

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

JUDITH AMBROSI

Plaintiff)

CASE NO. ST-16-CV-0000621

ACTION FOR: DAMAGES - CIVIL

vs)

CBI ACQUISITIONS, LLC D/B/A
CANEEL BAY RESORT,

Defendant

NOTICE OF ENTRY OF MEMORANDUM OPINION

TO: SAMUEL H. HALL, JR., ESQUIRE
ADAM G. CHRISTIAN, ESQUIRE
SUPERIOR COURT JUDGES AND MAGISTRATES
GENERAL COUNSEL
CLERK OF THE COURT, MRS. ESTRELLA GEORGE
LAW CLERKS
I. T. DIVISION

Please take notice that on October 25, 2019 a(n) MEMORANDUM
OPINION dated October 25, 2019 was entered by the Clerk in the above-entitled
matter.

Dated: October 25, 2019

Estrella H. George
Clerk of the Court

AUDREY C. BRIN
COURT CLERK II

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

JUDITH AMBROSI and JOHN AMBROSI,	)	
	)	
Plaintiffs,	)	
	)	CASE NO. ST-16-CV-621
v.	)	
	)	ACTION FOR DAMAGES
CBI ACQUISITIONS, LLC d/b/a	)	
CANEEL BAY RESORT,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	Cite as 2019 VI 151U
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court upon Defendant’s Motion for Summary Judgment filed on September 25, 2019. Plaintiffs filed a response on October 9, 2019. Thereafter, Defendant filed a reply on October 16, 2019. Plaintiffs (the “Ambrosis”) are represented by Samuel H. Hall Jr., Esquire and Marie E. Thomas Griffith, Esquire and the Defendant, CBI Acquisitions, LLC d/b/a Caneel Bay Resort (Caneel Bay) is represented by Adam G. Christian, Esquire. The Court heard oral arguments at a motions hearings on October 18, 2019. Defendant’s Motion for Summary Judgment requests the Court to dismiss Plaintiffs’ gross negligence claim and prayer for punitive damages. For the following reasons, the Court will grant Defendant’s Motion for Summary Judgment.

I. FACTUAL BACKGROUND

Plaintiffs Judith and John Ambrosi were vacationing at the Caneel Bay Resort on St. John, U.S. Virgin Islands from June 20 to 24, 2016.¹ On the evening of June 22, 2016, the Ambrosis

¹ Defendant’s Motion for Summary Judgment, p. 1.

dined at ZoZo's Restaurant, which was located on the premises of the Resort.² As the Plaintiffs headed back to their room via the sidewalk where the historic mill ruins are located, Mrs. Ambrosi, due to a combination of poor lighting conditions surrounding the sidewalk, the steep incline of the sidewalk, the narrow width, as well as the nearby brightly lit historic mill ruins that altered her ability to see, stepped off the sidewalk and twisted and broke her left ankle.³ She eventually left the Virgin Islands on June 25, 2016, and had surgery performed on her left leg at her home in Kissimmee, Florida.⁴ Due to the injury, Mrs. Ambrosi has subsequently undergone physical therapy and still has a plate and nine screws in her ankle.⁵ Plaintiffs argue that Judith Ambrosi's injuries are a "direct and proximate result of Defendant's gross negligence."⁶ Plaintiffs premise that Caneel Bay failed to provide adequate lighting along its sidewalk near ZoZo's and failed to correct the lighting deficiency through revenue it obtained from selling flashlights for guests to navigate the property.⁷ In doing so, Defendant demonstrated a reckless indifference to the safety of its guests and accordingly warrants a recovery of punitive damages.⁸ However, Defendant contends that Plaintiffs' allegations "completely lack any indicia of reckless or wanton behavior to sustain a claim for gross negligence and punitive damages" because they have never received any notice of the alleged sidewalk deficiency.⁹ Therefore, because Plaintiffs only posit the same facts that they base the ordinary negligence claim on, they cannot recover punitive damages.¹⁰

² Defendant's Motion for Summary Judgment, p. 2.

³ See Defendant's Motion for Summary Judgment, p. 2. See also Plaintiff's Opposition Brief, pp. 2 & 3.

⁴ Plaintiffs' Opposition Brief, p. 3.

⁵ See Plaintiffs' Opposition Brief, pp. 3-4.

⁶ Plaintiffs' Opposition Brief, p. 4.

⁷ Plaintiffs' Opposition Brief, p. 8.

⁸ Plaintiffs' Opposition Brief, p. 8.

⁹ See Defendant's Motion for Summary Judgment, pp. 5-7.

¹⁰ Defendant's Motion for Summary Judgment, p. 6.

II. LEGAL DISCUSSION

a. Summary Judgment Standard

V.I.R. Civ. P. 56(a) provides that summary judgment shall be granted “if the movant shows that there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law.”¹¹ Pursuant to Rule 56(c), summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, electronically stored information, stipulations, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.¹² Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.¹³ To establish a genuine issue of material fact, the non-moving party must introduce evidence beyond the mere pleadings to create an issue of material fact on an essential element of that party’s case, and on which that party will bear the burden of proof at trial.¹⁴ As summary judgment is a “drastic remedy,” the Court should not take such motions lightly and inferences drawn “from the underlying facts, [should be viewed] in the light most favorable to the non-moving party.”¹⁵ Thus, once the non-moving party has presented more than a scintilla of evidence that may sway a jury, both parties should be granted an equal opportunity to present their facts to the jury.¹⁶

b. The Gross Negligence Standard in the Virgin Islands

The Virgin Islands Supreme Court recently held in *Brathwaite v. Xavier*, 2019 VI 26 (V.I.

¹¹ V.I.R. Civ. P. 56(a). *In re Adoption of Virgin Islands Rules of Civil Procedure* promulgated on March 31, 2017, by V.I. Supreme Court Order, replaces the Federal Rules of Civil Procedure in the territory.

¹² *Manbodh v. Hess Oil V.I. Corp. et al.* (In re Manbodh Asbestos Litigation Series), 47 V.I. 215 (V.I. Super. Ct. 2005).

¹³ See V.I. R. Civ. P. 56.

¹⁴ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

¹⁵ *Williams v. United Corp.*, 50 V.I. 191, 194-95 (V.I. 2008).

¹⁶ *United Corp. v. Tutu Park*, 55 V.I. 702, 707 (V.I. 2011).

2019), that in order to prevail on a claim for gross negligence in the Virgin Islands, “a plaintiff must establish that: (1.) the defendant owed plaintiff a legal duty of care; (2) defendant breached that duty in such a way as to demonstrate a wanton, reckless indifference to the risk of injury to plaintiff; and (3.) the defendant’s breach constituted the proximate cause of (4.) damages to plaintiff.”¹⁷

c. Availability of an Award of Punitive Damages

Punitive damages are “damages awarded in cases of serious malicious wrongdoing to punish or deter the wrongdoer or deter others from behaving similarly.”¹⁸ Punitive damages must be based on conduct that rises beyond mere negligence but also evinces, “at a minimum, reckless indifference to the person injured — conduct that is outrageous and warrants special deterrence.”¹⁹ Accordingly, the failure of a party to introduce sufficient evidence to support a claim of gross negligence precludes an accompanying request for an award of punitive damages.²⁰

d. Parties’ Contentions

At the hearing, Plaintiffs argued that Defendants exhibited gross negligence due to the nature of the narrow sidewalk, the inadequacy of lighting conditions surrounding the sidewalk, the brightly lit ruins adjoining the poorly lit sidewalk, as well as their failure to disclose the presence of flashlights to Plaintiffs and inform Plaintiffs about the need, use, and purpose of the flashlights.²¹ Plaintiffs emphasized that the instant case is not akin to banana peel cases where the dangerous condition lasted for a short duration and was temporary in nature, because here, Defendants failed to rectify an alleged obvious problem that remained unresolved for years, thus

¹⁷ *Brathwaite v. Xavier*, 2019 VI 26, at *31 (V.I. 2019).

¹⁸ *Id.* at *32.

¹⁹ *Id.*

²⁰ *Id.* at *37.

²¹ *See generally* Plaintiffs’ Opposition Brief, pp. 1, 2, and 8.

putting the Resort on notice to: 1.) erect warning signs or guardrails, 2.) adjust the lighting issues at the ruins adjacent to the sidewalk at issue and 3.) upgrade the slope and lighting of the sidewalk.²² Further, Plaintiffs add that Defendant's hotel staff failed to inform Plaintiffs that there were flashlights available and also failed to provide instructions concerning their need, use, and purpose while traversing the Resort.²³ They further urge the Court to view that, in itself, the provision of flashlights is probative of Defendant's grossly negligent conduct because it demonstrates that they should have known that their guests were experiencing visibility issues, yet "in lieu of investing hotel revenue in providing adequate exterior lighting, Caneel Bay chose not to do anything to protect its guests," and as such acted with conscious, reckless indifference to its guests by valuing profits and bottom lines instead of addressing the illumination challenges.²⁴

Ultimately, Plaintiffs maintain that the crux of Defendant's actions that illustrates the reckless indifference element is particularly at play when Mrs. Ambrosi turned to focus on the poorly lit sidewalk after experiencing the brightly lit mill ruins lights. They insist that Defendant should have known that guests would experience difficulty with their vision while readjusting and refocusing from the ruins to the sidewalk, and it is precisely this situation that created the dangerous condition to Plaintiff. Thus, Plaintiffs contend that the totality of the circumstances should have put Defendant on notice to fix the issues and is reflective of their systemic failure to address a longstanding issue. Plaintiffs summarize that all these facts warrant and support a claim of gross negligence and necessitates an award of punitive damages.²⁵

²² See Plaintiffs' Opposition Brief, p. 8.

²³ Plaintiffs' Opposition Brief, pgs. 1-2; *see also* Plaintiffs' Exhibit 5 (John Ambrosi's Deposition where he stated that he did not see flashlights in the room and he did not ask the front desk for any either).

²⁴ Plaintiffs' Opposition Brief, pp. 2 & 6.

²⁵ During the hearing, Defendant honed in that Plaintiffs themselves repeatedly said "should have," thus indicating only a negligence standard.

On the other hand, at the hearing, Defendant asserts that it was never put on notice of any issues relating to the sidewalk because there is no patently obvious damage and no allegation of debris but suggests that Plaintiff's inebriated state caused the fall.²⁶ Defendant raised five distinct points. First, Defendant offered that Interrogatory No. 4 asked Defendants to provide the name, address, and email of people who have fallen between the contested area (ZoZo's Restaurant and Rooms 132-166) and the parking lot and Defendant responded that Plaintiff was the only complaint they received, but submitted that there is the likelihood that one other person may have had an incident within that vicinity but never filed a formal complaint.²⁷ As a result, because guests have been traversing that area under the same conditions without any adverse results, Caneel Bay could never have known there was an issue as Plaintiff suggests.²⁸ Second, Defendant proposes that sufficiency/amount of lighting and its effect on the eye is a matter of physiology that requires the testimony of a medical expert. Therefore, the surveyors and engineers provided as experts are unqualified to do so. Third, Defendant rebuts Plaintiffs' argument about the flashlight. Caneel Bay expressed that the use of flashlights are explicitly clear, and Defendant did not need to provide any additional instructions on to how or when to operate them. Defendant highlights that providing the flashlights for sale at the gift shop, in fact, proves that Defendant attempted to remedy any lighting issues they may have had on their premises.

Further, Defendant argued that Plaintiffs' contentions about the width of the sidewalk are irrelevant because: 1.) the Plaintiffs were not walking side-by-side, as Mr. Ambrosi was walking about 20 to 30 feet away from Mrs. Ambrosi, and 2.) during Plaintiffs' expert's, Mr. King,

²⁶ See generally Defendant's Exhibits 4, 5, & 6. See also Plaintiffs' Exhibits 5 & 6 (Depositions of Judith and John Ambrosi where they affirmed that they had consumed a number of alcoholic beverages at dinner).

²⁷ See Defendant's Exhibit 2. On rebuttal, Plaintiff reiterated that such a response to Interrogatory No. 4 reveals that they knew that an incident had occurred in that same area.

²⁸ See Defendant's Motion for Summary Judgment, p. 5.

deposition, he indicated that he did not take the measurement of the sidewalk. Lastly, Defendant countered Plaintiffs' allegations about the expense to the resort to address these issues. Defendant explained that evidence to substantiate those claims is absent in the record and is speculative information that should not be presented to the jury. In sum, Defendant maintains that their actions or lack thereof only create an inference of mere negligence and Plaintiffs put forth no evidence that rises to the level of gross negligence as *Brathwaite* held.²⁹

e. This Court Grants Summary Judgment to Defendant on the Gross Negligence Claim as the Record and Plaintiffs' Arguments are Devoid of any Evidence Necessary to Support the Claim

A thorough review of the record reflects that there is no genuine issue of material fact as it relates to Plaintiffs' claim for gross negligence and punitive damages as it is completely devoid of any such fact. Plaintiffs have not set forth any fact to show that Caneel Bay operated with wanton and/or reckless indifference to the hotel guests or particularly the Ambrosis. Plaintiffs' assertion that the rooms should have been equipped with flashlights or Caneel Bay should have warned their guests to use flashlights to ensure their safety as they traverse on the premises during the evening does not rise to the level of gross negligence. Consequently, this inaction does not warrant an award of punitive damages. In relying on *Brathwaite*, just as the Supreme Court held that absent a finding of sufficient evidence to sustain a gross negligence claim, a party may not seek an award of punitive damages. This Court echoes the same as neither the record nor any argument proffered at the hearing demonstrates that the imposition of punitive damages is proper. Accordingly, Defendant is entitled to judgment as a matter of law and grants Defendant's motion for summary

²⁹ See Defendant's Exhibit 13 (Interrogatory No. 18 asked what facts serve as the basis for the grossly negligent acts claim, and Judith Ambrosi provided the same response she did in Interrogatory No. 17, which asked about the facts that serve as the basis for the ordinary negligence claim). See also Defendant's Exhibit 14 (John Ambrosi responded in the same manner when asked these questions).

judgment.

Accordingly, it is hereby

ORDERED that Defendant's motion for summary judgment is **GRANTED**; and it is further

ORDERED that Count II, gross negligence, is **DISMISSED**; and it is further

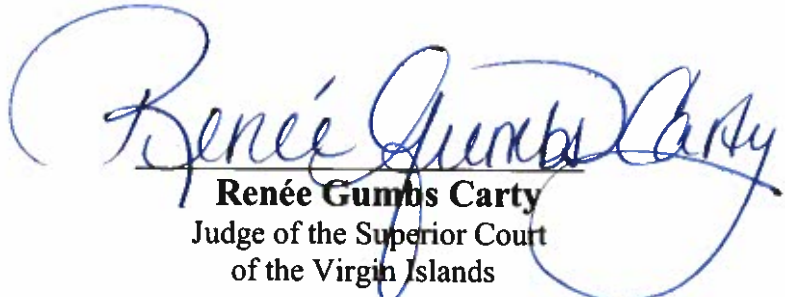
ORDERED that Plaintiffs' request for punitive damages is **DENIED**; and it is further

ORDERED that copies of this Order shall be distributed to Samuel H. Hall, Jr. Esquire and Adam G. Christian, Esquire.

Dated: October 25 2019

ATTEST:
Estrella H. George
Clerk of the Court

By: Donna D. Donovan
Court Clerk Supervisor ____/____/____


Renée Gumbs Carty
Judge of the Superior Court
of the Virgin Islands