

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

CENTERLINE CAR RENTALS,
INC.,

Plaintiff)

)

)

)

vs

)

JESSIE WHIPPER
JAYE ALEXIS WHIPPER
KATRINA RAMKEESON

)

)

)

Defendant

CASE NO. SX-09-CV-0000301

ACTION FOR: DAMAGES - CIVIL

**NOTICE OF ENTRY OF
MEMORANDUM OPINION
AND ORDER**

TO: THOMAS G. KRAEGER, ESQ.
JESSIE WHIPPER, PRO SE (MAIL)
JAYE WHIPPER, PRO SE (MAIL)
JUDGES AND MAGISTRATES OF THE SUPERIOR
COURT
LAW CLERKS OF THE SUPERIOR COURT
LAW LIBRARY; RECORD BOOK, IT

Please take notice that on October 22, 2014 a(n) MEMORANDUM
OPINION AND ORDER dated October 22, 2014 was entered by the Clerk in the
above-entitled matter.

Dated: October 22, 2014

Estrella H. George
Acting Clerk of the Court



IRIS D. CINTRON
COURT CLERK II

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

CENTERLINE CAR RENTALS, INC.,	)	
	Plaintiff,	
vs.	)	
	)	CIVIL NO SX-09-CV-301
JESSIE WHIPPER, JAYE WHIPPER AND	)	
KATRINA RAMKEESON,	)	ACTION FOR DAMAGES,
	Defendants.	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Summary Judgment and Memorandum in Support ("Motion"), filed June 11, 2014, against Defendant Jessie Whipper ("Jessie") and Defendant Jaye Whipper ("Jaye"); and Plaintiff's Motion to Deem Conceded its Motion for Summary Judgment, filed August 1, 2014. For the reasons that follow, Plaintiff's Motion will be granted in part and denied in part. Plaintiff's Motion to Deem Conceded is denied.

BACKGROUND

On March 13, 2009 Jessie and her daughter Jaye went to Plaintiff Centerline Car Rental, intending to rent a vehicle for an overnight party at Divi Resort to celebrate Jaye's birthday. Complaint, ¶6, 11. Plaintiff's representative informed Jessie that no one under 25 years old would be qualified to drive the rented vehicle. *Id.* Both women departed, but later that same day Jessie returned by herself and rented the vehicle, a 2008 Nissan Pathfinder, in her own name. Jessie "...signed and initialed the rental agreement and represented to Centerline that there would be no drivers of the leased vehicle other than herself." Motion, Statement of Undisputed Facts, at 1 (*citing* Deposition of Jessie Whipper, Exhibit A, at 15-19). The Rental Contract ("Contract") stated, in relevant party, that "customer is responsible for and will reimburse Centerline Car

Rentals, Inc. for all loss or damage whatsoever (and regardless of negligence) to vehicle... but customer liability for such loss or damage shall not exceed \$1,500.” Statement of Undisputed Facts, Exhibit D.

Furthermore, Jessie affirmed by the Contract as to “additional driver” that there would be “none.” Complaint, ¶9, Statement of Undisputed Facts, Exhibit D. Additionally, Jesse admits that she understood that only she was authorized to drive the rental vehicle. Statement of Undisputed Facts, at 2 (*citing* Deposition of Jessie Whipper, Exhibit A, at 34-35).

On the same evening, March 13, 2009, Jessie allowed Jaye to drive the rental vehicle, knowing that the Contract prohibited her from doing so. Deposition of Jessie Whipper, Exhibit A, at 16. Jaye and a group of friends drove to Divi Resort where they rented a room to celebrate Jaye’s 20th birthday. While at Divi, one of Jaye’s friends, Defendant Katrina Ramkeesoon, asked Jaye if she could drive the rental car, a request that Jaye refused – purportedly because Ramkeesoon had been drinking, and had previously caused an accident while driving her father’s car, resulting in the loss of her license. Deposition of Jaye Whipper, Exhibit B, at 13-14.¹

Later that night, Ramkeesoon took Jaye’s keys, which Jaye had left next to her bag on the hotel room counter; drove the rental car without Jaye’s knowledge or permission; and caused an accident which totaled the rental vehicle. *Id.* at 16-23.

On March 15, 2009 Jessie signed a damage report in which she “acknowledge[d] responsibility for the loss/damage and assume[d] responsibility for any and all repair costs.” Statement of Undisputed Facts, Exhibit C. Furthermore, by the Damage Report Jesse admitted that

¹ Plaintiff’s Motion seeks judgment against Defendants Jessie and Jaye only. Default was entered against Defendant Ramkeesoon on September 26, 2009, but Plaintiff has not sought judgment against her.

the “vehicle is a total loss” and that the “vehicle was being driven by an unauthorized driver.” *Id.*

Plaintiff requests summary judgment against Jessie for breaching the Contract with Plaintiff (Complaint Count I), and against Jaye for negligence (Count III).² Plaintiff’s negligent entrustment claim against Jessie (Count II) and its negligence claim against Ramkeesoon (Count IV) are not subject of the Motion, are not considered in this Opinion and Order and remain pending.

DISCUSSION

A moving party will prevail on a motion for summary judgment where the record shows that there is no unresolved genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), applicable pursuant to Super. Ct. R. 7; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). The reviewing court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no unresolved genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

² Count III of Plaintiff’s Complaint actually alleges the liability of Jaye on the basis of her negligent entrustment of the rental vehicle to Ramkeesoon: “As a direct result of Jaye Whipper’s negligence in entrusting the Pathfinder to Katrina Ramkeesoon, Plaintiff’s vehicle was rendered a total loss.” Complaint, ¶ 30. By its Motion, Plaintiff concedes that Jaye did not entrust the vehicle to Karina, but rather asserts that Jaye breached a duty of care to Plaintiff when she “simply left the keys on the counter where Katrina took them without Jaye’s knowledge or permission.” Motion, at 4.

A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing that there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The nonmoving party asserting that a fact is genuinely disputed must support the assertion by “citing to particular parts of materials in the record...” Fed. R. Civ. P. 56(c)(1)(A). *See also Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), citing Rule 56(e) prior to its 2010 amendment. “As to materiality, only those facts that ‘might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.’” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248).³

Plaintiff’s Motion is unopposed, as is its Statement of Undisputed Facts. Nonetheless, judgment may properly enter in favor of Plaintiff only to the extent that Plaintiff establishes from the undisputed facts in the record that it is entitled to judgment as a matter of law. Since summary judgment should be granted only in clear cases, if the evidence presented on a motion for summary judgment is subject to conflicting interpretations or reasonable persons might differ as to its significance, summary judgment is improper. *See Macedon v. Macedon*, 19 V.I. 434, 437 (Terr. Ct. 1983), citing *Bragen v. Hudson County News Co.*, 278 F.2d 615, 618 (3d Cir.1960).

³ Jesse and Jaye have filed no response or opposition to Plaintiff’s Motion. By Order entered May 30, 2014, the withdrawal of counsel for Jesse and Jaye became effective, and the parties were directed “to engage in discussions... to determine whether or not this matter may be settled without trial.” Failing settlement following such discussions, leave was granted to any party to file its dispositive motion. By letter signed by both Jessie and Jaye, received June 4, 2014, they advised that “My mother Jessie Whipper and I Jaye Whipper would like to settle in court to avoid losing the house on the settlement agreement,” an apparent reference to Plaintiff’s insistence that security be pledged for any settlement to be paid over time. Plaintiff’s Motion was filed thereafter on June 11, 2014.

I. Plaintiff is entitled to judgment as a matter of law against Jesse Whipper as to Count I of Plaintiff's Complaint – Breach of Contract.

a. There are no genuine issues of material fact in dispute.

Plaintiff's Statement of Undisputed Facts has not been challenged by Jesse. As to Plaintiff's claim on the Contract, there are no genuine issues of material fact in dispute. Therefore, the Court will examine whether Plaintiff is entitled to judgment as a matter of law.

b. Plaintiff has established as matter of law that Defendant Jessie Whipper breached the Contract with Plaintiff.

To establish a breach of contract claim, the non-breaching party "must prove that a contract existed, that there was a duty created by that contract, that such duty was breached, and that [the non-breaching party] suffered damages as a result." *Chapman v. Cornwall*, 58 V.I. 431 (V.I. 2013) (citing *Arlington Funding Servs., Inc. v. Geigel*, 51 V.I. 118, 135 (V.I. 2009)).

In this case, Plaintiff has established the existence of the Contract with Defendant Jessie Whipper (Statement of Undisputed Facts, Exhibit D); that the Contract imposed a duty on Jessie to refrain from allowing any other individuals to operate the rental vehicle (Statement of Undisputed Facts, at 1 (citing Deposition of Jessie Whipper, Exhibit A, at 15-19)); that the Contract specifically imposed personal liability on Jesse up to a limit of \$1,500.00;⁴ that Jesse breached her contractual duty by allowing her under-aged daughter Jaye to drive the car on the night of Jaye's birthday party (Deposition of Jessie Whipper, at 16); and that as a result of such breach, Plaintiff experienced damages in the form of a totaled rental vehicle.

⁴ The Contract states in relevant part: "...customer liability for such loss or damages shall not exceed \$1,500 except when four wheel drive vehicle was used, operated or driven in violation of any provision of this Rental Agreement." Statement of Undisputed Facts, Exhibit D.

As such, Plaintiff has established that Defendant Jessie Whipper breached the Contract with Plaintiff and that Plaintiff is entitled to judgment as a matter of law on Count I of its Complaint, limited to the monetary maximum damage award set out in the Contract. The Court will enter judgment in the amount of \$1,500.00 against Defendant Jessie Whipper.

II. Plaintiff is not entitled to judgment as a matter of law against Jaye Whipper on Count III of Plaintiff's Complaint - Negligent Entrustment (or Negligence).

Plaintiff, in its Complaint alleging negligent entrustment, states that Jaye Whipper "gave Katrina Ramkeesoon the keys to the vehicle" knowing "Ramkeesoon to be under the influence of alcohol." Complaint, ¶14. Following discovery, in its Motion and accompanying Statement of Undisputed Facts ("SUF"), Plaintiff now concedes that "One of Jaye's friends, Katrina Ramkeesoon, asked Jaye about driving the leased vehicle and Jaye refused." SUF, ¶ 8.

Plaintiff now alleges that Jaye is liable under ordinary negligence principles because "...she had a duty to keep the rental keys from Katrina and breached the duty by failing to keep the keys secure and out of Katrina's reach. Jaye's leaving the rental keys unattended on the counter of the hotel room amounts to negligent failure to use ordinary care to prevent Katrina from driving the vehicle." Motion, at 4. Plaintiff has not petitioned the Court for leave to amend its Complaint to be consistent with newly discovered information and its new theory of liability.

Under a negligent entrustment theory, "it is negligence to permit a third person to use a thing... which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing... in such a manner as to create an unreasonable risk of harm to others." *Baron v. Rosario*, 37 V.I. 82, 85 (D.V.I. App. Div. 1997), citing Restatement (Second) of Torts § 308.

In *Baron v. Rosario*, the Appellate Division affirmed the trial court's summary judgment dismissing the plaintiff's negligent entrustment claim against a woman whose nephew removed her car keys from behind a plant in the bathroom where she regularly kept them, and drove the car without permission, resulting in an accident. The Court cited Restatement (Second) of Torts § 390 which states: "One who supplies... a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them." Here, since the facts presented by Plaintiff establish that Jaye did not entrust the rental vehicle to Katrina, Jaye cannot be liable for negligent entrustment.

Ordinary negligence, however requires, no affirmative act such as the entrustment of a vehicle to a potentially dangerous driver. Rather, the moving party must simply establish that the conduct causing harm was "reasonably foreseeable." See *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 533 (V.I.2013) ("It is a longstanding tenet of American jurisprudence that negligence can only arise from foreseeable harms, as '[t]he risk reasonably to be perceived defines the duty to be obeyed.'" quoting *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 100 (N.Y.1928)).⁵

⁵ As noted, Plaintiff's sole allegation of liability against Defendant Jaye Whipper in the Complaint sounds in negligent entrustment theory. Yet, its Motion alleges instead that Jaye was negligent in failing to keep the vehicle keys from Ramkeesoon. Super. Ct. R. 8 permits the Court to amend any pleading "for any variance between the complaint and the evidence adduced at trial." Here, the evidence adduced in pretrial discovery has resulted in Plaintiff changing its legal theory of liability against Defendant Jaye Whipper, and the Court will recognize and grant Plaintiff's implicit request for leave to amend its pleading to permit it to present its negligence claim against Jaye. "[S]uch amendments are not as of right, but are vested in the sound discretion of the Superior Court." *Harvey v. Christopher*, 55 V.I. 565, 577 (V.I. 2011).

Plaintiff has abandoned its negligent entrustment claim against Defendant Jaye Whipper. Notwithstanding the fact that the *pro se* Defendant has not sought such relief, the Court will enter summary judgment against Plaintiff in favor of Jaye on Plaintiff's negligent entrustment claim. "Where one party has invoked the power of the court to render a summary judgment against an adversary, the court has the power to render a summary judgment for the adversary if it is clear that the case warrants that result, even though the adversary has not filed a cross-motion for summary judgment." *Suid v. Phoenix Fire*, 26 V.I. 223, 226 (D.V.I. 1991).

Plaintiff's claim for liability in negligence against Jaye rests upon the following facts: Katrina had asked Jaye about driving the leased vehicle and Jaye refused; Jaye knew that years earlier Katrina had taken the keys to her father's car without permission and was involved in an accident, resulting in the loss of her license; Jaye left the rental vehicle keys on the counter in the room at Divi where Katrina was; and Katrina took the keys without Jaye's knowledge or permission and wound up in an accident which totaled the vehicle. SUF, ¶¶ 8-11. Further, Jaye believed that Katrina had been drinking. Deposition of Jaye Whipper, at 12-13.

These alleged and undisputed facts may be sufficient at trial for a fact finder to determine that Jaye was negligent in not taking greater care to keep the vehicle keys away from Katrina. At this stage, however, it cannot be determined that Plaintiff is entitled to judgment as the result of Jaye's negligence as a matter of law based upon the facts in the record, as a reasonable trier of fact could also return a verdict for the nonmoving party.

Jaye testified that "I think" that Katrina did not have a license as a result of the previous accident when she took her father's car keys, but she stated that "I'm not sure." Asked whether her father or the government took away her license, Jaye responded: "I think the government. I'm not

sure. I don't know the whole story." When questioned when that accident took place, Jaye responded: "Years ago. I think it's before I knew her." *Id.* at 14.

Further, Jaye was asked: "Q. All right. Did you make any effort to hide the keys from her? Or where did you have the keys when she took them?" Jaye responded: "A. It was next to my bag on the counter, and she was getting her stuff, too, so I didn't think that she would take the keys for the car." *Id.* at 25.

The foregoing represents the sum total of the factual record presented in support of Plaintiff's claim that it is entitled to judgment against Jaye for her negligence in failing to keep the keys to the rental vehicle from Katrina. Reviewing these facts and drawing all reasonable inferences in the light most favorable to the nonmoving party, material facts have not been established as a matter of law – specifically, whether Jaye had and breached an affirmative duty to hide or keep keys from Katrina. Jaye knew that years earlier Katrina had taken her father's car without permission and had an accident; that she had no license; that she had been drinking; and that she asked Jaye for permission to drive the rental car. With that knowledge, however, Jaye "didn't think that she would take the keys for the car." Whether these facts are sufficient to permit a finding of negligence against Jaye is a question better left to the finder of fact at trial.

In light of the foregoing, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment is GRANTED as to Defendant Jessie Whipper, and JUDGMENT is ENTERED in favor of Plaintiff and against Defendant Jesse Whipper in the amount of \$1,500.00. It is further

ORDERED that Summary Judgment is GRANTED in favor of Defendant Jaye Whipper

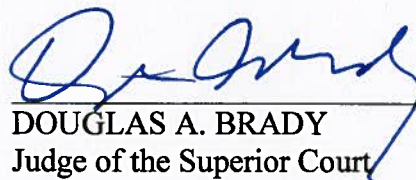
on Plaintiff's claim alleging Negligent Entrustment, and such claim against Defendant Jaye Whipper is DISMISSED WITH PREJUDICE. It is further

ORDERED that Count III of Plaintiff's Complaint is deemed amended to present an additional claim for liability against Defendant Jaye Whipper based on ordinary Negligence. It is further

ORDERED that Plaintiff's Motion for Summary Judgment against Defendant Jaye Whipper on its Negligence claim is DENIED without prejudice. It is further

ORDERED that the trial of this matter will be scheduled for a date to be set by separate Order to issue.

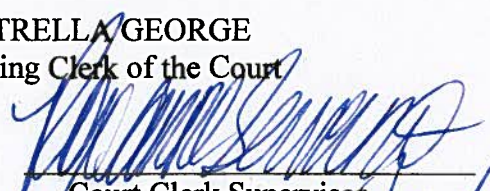
DATED: October 22, 2014.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By:


Court Clerk Supervisor
10/22/14