

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

|                    |   |                    |
|--------------------|---|--------------------|
| JUANITA LOPEZ      | ) |                    |
|                    | ) |                    |
| Plaintiff          | ) | CIVIL NO. 797/1987 |
|                    | ) |                    |
| vs.                | ) | ACTION FOR DAMAGES |
|                    | ) |                    |
| ABC JANITORS, INC. | ) |                    |
|                    | ) |                    |
| Defendant          | ) |                    |
|                    | ) |                    |

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FINCH, Judge

MEMORANDUM OPINION AND ORDER  
(Filed May 12 1988)

INTRODUCTION

This matter came before the Court on defendant's motion to dismiss. The issue raised thereby, is whether separate actions can be maintained under Virgin Islands law, against joint tortfeasors in a motor vehicle negligence case? For the reasons mentioned below, this Court thinks not.

FACTS

In this suit for damages, Juanita Lopez alleges that the defendant negligently entrusted its vehicle to an employee, Todd Hinkel, and as a result of this negligent entrustment, she was damaged. The defendant in its answer generally denied the allegations. It also affirmatively pleaded res judicata and moved to dismiss on the same ground. Expressed otherwise, ABC argues that since Hinkel cannot now be joined in the action, his absence will result in prejudice to it since the Court is deprived of the ability to apportion fault among all the interested parties. In a prior suit plaintiff sued Hinkel and ABC Janitors, Inc. (Civil No. 983/86), elected to dismiss as against ABC Janitors, Inc., and recovered a judgment against Hinkel. The facts in that prior suit form the basis for the suit in this case.

DISCUSSION

Defendant ABC contends that Lopez's failure to join Hinkel, an indispensable party, effectively denies ABC its right, pursuant to 5 V.I.C. 1451(d), to demonstrate that its liability to Lopez is not joint and several. Thus argues ABC, the complaint ought to be dismissed. Lopez counters with two arguments: 1) She is entitled to maintain separate actions

against joint tort-feasors if she so chooses; and 2) ABC can preserve its right under 1451(d) by simply impleading Hinkel. The question then, is whether separate actions can be maintained, under Virgin Islands law, against joint tort-feasors in a motor vehicle negligence case? Finding no issue of fact, this Court responds in the negative.

Lopez's second argument will be addressed first. The response is, simply, that ABC is not required, nor can it be compelled, to implead Hinkel. The mere possibility of this course of action does not relieve a plaintiff from complying with the dictates of F.R.Civ.P. Rule 19(a). Lopez's argument is thus untenable.

Lopez is correct in asserting that generally, a plaintiff is entitled to maintain separate actions against joint tort-feasors. The rationale for this rule is that joint tort-feasors are jointly and severally liable for the full amount of a plaintiff's damages, thus they need not be joined in a single action. 1 V.I.C. 4 and Restatement (Second) of Torts 875, 879 and 882 (1979); Field v. Volkswagenwerk AG, 626 F2d 293, 298, n.7 (3rd CIR. 1980). See also, Flynn v. Hubbard, 782 F.2d 1084, 1089 (1st Cir. 1986) (stating that "Under F.R.Civ.P. 19,..., joint tort-feasors need not be joined since each is liable for the entire amount of the recovery."). However, the Virgin Islands has enacted specific legislation which governs

the liability of tortfeasors in negligence cases, thus it becomes necessary to examine this legislation. V.I. Distributors, Inc. v. Durkee Foods. 19 V.I. 85, 92 (D.C.V.I. 1982).

The Virgin Islands Code provides that:

"Where recovery is allowed against more than one defendant, the trier of fact shall apportion, in dollars and cents, the amount awarded against each defendant. Liability of defendants to plaintiff shall be joint and several..." 5 V.I.C. 1451(d).

This section was amended on June 20, 1986 with respect to the liability of tortfeasors in automobile cases. The 1986 Amendment added the following language:

"Provided, however, no defendant in a cause of action concerning a motor vehicle accident shall be responsible for any judgment entered in favor of the plaintiff greater than the amount of negligence apportioned to such defendant unless the negligence of the defendant shall be greater than 50 percent, in which case the defendant shall be responsible for the total amount of the judgment..."

5 V.I.C. 1451(d). This amendment relieves a defendant, in an automobile negligence case, from being exposed to joint and several liability, if he can show that he is only 50% or less negligent. ABC, as a sole defendant, is clearly precluded from making such a showing, and would thus be responsible for the full amount of any judgment Lopez obtains. Accordingly, this Court concludes that, in Hinkel's absence, ABC cannot be

accorded complete relief. He is therefore a necessary party to this action. F.R.Civ.P. Rule 19(a).

The predicament which Lopez faces is that she cannot now join Hinkel. Since Lopez has already sued and obtained a judgment against Hinkel, res judicata principles preclude her from joining Hinkel. The Court must now decide whether "in equity and good conscience this action should proceed" against ABC solely. F.R.Civ.P. Rule 19(b). In making this determination, several factors will be considered.

First, as pointed out earlier, ABC will be fully responsible for any judgment rendered in Lopez' favor. Section 1451(d) contemplates such full responsibility only where a defendant is more than 50% negligent. In Hinkel's absence, ABC is denied the opportunity to show that ABC is either as negligent as Hinkel, or less, and thereby avoid full responsibility for Lopez' damages. ABC is thus greatly prejudiced.

Second, it is impossible to shape the judgment in such a way as to protect ABC from the aforementioned prejudice.

Thirdly, if this action is dismissed, plaintiff's only adequate remedy would be to attempt execution on her judgment against Hinkel.

Findings of Fact & Conclusions of Law  
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After considering the various factors, this Court concludes that Hinkel is an indispensable party to this suit. The intent of the 1986 Amendment to Section 1451(d) will be completely abrogated if plaintiffs are permitted to maintain separate action against tort-feasors in automobile cases. Accordingly, in equity and good conscience, this action should not proceed. Plaintiff had two tort-feasors and decided to let one go and seek it later. That one has now gone forever. The complaint will be dismissed.

DATED:

5/12/88

  
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Raymond L. Finch, Judge