

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

MARY LEE,

Plaintiff,

-vs-

RALPH THOMAS, RED CAP SERVICES, INC.)
AND VIRGIN ISLANDS PORT AUTHORITY,)

Defendants.

)
) **CASE NO.: ST-17-CV-321**
)
) **ACTION FOR DAMAGES**
)

) **JURY TRIAL DEMANDED**
)
)

MEMORANDUM OPINION

Pending before the Court are the following:

1. Defendant Red Cap Services, Inc.'s Motion to Dismiss or in the Alternative Summary Judgment, filed on August 22, 2017;
2. Defendant Red Cap Services, Inc.'s April 23, 2018 Notice of Filing in which it provides Exhibits 1 through 4 which were referenced in its August 22, 2017 Motion but were not attached; and
3. Defendant Red Cap Services, Inc.'s Motion to Deem Motion to Dismiss or in the Alternative for Summary Judgment Conceded, filed on November 14, 2017.

In spite of two Orders directing the Plaintiff to respond, the Plaintiff never filed a response to the Motion to Dismiss or in the Alternative Summary Judgment. Nor did the Plaintiff ever file a motion requesting an extension of time within which to respond to the Motion to Dismiss or in the Alternative Summary Judgment.

I. The Motion to Deem Motion to Dismiss or in the Alternative for Summary Judgment Conceded Will be Denied.

The Motion to Deem Motion to Dismiss or in the Alternative for Summary Judgment Conceded will be denied because "the fact that a summary judgment motion is deemed uncontested due to a procedural defect—such as not filing a timely opposition—is not grounds for accepting the moving party's undisputed facts as true."¹ Further, the Superior Court "may not accept as true the moving party's itemization of undisputed facts; instead the [C]ourt must satisfy itself that the evidence in the summary judgment records supports this relief."²

¹ *Vanterpool v. Gov't of the Virgin Islands*, 63 V.I. 563, 583 (V.I. 2015) (citing *Martin v. Martin*, 54 V.I. 379, 389 (V.I. 2010)).

² *Id.*

With respect to an unopposed motion to dismiss, “a ‘motion is not automatically granted simply because it is unopposed.’”³ In other words, even though a motion is unopposed, courts must still determine whether to grant it, especially when the decision is within the court's discretion.⁴

III. Defendant Red Cap Services, Inc. is Entitled to Entry of Summary Judgment in its Favor.

A party may file a motion for summary judgment at any time 30 days after the close of all discovery.⁵ In this case, Red Cap moved for summary judgment supported by exhibits documenting that the entity known as Red Cap Services, Inc. did not come into existence until July 25, 2016. The date of the creation of the corporation Red Cap Services, Inc. is significant because the Complaint alleges that on or about July 20, 2015, the Plaintiff, Mary Lee, was injured when the “Defendant, Ralph Thomas, an employee of Red Cap Services and an agent of Defendant, VIPA, ran a loaded luggage cart into and over Plaintiff's leg....”⁶

The Complaint further alleges that “[a]t all times material herein, Defendant Red Cap Services, Inc. (hereinafter “Red Cap Services”), was a duly registered Virgin Islands Corporation....”

To the extent that Plaintiff's Motion moves for summary judgment, the Court finds that there is no genuine issue to the following material facts:

1. The corporation Red Cap Services, Inc. was formed on July 25, 2016 when the Articles of Incorporation of Red Cap Services, Inc. were filed and its filing fee paid.⁷
2. Red Cap Services, Inc.'s Agent for Service of Process as of July 25, 2016, is Attorney Ryan Greene.⁸

Virgin Islands Rule of Civil Procedure 56 governing motions for summary judgment provides: “[a] party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.”⁹ The party moving for summary judgment bears the burden of demonstrating that there is no genuine issue of any material fact and that it is entitled to judgment as a matter of law. This burden may be met by pointing out that there is an absence of evidence to support a particular element of the nonmoving party's case.

The Court must consider the evidence provided by both parties and view all inferences to

³ *Ayala v. Lockheed Martin Corp.*, 67 V.I. 290, 303 (V.I. Super. Ct. 2017) (citations omitted).

⁴ *In re: Alumina Dust Claims*, 67 V.I. 172, 187 (V.I. Super. Ct. 2017) (citations omitted).

⁵ V.I. R. Civ. P. 56(b).

⁶ Pl. Compl. ¶ 6.

⁷ Def. Exs. 1 and 2. V.I. Code Ann. tit. 13, § 6.

⁸ Def.'s Ex. 4.

⁹ V.I. R. Civ. P. 56(a).

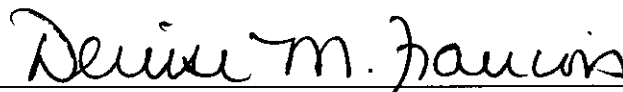
be drawn from that evidence in a light most favorable to the nonmoving party. If the Court does not grant all of the relief requested by the motion, it “may enter an order stating any material fact—including an item of damages . . . that is not genuinely in dispute and [treat] that fact as established in the case.” “A fact is material if it can affect the outcome of the case,”¹⁰ and a genuine dispute of material fact exists if the evidence is such that a reasonable jury could find in favor of the nonmoving party on the disputed fact. Summary judgment should be granted if there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law.

Viewing all inferences in a light most favorable to the nonmoving party, the Court finds that Lee was injured on July 20, 2015, on premises owned by the Virgin Islands Port Authority when Defendant Ralph Thomas allegedly ran a loaded luggage cart over her leg. However, the corporation known as Red Cap Services, Inc. did not exist on July 20, 2015. In fact, Red Cap Services, Inc. did not come into existence until July 25, 2016.

There is nothing in the record to support any allegation that Red Cap Services was the employer of Defendant Ralph Thomas at the time of the July 20, 2015 incident. Because Red Cap Services cannot be held liable for an event that occurred before it existed, summary judgment will be granted in its favor.

A partial summary judgment consistent with this Memorandum Opinion follows.

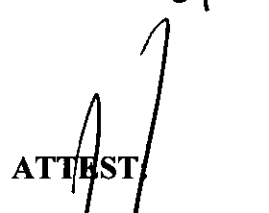
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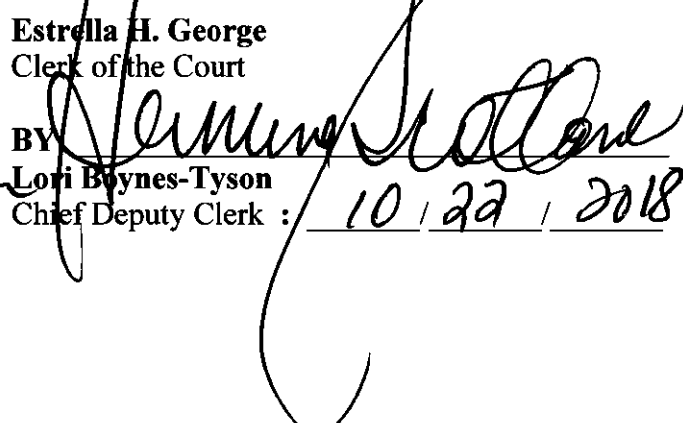
DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

ATTEST:


Estrella H. George
Clerk of the Court

BY:


Lori Byrnes-Tyson
Chief Deputy Clerk :

10/22/2018

¹⁰ *Burd v. Antilles Yachting Servs., Inc.*, 57 V.I. 354, 360 (V.I. 2012) (citations omitted).