go to her car, all right, cool, they took the girls through the drive-through [sic], I went back inside, straighten up, gets things going. And, for me, it was done there." Finch Dep. 74:6-18. He also testified that he was back at The Rock when Robbins returned injured after the attack. *Id.* 37:24-38:8.

This coloring of the facts is not tolerable. Counsel is not at liberty to ignore the record and finagle a version of "undisputed facts" that is neither undisputed nor factual for surviving summary judgment. Even in 2018, truth is still truth, and simply inaccurately describing something as an "undisputed fact" does not mean the Court must give it weight when it is not supported by a sworn statement. To the extent any of the above is a disputed fact, as opposed to a misrepresentation, it is not a genuine fact material to the Court's findings.

id. (citing Fed. R. Civ. P. 56). A fact is material only where it “might affect the outcome of the suit under the governing law,” *id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)), and a factual dispute is deemed genuine if, “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” *Greene v. V.I. Water & Power Authority*, 65 V.I. 67, 73 (V.I. Super. Ct. 2016) (quoting *Liberty Lobby*, 477 U.S. at 248).

When reviewing the record under a summary judgment motion, a court, “must view the inferences to be drawn from the underlying facts in the light most favorable to the non-moving party,” and, “must take the non-moving party's conflicting allegations as true if supported by ‘proper proofs.’” *Williams*, 50 V.I. at 194. A party opposing a motion for summary judgment, the non-movant, “may not rest upon the mere allegations or denials of [her or] his pleadings, but must set forth specific facts showing that there is a genuine issue for trial.” *Liberty Lobby*, 477 U.S. at 248 (quoting Fed. R. Civ. P. 56(e)).

To entitle the non-movant to proceed to trial, an issue of material fact needn't be clear enough, “to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial.” *Id.* at 248-49 (citation and internal quotations omitted). Such evidence presented by the non-movant, “may be direct or circumstantial, but the mere possibility that something occurred in a particular way

is not enough, as a matter of law,” for a jury or judge to find it *probably* happened that way. *Williams*, 50 V.I. at 195 (citation and internal quotations omitted). Distilling then what evidence is required to survive summary judgment, “the nonmoving party’s evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” *Id.* (citing *Saldana v. Kmart Corp.*, 43 V.I. 361, 364 (3d Cir. 2001)).

ANALYSIS

Robbins alleges that The Rock had a duty to provide adequate security and to provide reasonable protection for its business invitees . . . in and about their premises and in the parking lot”³² He argues that The Rock failed to provide adequate numbers of adequately trained security personnel to protect business invitees, and that The Rock failed to adequately train or supervise its employees or security personnel to take reasonable steps to restrain Powell.³³ Robbins argues that, “The Rock’s security . . . permitted the clear and present danger of the fight to continue into an area which The Rock controlled and The Rock’s security stood by and watched while Mr. Robbin’s arm was slashed”³⁴

Separately, Robbins argues that Defendants also, “failed to properly empty trash receptacles on and about its premises[.]”³⁵ He argues that The Rock, “knew or

³² Compl. ¶ 49.

³³ *Id.* ¶ 22.

³⁴ *Id.* 2.

³⁵ Compl. ¶ 50.

should have known, that by allowing empty glass beer bottles onto its premises [sic] and to accumulate in trash receptacles on its premises would pose a serious risk of harm and injury to its invitees and the public at large[.]”³⁶ He argues that in failing to empty trash receptacles “around their various properties,” Defendants, including The Rock, “permitted Ashana Powell to utilize an empty glass bottle as a weapon injuring [] Robbins.”³⁷ Robbins argues that, “[a]s a direct and proximate result of the foregoing [sic] negligent, grossly negligent, and reckless acts or omissions by [] The Rock,” he suffered his serious injuries.³⁸

Robbins does not argue that The Rock breached a duty of care in responding to the fight that occurred in The Rock, but he does state that this is not a premises liability case.³⁹ Thus the Court will examine the other forms of negligence to which Robbins alludes to determine if The Rock is entitled to summary judgment.

I. Establishing a Claim of Negligence for Failure to Protect.

A negligence claim requires (1) a legal duty of care to the plaintiff, (2) a breach of that duty of care by the defendant (3) constituting the factual and legal cause of (4) damages to the plaintiff. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014). The issue of whether a defendant’s behavior conformed to a standard of conduct required is a question of fact, *In re Catalyst Litig.*, 2010 V.I. LEXIS 126, *12

³⁶ *Id.*

³⁷ Oppo. 2.

³⁸ Compl. ¶ 53.

³⁹ Oppo. 14 (“The Rock attempts to argue that this is a premises liability case instead of a negligence case. Unfortunately for The Rock a cause of action cannot be changed merely because a party argues in a motion that the cause of action should be something else.”).

(V.I. Super. Ct.) (citing Restatement (Second) of Torts, § 328A, cmt. d (Am. Law Inst. 1965)), but *whether* a duty exists, and the nature of the legal duty, is generally a question of law to be determined by the Court, *see Sealey-Christian v. Sunny Isle Shopping Ctr., Inc.*, 52 V.I. 410, 420 (V.I. 2009) (citing *Turbe v. Gov't of V.I.*, 938 F.2d 427, 429 (3d Cir. 1991)).

Under this jurisdiction's premises liability scheme, possessors of land owe a duty to protect visitors on that land from foreseeable harms caused by the foreseeable reoccurrence of known dangerous conditions on that land. *Perez v. Ritz-Carlton (V.I.), Inc.*, 59 V.I. 522, 533-34 (V.I. 2013). "Liability for such foreseeable harms is based on the possessor's superior knowledge of the property, as the possessor is in the best position to know of potentially dangerous conditions on the property[.]" *Id.* at 533. Thus, like in negligence actions more generally, foreseeability of harm "is the touchstone of the existence of a land possessor's duty of reasonable or ordinary care" in all premises liability actions. *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 386 (V.I. 2014) (citing *id.*) (internal quotations omitted). "[I]f a possessor could anticipate that the conditions on its property would result in injury to those foreseeably using the property, the possessor can be held liable for those injuries." *Id.* at 394. Our Supreme Court made clear in *Machado* that a possessor's duty turns on the foreseeability of harm regardless of the status of the visitor. *Id.* at 385-91.

However, Plaintiff argues that this is not a premises liability case, that it is a duty-to-protect case, and that The Rock owed that duty "even when The Rock's

patrons were outside the four walls of The Rock”.⁴⁰ More precisely, Plaintiff argues that The Rock owed a duty to protect Plaintiff against the attack by Powell, a third-party assailant. Indeed, distinct from a premise liability action, a criminal act against a patron by a third-party cannot be a known condition on the land in the same way a broken stair or shattered glass can be. Distinct from a premises liability case, liability in a duty-to-protect case is not based on the landowner’s superior knowledge of the property. Bearing those distinction in mind, no Virgin Islands court has yet articulated what sort of duty a bar owner owes a patron to protect him or her against third-party criminal acts. However, courts in several other jurisdictions have. To determine the appropriate common-law rule for the Virgin Islands, this Court must look to those other jurisdictions to see how they have resolved the question, then weigh all persuasive authority on the question and determine the most appropriate common-law rule for the Virgin Islands. *See Gov’t of the V.I. v. Connor*, 60 V.I. 597, 603 (V.I. 2014) (per curiam) (“[T]he Superior Court, when considering a question not foreclosed by prior precedent from this Court, must perform a three-part analysis as set forth in *Banks*.”).⁴¹ The Court will examine a bar owner’s duty to protect patrons, foreseeability and other factors that must be considered.

⁴⁰ Oppo. 7.

⁴¹ “The first step in [a *Banks*] analysis—whether any Virgin Islands courts have previously adopted a particular rule—requires the Superior Court to ascertain whether any other local courts have considered the issue and rendered any reasoned decisions upon which litigants may have grown to rely. The second step—determining the position taken by a majority of courts from other jurisdictions—directs the Superior Court to consider all potential sides of an issue by viewing the potentially different ways that other states and territories have resolved a particular question. Finally, the third step in the *Banks* analysis—identifying the best rule for the Virgin Islands—mandates that

a. The Basic Duty of a Bar Owner to Protect Patrons.

Courts from several other jurisdictions have stated the general rule that, normally, a land owner owes, “no duty to protect lawful entrants from criminal attacks by third parties.” *Cooke v. Maxum Sports Bar & Grill*, 2018 Ill. App. LEXIS 459, *P55 (citation omitted); *see also, e.g., Del Lago Ptnrs. v. Smith*, 307 S.W.3d 762, 767 (Tex. 2010) (“Generally, a premises owner has no duty to protect invitees from criminal acts by third parties.”) (citation omitted); *Desir, Estate of ex rel. Estiverne v. Vertus*, 214 N.J. 303, 333-34 (2013) (“[T]here is generally no duty to protect others against harm from third parties[.]”) (citing W. Page Keeton et al., *Prosser and Keeton on Torts*, § 56, at 385 (5th ed. 1984)); *McKown v. Simon Prop. Grp. Inc.*, 182 Wn.2d 752, 766 n. 3 (Wash. 2015). Yet courts commonly recognize an exception to the general rule in circumstances where, “the possessor of land and the entrant stand in a special relationship.” *Cooke*, 2018 Ill. App. LEXIS 459, *P55; *see also, e.g., Doe v. Grosvenor Props.*, 73 Haw. 158, 163 (1992) (“Exceptions to the general rule that there is no duty to protect may arise when justified by the existence of some special relationship between the parties.”) (citations omitted); *McKown*, 182 Wn.2d at 755 n. 2 (“[W]e recognize[] a limited special relationship exception for businesses to the general common law rule that a person owes no duty to protect others from criminal

the Superior Court weigh all persuasive authority both within and outside the Virgin Islands, and determine the appropriate common law rule based on the unique characteristics and needs of the Virgin Islands.” *Id.* at 603 (citations omitted).

acts of third persons.”).⁴² Upon a finding of a special relationship, courts have been willing in certain circumstances to impose a duty on premises owners. The duties, “arise out of special relations between the parties, which create a special responsibility, and take the case out of the general rule.” Restatement (Second) of Torts § 314A.

This general rule and the special relationship exception are consistent with the Restatement (Second) of Torts § 344, which states:

A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to

- (a) discover that such acts are being done or are likely to be done, or
- (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

Comment d of § 344 explains that while possessors are generally not responsible for the harm that results from the criminal acts of third persons, they do have a ‘reasonable care’ duty to protect from such acts:

A public utility or possessor of land who holds it open to the public for entry for his business purposes is not an insurer of the safety of such visitors against the acts of third persons, or the acts of animals. He is, however, under a duty to exercise reasonable care to give them protection.

⁴² The Restatement (Second) of Torts § 314A lists “Special Relations Giving Rise to Duty to Aid or Protect”. Among those it lists is, “[a] possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation”—an invitee. Business visitors are included under this definition. See *id.* § 332; BLACK’S LAW DICTIONARY, *Invitee* (10th ed. 2014):

(4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.

This duty of 'reasonable care' is the standard, consistent with the standard of care required in other areas of negligence law, adopted by a number of courts. *E.g.*, *Ky. Fried Chicken of Cal. v. Superior Court*, 14 Cal. 4th 814, 823 (Cal. 1997) ("The Restatement rule continues to be the generally accepted test of liability of a business owner for injuries on the business premises caused by third party criminal conduct."); *Miller v. B.H.B. Enterprises*, 152 N.C. App. 532, 541 (2002) ("Liability for injuries may arise from failure of the proprietor to . . . provide reasonable means to protect his patrons from harm or give a warning adequate to enable patrons to avoid harm.") (citation and internal quotations omitted); *Reilly v. 180 Club, Inc.*, 14 N.J. Super. 420, 424 (N.J. Super. Ct. App. Div. 1951) ("It is in the law the duty of a tavern-keeper to exercise reasonable care, vigilance, and prudence to protect his guests from injury from the disorderly acts of other guests.") (citations omitted).⁴³

⁴³ See also, *e.g.*, *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 525 (Del. 1987) ("We conclude that while a property owner is no more an insurer or guarantor of public safety than are police agencies, there is a residual obligation of reasonable care to protect business invitees from the acts of third persons."); *Madden v. C & K Barbecue Carryout, Inc.*, 758 S.W.2d 59, 61-62 (Mo. 1988); *Zueger v. Carlson*, 542 N.W.2d 92, 96-97 (N.D. 1996); *McClung v. Delta Square Ltd. P'ship*, 937 S.W.2d 891, 898-99 (Tenn. 1996) (writing, "Notwithstanding the reluctance to impose a duty on business owners, the majority of courts that have considered the issue have been unwilling to hold that a business never has a duty to protect customers from criminal acts. Instead, most have held that, while not insurers of their customers' safety, businesses do have a duty to take reasonable precautions to protect customers from foreseeable criminal acts," and listing cases from other jurisdictions supporting that rule); see also, *c.f.*, *Perez*, 59 V.I. at 534 ("Furthermore, we are persuaded by the fact that the recurring condition rule is not in conflict with the principle that the possessor is not an insurer of the visitor's safety.") (citations and internal quotations omitted).

b. The Foreseeability Limitation on a Bar Owner's Liability.

Courts have generally not found, however, that a bar owner's liability to patrons for injuries by third parties is unlimited; as is typical in negligence actions, they have held that whether a business owes a duty to protect patrons from criminal acts of third persons turns on the foreseeability of those acts. For example, in *Delgado v. Trax Bar & Grill*, the California Supreme Court said of a bar proprietor's duty:

Turning to the application of the special relationship doctrine in the case before us, it is undisputed that defendant, a bar proprietor, stood in a special relationship with plaintiff, its patron and invitee, and hence owed a duty to undertake reasonable steps to secure common areas *against foreseeable criminal acts of third parties that were likely to occur in the absence of such precautionary measures* and to take such appropriate action as is reasonable under the circumstances to protect patrons.

36 Cal. 4th 224, 244 (citations and internal quotations omitted) (emphasis added). In another example, from the Court of Appeals of Louisiana, the court wrote when discussing the duty of business owners:

Although business owners are not the insurers of their patrons' safety they do have a duty to implement reasonable measures to protect their patrons from criminal acts when those acts are foreseeable. There is generally no duty to protect others from the criminal activities of third persons. *This duty only arises under limited circumstances, when the criminal act in question was reasonably foreseeable to the owner of the business. Determining whether a crime is foreseeable is, therefore, a critical inquiry.*

Daniels v. Essex Ins. Co., 890 So. 2d 599, 602-03 (2004) (citations omitted) (emphasis added); *see also, e.g., Viotty v. Bank of N.S.*, 2010 U.S. Dist. LEXIS 60816, *8 (D.V.I.) (granting summary judgment to a bank that was sued by a patron who was in the

bank at the time of a robbery and writing, “since the possessor is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur.”) (citing the Restatement § 344 cmt. f); *Cooke*, 2018 Ill. App. LEXIS 459, *27 (“Business invitor liability for foreseeable criminal attacks on the premises is well established.”); *McKown*, 182 Wn.2d. at 765 (“[A] business owes a duty to its invitees to protect them from ‘reasonably foreseeable’ criminal acts of third persons.”) (citation omitted).

These concepts of foreseeability and reasonable care are, again, consistent with negligence actions more broadly, and in fact accord with the broader landowner-possessor liability scheme that this jurisdiction already follows. *See, Machado*, 61 V.I. at 381 (“Traditionally, the duty of care owed by a land possessor . . . was determined by classifying the entrant as either an invitee, a licensee, or a trespasser . . . instead of holding a land possessor to the general duty of reasonable care utilized in all other areas of negligence law.”) (citations omitted); *id.* at 383 (“[Yet] the foreseeability of the injury should be the controlling factor in determining the liability of the possessor,’ just as in all other negligence actions.”) (citing *Heins v. Webster Cnty.*, 250 Neb. 750, 759 (1996)); *see also, id.* at 389-91 (discussing importance of foreseeability in limiting liability). It is therefore proper for this Court to extend the application of the principles of foreseeability and reasonable care to actions involving

a bar owner's duty to protect patrons against third-party criminal acts. It will do so here.

c. Additional Factors Courts Consider in Determining the Existence of Duty.

Notwithstanding the foregoing analysis, the Court notes that even among jurisdictions that have adopted foreseeability as a prerequisite to business owner liability (which most apparently have), many courts have held that the inquiry as to the existence and scope of duty does not stop at foreseeability. *E.g., Timberwalk Apts. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998) ("Foreseeability is the beginning, not the end, of the analysis in determining the extent of the duty to protect against criminal acts of third parties.") (quoting *Lefmark Mgmt. Co. v. Old*, 946 S.W.2d 52, 59 (Tex. 1997)). Several jurisdictions consider factors in addition to foreseeability in bar owner liability cases and in negligence actions more generally. Balancing competing policy interests, courts rely on these additional factors to further bound a possessor's liability and more strictly limit the situations in which those owners have a duty to protect.

In *Observatory Corp. v. Daly*, 780 P.2d 462 (1989), for example, the Colorado Supreme Court considered a tavern owner's duty to protect after the plaintiff, a tavern patron, was injured in the parking lot of the tavern and sued the tavern's parent company for failure to protect. The court wrote, "[a] court's determination that the defendant did or did not owe a legal duty to the plaintiff is an expression of

the sum total of those considerations of policy which lead the law to say that the plaintiff is or is not entitled to protection." *Id.* at 466 (quoting *University of Denver v. Whitlock*, 744 P.2d 54, 57 (Colo. 1987). It found that in, "making this determination the court must exercise a prudential judgment based on a weighing of many factors, including the foreseeability of harm from the failure of the defendant to take protective action[.]" *Id.* The court elaborated:

While foreseeability of harm is a prominent element in determining a tavern proprietor's legal duty to patrons and other persons legitimately on the tavern premises, it is not the exclusive element. Our recent decisions make clear that a court must also consider, in addition to the foreseeability of harm, the social utility of the proprietor's conduct, the magnitude of the burden of guarding against the injury, the consequences of placing that burden upon the defendant, and any other relevant factors implicated by the facts of the case.

Id. at 468 (citations omitted). Finding no evidence that the tavern had notice that the third party "constituted an unreasonable risk of physical harm" to the plaintiff, the court held, "to impose [] a duty would be tantamount to requiring a tavern employee to divine future violence on the part of a tavern patron notwithstanding the absence of any objective evidence indicating that the patron constituted an unreasonable risk to the safety of others. The practical consequences of such a rule would be to render the tavern proprietor a virtual insurer of the safety of all persons legitimately on its premises." *Id.* at 469. The court declined to adopt such a rule, and concluded the tavern had no legal duty.

From another jurisdiction, in *Nicole M. v. Sears*, 76 Cal. App. 4th 1238 (1999), the California Court of Appeals had before it a case where a victim of an assault in

the parking lot of a department store filed a negligence action against the department store for failing to prevent the attempted assault by providing better lighting. The court discussed deciding the existence of a duty owed by a business owner to patrons:

Some factors that courts consider in determining the existence and scope of a duty in a particular case are: [t]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Id. at 1244-45 (citing *Ann M. v. Pacific Plaza Shopping Center*, 6 Cal. 4th 666, 675 n. 5 (Cal. 1993)). The court wrote that foreseeability is the "crucial factor" in determining the existence of duty, but expounded, "[t]he duty calculus involves balancing foreseeability against several factors, including the extent of the burden to be imposed on the defendant." *Id.* at 1245. The court engaged in that balancing, and found that, the "monetary costs . . . [and] social costs of imposing a duty on landowners to hire private police forces are also insignificant." It held, that, "a high degree of foreseeability is required in order to find that the scope of a landlord's duty of care includes the hiring of security guards." *Id.* It further concluded that, "the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises." *Id.* (citing *Ann M.*, 6 Cal. 4th at 679 ("While there may be circumstances where the hiring of security

guards will be required to satisfy a landowner's duty of care, such action will rarely, if ever, be found to be a 'minimal burden.'"))).

Also, in *Cooke*, a case before the Appellate Court of Illinois, bar patrons had brought an action against a bar alleging failure to protect after the patrons were attacked in a strip mall parking lot outside the bar. The court started by affirming, "business invitor liability for foreseeable criminal acts on the premises is well established." 2018 Ill. App LEXIS 459, *P59. But it then distinguished the case before it, where, "plaintiffs were attacked and injured in a parking lot owned by [the bar's] landlord, around the corner from [the bar's] front door and out-of-view from [the bar's] bouncers." *Id.* In moving to its discussion of whether the bar had a duty to protect plaintiffs, the court applied this principle:

[T]he existence of a special relationship, alone, is not sufficient to impose a duty upon the possessor of land to protect lawful entrants from the criminal acts of third parties. Before a duty to protect will be imposed on a possessor of land, the court must also consider (1) whether the criminal attack was reasonably foreseeable, (2) the likelihood of the injury, (3) the magnitude of the burden to guard against the injury, and (4) the consequences of placing that burden upon the possessor.

2018 Ill. App. LEXIS 459, *P56 (citing *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436-37 (Ill. 2006) (applying those factors to determine the existence of a restaurant owner's duty to protect a patron, *id.* at 436-46)).

In addition to those examples, appellate courts in numerous other jurisdictions have adopted similar factors in determining whether a bar owner has a duty to protect, or the existence of a duty in negligence actions more broadly.⁴⁴

d. The Rule on a Bar Owner's Duty to Protect that this Court Adopts.

It appears to this Court that it is common practice for courts to weigh additional factors along with foreseeability in deciding whether bar owners owe a

⁴⁴ For a case involving landlord liability, see, e.g., *C.S. v. Sophir*, 220 Neb. 51, 54 (1985) ("Factors to consider in imposing a duty on a landlord include weighing the relationship of the parties against the nature of the risk and the public interest in the proposed solution, as well as the likelihood of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on a defendant.") (citations omitted). For a case involving business owner liability, see *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891, 901 (Tenn. 1996) ("We have also noted that several factors are to be considered in deciding whether a risk is an unreasonable one, thereby giving rise to a duty. Those factors include the foreseeable probability of the harm or injury occurring; the possible magnitude of the potential harm or injury; the importance or social value of the activity engaged in by defendant; the usefulness of the conduct to defendant; the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct; and the relative safety of alternative conduct.") (citation and internal quotations omitted).

For cases discussing negligence more broadly, see, e.g. *Remsburg v. Montgomery*, 376 Md. 568, 583 (2003) ("In determining the existence of a duty, we consider, among other things: the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered the injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved. . . . While foreseeability is often considered among the most important of these factors, its existence alone does not suffice to establish a duty under Maryland law.") (citations and internal quotations omitted); *Mower v. Baird*, 2018 UT 29, P17 (Utah) ("In *Jeffs*, we established a five-factor test for determining whether a defendant owes a duty to a plaintiff: (1) whether the defendant's allegedly tortious conduct consists of an affirmative act or merely an omission; (2) the legal relationship of the parties; (3) the foreseeability or likelihood of injury; (4) public policy as to which party can best bear the loss occasioned by the injury; and (5) other general policy considerations. Not every factor is created equal, however. Some factors are featured heavily in certain types of cases, while other factors play a less important, or different, role. The first two factors are considered 'plus' factors used to determine whether a duty would normally exist. The final three factors are considered 'minus' factors used to eliminate a duty that would otherwise exist.") (citations and internal quotations omitted).

duty to protect patrons and former patrons. However, *Banks* directs that this Court must still, “weigh all persuasive authority both within and outside the Virgin Islands, and determine the appropriate common law rule based on the unique characteristics and needs of the Virgin Islands.” Limiting bar owners’ liability by weighing factors such as the magnitude of the burden would be consistent with principles enunciated by our own Supreme Court in adopting a ‘reasonable care’ duty in premises liability cases. *E.g.*, *Machado*, 61 V.I. at 390 (“there are limits to ‘reasonable care’”) (quoting *Jones v. Hansen*, 254 Kan. 499, 510 (Kan. 1994)); *Machado*, 61 V.I. at 389 (“[H]olding a land possessor to a uniform duty of reasonable care with respect to all entrants on the land does not impose ‘strict’ or ‘limitless’ liability, and . . . ‘is not in conflict with the principle that the possessor is not an insurer of the visitor's safety.’”) (quoting *Perez*, 59 V.I. at 534). Also, this Court notes that the Virgin Islands legislature enacted a law in 2013 that distinguishes the Virgin Islands from many jurisdictions: “Under the prevailing view, civil damage or dramshop acts provide a remedy against the supplier of intoxicants for the death of an intoxicated person[.]” 64 A.L.R.2d 705.⁴⁵ However the Virgin Islands statute directs that, “[a] person who sells or furnishes alcoholic beverages to a person of lawful drinking age does not thereby become liable for injury or damage caused by or resulting from the intoxication of such person,” 8

⁴⁵ “In a number of states statutes known as dramshop or civil damage acts have been enacted establishing civil liability of the vendor of intoxicants for certain classes of injuries attributable to the use of alcoholic beverages. . . . While varying widely in detail, such statutes typically provide that the supplier of intoxicants shall be liable to a person injured in person, property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, attributable to intoxicants furnished by such supplier.” 64 A.L.R.2d 705.

V.I.C. § 161. Thus, the Virgin Islands legislature has formally established and codified an existing policy goal of limiting liability for establishments that sell liquor.⁴⁶ With that in mind and having considered what is required by *Banks*, the Court finds it appropriate to here adopt the following set of rules:

A possessor of land owes no duty to protect lawful entrants from criminal actions by third parties. However, one exception is where the possessor of land and the entrant stand in a special relationship, as in the case of a bar or tavern owner and its patron. The special relationship can give rise to a duty to protect the entrant from criminal attack by third parties. In considering whether the possessor has a duty to protect, a court shall consider: (1) whether the criminal attack was reasonably foreseeable, (2) the likelihood of the injury (3) the magnitude of the burden to guard against the injury, (4) the consequences of placing that burden upon the possessor, and (5) and any other relevant factors implicated by the facts of the case. Not every factor must be weighed equally. Some factors feature heavily in certain types of cases, while other factors play a less important, or different, role.

II. The Rock Had no Duty to Protect Robbins in the Port of \$ale Parking Lot.

Robbins argues that The Rock had a duty to hire and train security personnel to protect its patrons, and that because The Rock did not hire an adequate number of security staff and adequately train them, Robbins was not protected from the attack by Powell. In essence, Robbins argues that The Rock breached a duty to protect by not hiring enough adequately-trained security staff.

⁴⁶ This statute was enacted after Robbins was injured. However, it illustrates the former unwritten policy.

However, a more central issue—one not clearly addressed by either party—is whether The Rock had a duty to protect Robbins in the Port of Sale parking lot at all. Robbins submits that he was on Port of Sale property (and therefore, no longer on The Rock’s premises) when he was attacked.⁴⁷ Also, he does not argue that The Rock breached a duty to protect him during the first fight, the one on The Rock’s premises. The important question then is whether The Rock owed Robbins a duty to protect during the second fight, in the parking lot. If it did not, then it follows that it owed him no duty to hire security personnel to offer that protection.

Without pronouncing on whether the attack by Powell on Robbins in the parking lot behind The Rock was foreseeable, the Court finds another factor weighs more heavily in this case: it would place an unjustifiable burden on The Rock to find that it had a duty to protect Robbins from Powell’s attack in the Port of Sale parking lot. A few cases from other jurisdictions are sufficiently analogous as to be instructive here.

For example, in *Badillo v. De Vivo*, 161 Ill. App. 3d 596 (1987), the Illinois Court of Appeals faced facts considerably similar to this case. The plaintiff in that case, while a patron at defendant’s lounge, was verbally accosted and physically attacked by another female patron. The defendant intervened and stopped the

⁴⁷ Compl. ¶ 14 (“... a further altercation took place in the parking area between The Rock and Mojos in the Port of Sale mall[.]”); *id.* ¶ 15 (“Thereafter Powell remained on the [Port of Sale] premises and then picked up an empty beer bottle from a nearby trash receptacle on said premises.”); *id.* ¶ 17 (“Just outside of Mojo’s . . . Robbins was also seriously injured . . .”); Oppo. 1 (“The Plaintiff was injured after a fight broke out at The Rock . . . and continued onto the Port of Sale, Inc.’s [] property toward the area of Mojo’s . . .”).

altercation, and then ejected both plaintiff and her assailant. The plaintiff then proceeded to her automobile, parked a half-block away from defendant's club, where she was again attacked by the same patron, this time with a police baton. The court held that, "even assuming the subsequent assault was foreseeable, foreseeability is not the only element to establish duty[.]" It went on, "[t]his court has repeatedly held that requiring a business operator to protect its patrons from injuries that occur after the patron leaves the premises places an unjustifiable burden on the operator and on the police force." *Id.* at 599. The court reasoned that assigning a duty, "would oblige tavernkeepers, as well as other business operators to, in essence, police the streets so as to ensure their patrons' safe passage to their cars or even their homes," and that, "it would require establishment owners to determine which party was the aggressor in an altercation and to detain that potentially dangerous person on the premises until the victim could flee." *Id.* The court found no legal duty owed by the defendant lounge operator.

In another similar case before the New York Appellate Division, the plaintiff, "allegedly was injured when he was struck on the head with a broomstick by an assailant while in the parking lot outside a bar and restaurant owned by the defendant." *Hegarty v. Tracy*, 125 A.D.3d 804, 805 (2015). The case involved facts quite similar to this case:

In support of his motion for summary judgment, the defendant submitted evidence demonstrating that two groups of patrons, one of which included the injured plaintiff, were engaged in a verbal dispute before they left the establishment and went outside to the parking lot.

Once outside, the argument turned into a physical altercation between two women, and the injured plaintiff attempted to intervene. Within seconds of the injured plaintiff's intervention, he was struck from behind by the assailant.

Without detailing any additional evidence in the record, the court found that, "defendant established his prima facie entitlement to judgment as a matter of law dismissing the negligence cause of action with evidence demonstrating that he could not have reasonably prevented the unforeseeable and unexpected assault upon the injured plaintiff." *Id.* at 805.

Also, in *Johnson v. Martin*, 626 P.2d 525, a case from the Washington Court of Appeals, plaintiff had brought an action to recover damages for injuries he suffered after visiting the defendants' establishment, a restaurant and bar. The plaintiff had argued that the defendant bar owners:

[S]hould have known that a fight was ensuing in time to have stopped it and avoided the injuries sustained by Plaintiff; additional policing of the business premises was necessary for the protection of his guests, and Defendants and their agents failed to exercise reasonable care to protect Plaintiff from injury and harm.

Id. at 526. In responding to this argument, the court of appeals wrote:

Although there were several altercations while [plaintiff] and his assailant were on the premises, the injuries complained about were inflicted several minutes after both had left, each with his friends. There was no proof that anyone, [plaintiff] included, was intoxicated because of some act or neglect of the [defendants], or at all. When first [plaintiff] and then several minutes later the assailant left, those parties went beyond the control of [defendants] and their agent, the bartender, and there was nothing reasonably prudent that they could do to protect either one.

Id. at 526. The court affirmed the lower court's dismissal order.

In this case, neither party provided any sworn statement showing: 1) that either Powell, Seybold, Cavalli, or Gerber were, “intoxicated because of some act of [The Rock], or at all,” *id.* at 526; 2) that Seybold and her friends were in The Rock for any extended period; 3) that Powell was acting belligerently prior to the other three women arriving to The Rock and provoking her; 4) that Powell was ever involved in any violence, or; 5) that The Rock was ever aware of any propensity for violence of Powell. After the initial fight broke out in The Rock, The Rock’s security guard intervened with the aid of patrons to break up the fight and separate the four women; there was no evidence provided or allegation made that he didn’t act promptly or professionally in doing so. The security guard then escorted Powell out. There is no testimony in the record suggesting that up until that point, The Rock, its agents, or its security acted in any way other than a reasonably prudent person would.

Once outside, all the women went around the corner from the bar’s front door, out-of-view from The Rock, down a car drive-thru, past the length of The Rock’s building, onto Port of Sale’s premises, and halfway across a parking lot of the Port of Sale mall. There in the Port of Sale parking lot the fight re-commenced, no longer on The Rock’s premises, and no longer even in view of The Rock.

There is no evidence that The Rock asked or encouraged Robbins to leave The Rock and go to offer aid in the Port of Sale parking lot—Robbins himself testified he was not obligated to. Robbins, “would probably have been safe had he remained,” in The Rock. *Walton v. Spidle*, 137 Ill. App. 3d 249, 254 (1985) (finding a tavern had no

duty to protect a patron who had left its premises voluntarily to assist in a fight involving his friend). In leaving The Rock's premises and going to another part of the Port of Sale mall, Robbins, Ervin, Powell, Seybold, Cavalli, and Gerber had gone "beyond the control" of The Rock, *Johnson*, 626 P.2d at 526, and beyond its view.

Finding that The Rock had a duty to protect Robbins would mean it had a duty to protect a former patron who had left The Rock by his own will, to intervene in a fight between other former patrons of The Rock who were also no longer on The Rock's premises or within The Rock's view, after The Rock's security person had disbanded a fight on those premises, and despite there being no testimony that Powell or any of the other women was intoxicated because of The Rock selling them alcohol. The magnitude of the burden on The Rock would be too great if its liability lingered like a mist in the area around The Rock's premises, into which patrons could wade, and then once inside cloak themselves indefinitely with The Rock's protection and thus avail themselves of The Rock's liability. Such a burden would not be justifiable. The Court finds The Rock had no duty to protect Robbins from Powell's attack in the Port of Sale parking lot. Robbins' claim that The Rock was negligent in failing to provide adequate security to protect him in the Port of Sale parking lot necessarily fails.

III. Robbin's Claim that The Rock Was Negligent in not Emptying Its Trash Fails.

Robbin's other argument vis-à-vis The Rock is that The Rock failed to empty trash receptacles on or about its premises, allowing empty beer bottles to accumulate in the trash receptacles on or about its premises. Robbins argues that The Rock, "knew or should have known, that [] allowing empty glass bottles to accumulate in trash receptacles outside its premises would pose a serious risk of harm and injury to its business invitees and the public as large, as those empty glass beer bottles were susceptible to being used as a weapon" ⁴⁸

This argument cannot survive summary judgment. Having argued that this is not a premises liability case, plaintiff has not otherwise coherently stated any theory of negligence regarding this claim. Even considering the basic elements of a negligence claim, Robbins argument fails absolutely. Robbins has offered no evidence showing that the broken bottle used by Powell came from anywhere at Port of Sale mall, let alone any receptacle in control of The Rock, and The Rock cited testimony from several witnesses' depositions which shows that no one knew where the bottle came from.⁴⁹ It could have come from Powell's car, or from anywhere else. Because Robbins cannot establish that the bottle came from Port of Sale mall, let alone from The Rock's premises, Robbins cannot establish that The Rock owed him a duty. The

⁴⁸ Compl. ¶ 50.

⁴⁹ Mot. 17-18.

Court cannot find that The Rock had the burden of being responsible for all of the trash at Port of Sale mall, if the bottle even came from Port of Sale mall, which there is no evidence that it did. In addition to lacking foreseeability, the magnitude of the burden on bar owners would be far too great if they could be haled into court and found liable merely because a patron was injured by an object coming from some trash bin, or some other place, somewhere within the business' vicinity. The Rock owed Robbins no duty concerning the emptying of trash.

The Court would add that it, and indeed The Rock, empathize with Robbins' situation.⁵⁰ As Robbins said, he didn't expect to be injured that day. He suffered serious injuries while trying to offer a helping hand. But his injuries are not the result of The Rock's negligence. As The Rock put it, "[w]hile the civil law exists to provide Brad Robbins with a remedy [from] those that have wronged him, there is no competent evidence that it was The Rock who harmed Robbins." Robbins might rightfully be entitled to damages, but not from The Rock.

CONCLUSION

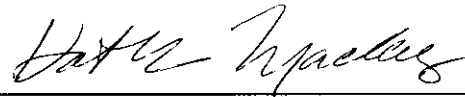
Robbins has failed to demonstrate that The Rock owed him a duty to protect him from criminal acts of third parties at the location where Powell attacked him. Additionally, because Robbins has provided no evidence showing that the beer bottle

⁵⁰ Mem. 19 ("What Ashana Powell did that day was awful. Maria Cavalli was left without an eye and Brad Robbins with a damaged arm.").

with which he was injured came from The Rock's property, or any other location at the Port of \$ale mall, Robbins has failed to establish that The Rock owed him any duty related to removing trash from its premises. As such, Robbins negligence claims fail as a matter of law. Therefore, The Rock is entitled to summary judgment on the claims against it and shall be dismissed from this suit with prejudice.

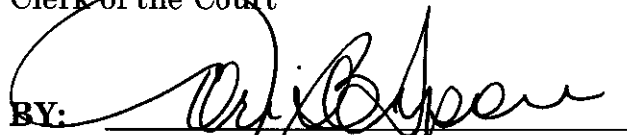
An order consistent with this Memorandum shall issue.

DATED: October 10, 2018



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY: 
LORI BOYNES TYSON
Chief Deputy Clerk 10/10/18