

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

BEVIN DORSETT AND	)	CASE NO. ST-2014-CV-233
CARONIQUE CROMWELL,	)	
	)	ACTION FOR DAMAGES
Plaintiffs,	)	
v.	)	<u>JURY TRIAL DEMANDED</u>
	)	
JONATHAN BLOMQUIST,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' Motion for Leave to File Second Amended Complaint, which was filed on March 21, 2016. Plaintiffs seek to amend their First Amended Complaint to add Sara B. Bell as a defendant and a claim for negligent entrustment against Bell. The Court will deny Plaintiffs' Motion because their proposed amendment is futile.

STANDARD FOR MOTIONS TO AMEND COMPLAINT

Rule 8 of the Superior Court permits the Court to "amend any process or pleading for any omission or defect therein." Rule 8 places the amendment of pleadings within the sound discretion of the Court. Because Rule 8 merely states the general rule that a court can correct errors or defects in pleadings, the Court looks to the standards set out under Federal Rule of Civil Procedure 15 for guidance. Pursuant to Federal Rule of Civil Procedure 15(a)(2), "[t]he court should freely give leave [to amend a pleading] when justice so requires." A motion to amend may be denied for "reasons such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of the amendment."¹ An amendment can be considered futile if the proposed amendment is frivolous, would be barred by the statute of limitations, or would otherwise not survive a motion to dismiss.

I. Plaintiffs' Proposed Amended Second Amended Complaint Is Futile Because It Fails to Plead a Valid Claim of Negligent Entrustment.

STANDARD FOR MOTION TO DISMISS

"The adequacy of a complaint is governed by Rule 8 of the Federal Rules of Civil Procedure."² A complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief."³ To survive a motion to dismiss for failure to state a claim upon which relief can be granted, "a complaint must contain sufficient factual matter, accepted as true,

¹ *Abdallah v. Abdel-Rahman*, 2015 V.I. LEXIS 102, at *3 (V.I. Super. Ct. Aug. 20, 2015).

² *Brady v. Cintron*, 55 V.I. 802, 822 (V.I. 2011). Federal Rule of Civil Procedure 8 applies to this proceeding through the operation of Superior Court Rule 7.

³ FED. R. CIV. P. 8(a)(2).

“to state a claim for relief that is plausible on its face.”⁴ All material allegations in the complaint are taken as true, and the Court must construe all facts in a light most favorable to the non-moving party.⁵ However, a plaintiff is obliged to provide “more than labels and conclusions.”⁶ Determining whether a complaint states “a plausible claim for relief” is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.”⁷ In making the plausibility determination, the Supreme Court of the Virgin Islands instructs that:

First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief.⁸

If the remaining facts are sufficient enough for the court to draw a reasonable inference that the defendant is liable based on the elements the plaintiff must plead, then the claim is considered plausible.⁹

STANDARD FOR NEGLIGENT ENTRUSTMENT

In order to prevail on a claim of negligent entrustment, a plaintiff must establish the following: (1) the defendant supplied a chattel to a third person; (2) likelihood that such third person because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the defendant should expect to be endangered; (3) the defendant knew or had reason to know of such a likelihood; and 4) proximate cause of the harm to plaintiff by conduct of the third person.¹⁰

ANALYSIS

The Court determines that Plaintiffs fail to plead sufficiently a tort of negligent entrustment in their propose Second Amended Complaint. Plaintiffs satisfy the first element of negligent entrustment by pleading that Bell entrusted Blomquist with the vehicle. However, Plaintiffs fail to allege facts that provide a basis as to why Bell should have suspected “Blomquist was a reckless and/or incompetent driver” or Blomquist would use the vehicle in a manner involving unreasonable risk. Plaintiffs also do not plead Bell knew Blomquist was an unsafe driver.

⁴ *Ashcroft v. Iqbal*, 559 U.S. 662, 677 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2002)).

⁵ *L’Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 206–170, 2010 WL 924259, at *1 (D.V.I. Mar. 11, 2010) (citing *Christopher v. Harbury*, 536 U.S. 403, 406 (2002)).

⁶ *Twombly*, 550 U.S. at 555.

⁷ *Iqbal*, 559 U.S. at 679.

⁸ *Brady v. Cintron*, 55 V.I. 802, 822-23 (2011) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649–50 (2011)).

⁹ *Id.*

¹⁰ *Faulknor v. Gov’t of the Virgin Islands*, 60 V.I. 65, 88-89 (V.I. Super. Ct 2014) (adopting Restatement (Second) of Torts § 390); see also *id.* (providing a *Banks* analysis). This Court sees no reason to depart from the *Banks* analysis provided in *Faulknor v. Government of the Virgin Islands*. It hereby adopts the reasoning opined in that decision and agrees that negligent entrustment as provided in Restatement (Second) of Torts § 390 should be adopted as a common law cause of action in the Virgin Islands.

Therefore, the Court finds Plaintiffs do not adequately plead a proposed claim upon which the Court can grant relief. As a result, the Court concludes that Plaintiffs' proposed Second Amended Complaint is futile and it will deny Plaintiffs' Motion.

II. Plaintiffs' Proposed Second Amended Complaint Is Futile Because They Would Be Unable to Join a Necessary Party.

Upon the parties' filing of the Stipulation for Dismissal with Prejudice between Plaintiffs and Defendant, the Court dismissed with prejudice Plaintiffs' claim against Defendant Jonathan Blomquist.¹¹ Therefore, a question arises regarding whether Plaintiffs can pursue a negligent entrustment claim against Bell without Blomquist as a co-defendant.

Federal Rule of Civil Procedure 19 governs mandatory joinder of defendants.¹² FRCP 19(a)(1) provides the following:

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

The Superior Court previously addressed similar issues concerning joinder of car drivers in order to proceed with a negligent entrustment claim against a vehicle's owner. *Lett v. Rosado*¹³ concerned a negligent entrustment claim against an employer. An employee driving a vehicle utilized by his employer was involved in a traffic accident. Relying on Restatement (Second) of Torts § 882 and case law outside the Virgin Islands, the Court determined that FRCP 19(a) did not require the plaintiff to proceed against the negligent employee as well. The court reasoned that "[t]he concerns noted in FRCP 19(a) are not present, because there is no risk of double recovery, inconsistent results or multiplicity of lawsuits on the same subject matter."¹⁴

*Lopez v. ABC Janitors, Inc.*¹⁵ also concerned an employer that allegedly negligently entrusted its vehicle to an employee. The plaintiff obtained a judgment against the employee in a prior action and *res judicata* principles precluded her from joining the employee in her action against the employer. The court decided that the plaintiff could not pursue a negligent entrustment claim against the employer without also joining the employee as a co-defendant. The court considered the rules imposed by Title 5, § 1451(d) of the Virgin Islands Code on judgments in

¹¹ Order of Dismissal (June 3, 2016).

¹² Federal Rule of Civil Procedure 19 applies pursuant to Superior Court Rule 7.

¹³ 2002 V.I. LEXIS 41 (V.I. Super. Ct. May 31, 2002) (unpublished).

¹⁴ *Id.* at *9.

¹⁵ 1988 V.I. LEXIS 47 (V.I. Super. Ct. May 12, 1988).

negligence actions. The statute provides that “[w]here recovery is allowed against more than one defendant . . . 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 other words, the statute “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.”¹⁶ As a sole defendant, the employer was “precluded from making such a showing, and would thus be responsible for the full amount of any judgment . . .”¹⁷ Therefore, the court determined that the employee was a necessary party.

This Court agrees with the rationale provided in *Lopez v. ABC Janitors, Inc.* and determines that Blomquist is a necessary party to this matter. If the Court enters a judgment, § 1451(d) would require an assessment of the parties’ apportionment of negligence. Similar to the circumstances in *Lopez v. ABC Janitors, Inc.*, without Blomquist, Bell would not be afforded her right to be not jointly and severally liable if her apportionment of negligence is half or less. Therefore, Plaintiffs cannot bring a claim against Bell because they would be unable to join a necessary party.

Accordingly, it is hereby

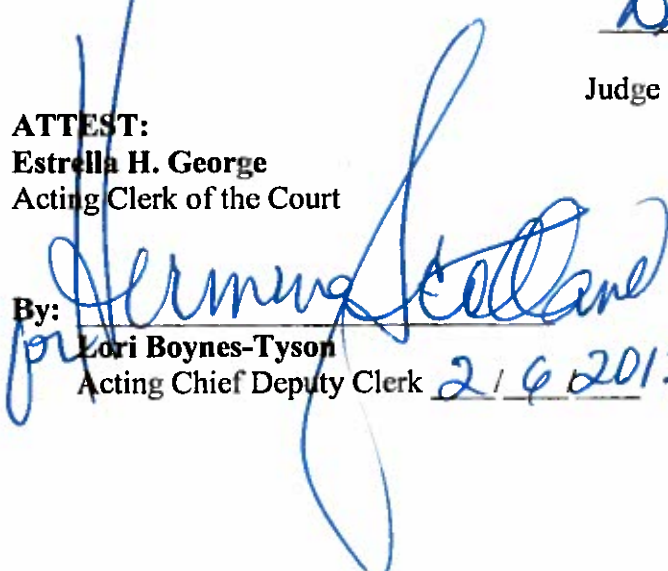
ORDERED that Plaintiffs’ Motion for Leave to File Second Amended Complaint is **DENIED**; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Ryan W. Greene, counsel for Plaintiffs, and to Attorney Douglas L. Capdeville, counsel for Defendant.

DATED: February 6, 2017


DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
Estrella H. George
Acting Clerk of the Court


By: **Lori Boynes-Tyson**
Acting Chief Deputy Clerk 2/6/2017

¹⁶ *Id.* at *4.

¹⁷ *Id.*