

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

CHRISTINE CLAUZEL POPO

Plaintiff,

vs.

WORLD FRESH MARKET

Defendant.

CASE NO. ST-15-CV-305

MEMORANDUM OPINION

Pending before the Court is Defendant's February 25, 2016, Motion for Summary Judgment.¹ For the following reasons, Defendant's Motion will be denied.

FACTUAL & PROCEDURAL HISTORY

Plaintiff Christine Clauzel Popo filed a Complaint on June 29, 2015, alleging negligence against Defendant World Fresh Market, the operator of a grocery store located at Long Bay, St. Thomas, Virgin Islands.² According to the Complaint, Popo was a business patron at Defendant's store on April 2, 2015, when she allegedly fell and suffered severe injury.³ Defendant filed an answer on August 6, 2015, denying negligence and raising affirmative defenses, and the parties filed a joint proposed scheduling plan on October 30, 2015. On January 11, 2016, Defendant served Plaintiff with Requests for Admissions, to which Plaintiff failed to respond.

STANDARD

A party may move for summary judgment at any time prior to thirty (30) days after the completion of discovery, but a motion for summary judgment filed prior to the start of discovery

¹ Plaintiff responded on March 30, 2016. Defendant did not file a reply.

² Compl. ¶¶ 2-4.

³ Compl. ¶ 7.

runs the risk of being considered premature.⁴ In such a case, under the guidance of Fed. R. Civ. P. 56(d),⁵ “if discovery is incomplete in any way material to a pending summary judgment motion . . . particularly . . . when . . . relevant facts are under the control of the moving party. . . , a court is justified in not granting the motion.”⁶

When deciding whether to grant or deny summary judgment under Fed. R. Civ. P. 56,⁷ the Supreme Court of the Virgin Islands instructs that the Superior Court is to employ the following standard:

Because summary judgment is a drastic remedy, it should be granted only when the pleadings, the discovery and disclosure materials on file, and any affidavits show

⁴ See FED. R. CIV. P. 56(b) (2010) advisory committee note to 2010 amendments. FED. R. CIV. P. 56(b) (2010) applies as a last resort to the practice and procedure of the Superior Court through SUPER. CT. R. 7. While the Supreme Court of the Virgin Islands has held that the standard of review governing motions for summary judgment under Rule 56 does not encompass the 2010 amendments, a review of the Virgin Islands statutes, Superior Court of the Virgin Islands rules, and precedents from the Supreme Court of the Virgin Islands reveals the absence of any other applicable procedure regarding the time limits for filing motions for summary judgments in Superior Court proceedings. *Sweeney v. Ombres*, 60 V.I. 438, 442 (V.I. 2014). As a result the current version of Fed. R. Civ. P. 56(b), as amended in 2010, applies in this case through SUPER. CT. R. 7.

⁵ “If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; (3) or issue any other appropriate order.” FED. R. CIV. P. 56(d) (2010). According to FED. R. CIV. P. 56(d) advisory committee note to the 2010 amendments, “[s]ubdivision (d) [as provided in the 2010 amendments,] carries forward without substantial change the provisions of former subdivision (f).” Because there is precedent of the Supreme Court of the Virgin Islands applying FED. R. CIV. P. 56(f) (2009) and FED. R. CIV. P. 56(d), (2010) duplicates the former subdivision (f), the Court applies FED. R. CIV. P. 56(d) (2010) in this case.

⁶ *Doe v. Abington Friends School*, 480 F.3d 252, 257 (3d Cir. 2007) (internal citations omitted); but see *Lasko v. Watts*, 373 Fed.Appx. 196 (3d Cir. 2010).

⁷ FED. R. CIV. P. 56 is made applicable to the practice and procedure of the Superior Court through SUPER. CT. R. 7. While FED. R. CIV. P. 56, through SUPER. CT. R. 7, provides the procedural mechanism for filing motions for summary judgment in Superior Court proceedings, the standard of review derives from the precedent delineated by the Supreme Court of the Virgin Islands. *Sweeney*, 60 V.I. at 442 (“[T]he Federal Rules of Civil Procedure . . . should represent rules of last resort rather than first resort, and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from this Court reveals the absence of any other [applicable] procedure”) (emphasis added). In *Martin v. Martin*, 54 V.I. 379, 386-387 (V.I. 2010), the Supreme Court of the Virgin Islands “adopted the standard contained in a prior version of [FED. R. CIV. P. 56], [which] remains controlling in Virgin Islands courts” and does not include the amendments to FED. R. CIV. P. 56 that went into effect on December 1, 2010. *Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563, 583 n.10 (V.I. 2015) (“Effective December 1, 2010, Federal Rule of Civil Procedure 56 was rewritten substantially to incorporate some — but not all — aspects of local rules similar to District Court Rule 56.1. Nevertheless, this Court’s *Martin* decision, which adopted the standard contained in a prior version of the rule, remains controlling in Virgin Islands courts”) (citations omitted); but see *Brodhurst v. Frazier*, 57 V.I. 365, 396 (V.I. 2012) (Swan, J., dissenting) (applying “the modern version of Rule 56(c)(1),” e.g. FED. R. CIV. P. 56 as amended in 2010, when reviewing the Superior Court’s ruling on a motion for summary judgment).

that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. When reviewing the record, this Court must view the inferences to be drawn from the underlying facts in the light most favorable to the nonmoving party, and we must take the non-moving party's conflicting allegations as true if supported by proper proofs. 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. Importantly, the nonmoving party may not rest on its pleadings but must set forth specific facts showing that there is a genuine issue for trial.⁸

Indeed, the Supreme Court of the Virgin Islands requires this Court to consider the merits of a motion for summary judgment and grant summary judgment only when satisfied that “the evidence in the summary judgment records supports this relief,” regardless of whether the non-movant submits a response.⁹

ANALYSIS

Defendant moves for summary judgment based on Plaintiff's failure to timely respond to discovery requests. On January 11, 2016, Defendant served Plaintiff with requests for admissions, but Plaintiff failed to respond within thirty (30) days. As a result, relying on Federal Rule of Civil Procedure 36(a)(3), Defendant contends that the requests for admissions are deemed admitted for purposes of summary judgment. Based on those admissions Defendant believes that no genuine issue of material fact exists and that Plaintiff cannot allege any facts upon which a jury would be able determine that Defendant was negligent. Plaintiff responds and acknowledges her failure to timely respond, but asserts that responses have since been provided. Further, Plaintiff argues that,

⁸ *Simpson v. Golden Resorts, LLLP*, 56 V.I. 597, 605 (V.I. 2012) (citations and internal quotation marks omitted); see also *Pedro v. Ranger American of the Virgin Islands, Inc.*, 2015 V.I. Supreme LEXIS 19, *3-6 (V.I. 2015) *Bertrand v. Mystic Granite & Marble, Inc.*, 2015 V.I. Supreme LEXIS 36, *7-8 (V.I. 2015).

⁹ *Vanterpool*, 63 V.I. at 583 (citing *Martin*, 54 V.I. at 389).

even if the motion is unopposed, the Court must satisfy itself that the evidence in the record supports summary judgment.

Federal Rule of Civil Procedure 36(a)(3) clearly states that a matter is admitted unless the party responds to the request for admissions within thirty (30) days, but the Court may extend the deadline.¹⁰ Here, although Plaintiff claims to have filed an untimely response, Plaintiff has not sought leave of Court for an extension of the thirty (30) day deadline, and the Court is unable to find notice of a response by Plaintiff in the record. Notably, Plaintiff does not oppose the undisputed facts offered by Defendant and fails to attach any Exhibits in support of her Opposition to Defendant's Motion for Summary Judgment, apparently relying solely on her argument that the motion must be denied as premature because discovery is not complete. Given the significant time that has passed since the original deadline and the continued inaction by Plaintiff in this case, the Court agrees with Defendant and finds the requests for admission admitted for purposes of summary judgment.¹¹ Specifically, "[r]esponses to requests for admissions...are part of the record which may be used in support of, or in opposition to, motions for summary judgment."¹²

Nevertheless, the Supreme Court of the Virgin Islands has held that a party is not entitled to summary judgment simply because of a procedural defect.¹³ "[T]he party moving for summary judgment possesses the initial burden of identifying evidence indicating that there is an absence of

¹⁰ *Constr. Technicians v. Zurich Am. Ins. Co.*, 61 V.I. 153, 158-59 (V.I. 2014) (relying on the standard from FED. R. CIV. P. 36(a)(3)).

¹¹ "The trial court did not abuse its discretion when it deemed as admitted the statement of facts submitted with Zurich's motion. The rule is explicit that George had 30 days to respond to Zurich." *Constr. Technicians*, 61 V.I. at 158-59 (relying on the standard from FED. R. CIV. P. 36(a)(3)).

¹² *Go Fast Charters LLC v. Texaco Caribbean, Inc.*, 2015 V.I. LEXIS 93, *7 (V.I. Super. Ct., July 31, 2015); see FED. R. CIV. P. 56(c)(1)(A) (noting that admissions are one part of the record which may be used to sustain a motion for summary judgment).

¹³ See *Vanterpool*, 63 V.I. at 583 (citing *Martin*, 54 V.I. at 389).

any issue of material fact” and entitlement to judgment as a matter of law.¹⁴ While it is clear that the Superior Court may not accept as true the moving party's itemization of undisputed facts when the nonmoving party fails to file an opposition to a motion for summary judgment, here the facts are deemed admitted based on Federal Rule of Civil Procedure 36. Still, “the [C]ourt must satisfy itself that the evidence in the summary judgment records supports this relief.”¹⁵

The following four elements establish a claim for negligence in the Virgin Islands: “(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.”¹⁶ The question of duty is generally a question of law. Based on the admitted facts, Plaintiff was not in the grocery store at Long Bay, St. Thomas on April 2, 2015, when she allegedly fell.¹⁷ She did not fall, was not injured, and did not lose any wages.¹⁸ Plaintiff never reported the alleged fall to Defendant.¹⁹ Further, Plaintiff admits that there was no evidence that Defendant was negligent.²⁰ Based on these facts as admitted, the Court agrees that no genuine issue of material fact exists since, if Plaintiff was not at the grocery store, Defendant did not owe her a duty and could not have been negligent.²¹

¹⁴ *United Corp. v. Hamed*, 2016 V.I. Supreme LEXIS 1, at *18-19 (V.I. 2016) (citations omitted); *Sickler v. Mandahl Bay Holding, Inc.*, 2014 V.I. LEXIS 39, *5-6 (V.I. Super. Ct., July 7, 2014) (“Under a summary judgment standard, however, a burden-shifting framework applies, pursuant to which the moving party bears the initial burden of showing that the non-movant has failed to establish one or more essential elements of its case, and, once that initial burden is met, the non-moving party must go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.”)

¹⁵ *Vanterpool*, 63 V.I. at 583 (citing *Martin*, 54 V.I. at 389). While LRCi 56.1 provides a basis for deeming uncontested facts conceded, the Superior Court may not do so by relying on Super. Ct. R. 7 when the “rigid application of [LRCi] 56.1 . . . is in clear conflict with [this] prior precedent of the [Supreme] Court [of the Virgin Islands].” *Mercado v. Gov't of the Virgin Islands*, 2012 V.I. LEXIS 2, *8 (V.I. Super. Ct., Jan. 5, 2012).

¹⁶ *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014).

¹⁷ Def.'s Feb. 25, 2016, Mot., Ex. 1, January 11, 2016, Requests for Admissions, ¶ 6.

¹⁸ *Id.* at ¶¶ 3, 5, 17-19.

¹⁹ *Id.* at ¶ 1.

²⁰ *Id.* at ¶ 7-9.

²¹ *Watson v. Gov't of the V.I.*, 2014 V.I. LEXIS 103, *5 (V.I. Super. Ct., Oct. 29, 2014) (relying on admitted facts to form the basis of its summary judgment ruling that there is no genuine issue of material fact, but denying summary judgment as a matter of law).

However, it is clear that, based on Plaintiff's Complaint, Plaintiff would not ordinarily agree to these admissions.

This jurisdiction strongly "prefer[s] that cases be decided on the merits and [that] any doubts should be resolved in favor of this preference."²² As a matter of policy, requests for admission are considered written fact discovery. "Written discovery is part of an early stage of civil litigation, which dictates the flow of the later stages of a case" and the responses are often used when determining the type of depositions and the questions for the depositions. Here, Plaintiff's failure to timely respond to the requests for admissions is a procedural defect, and there appears to be a discrepancy in the record in terms of whether responses were ever filed. Since only written discovery has been conducted in this case, and since this jurisdiction prefers that cases be determined on the merits, the Court finds the current motion for summary judgment to be premature. However, if Plaintiff fails to act in this case, on proper motion by Defendant, the Court will not hesitate to dismiss Plaintiff's Complaint.

CONCLUSION

For the forgoing reasons, Defendant's Motion for Summary Judgment is denied without prejudice as premature. An Order consistent with this Memorandum Opinion shall issue.

Dated: August 8, 2016

ATTEST: Estrella H. George
Acting Clerk of Court

by: Lori Boynes-Tyson
Court Clerk Supervisor 8 / 10 / 2016


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY
DATE: Aug. 10, 2016
ESTRELLA H. GEORGE
Acting Clerk of the Court
By: Cameil A. Clarke
Court Clerk II

²² *Beachside Assocs., LLC v. Fishman*, 53 V.I. 700, 719 (V.I. 2010) (citation omitted).