

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS  
DIVISION OF SAINT CROIX AT KINGSHILL**

**SAMUEL VEIRA, WILHEMINA GLASGOW** )  
individually and as next friend of **SAMANTHA** )  
**VEIRA, PAULA FREDERICK** individually and )  
as next friend of **CRYSTAL FREDERICK,** )  
**SHARON GLASGOW** individually and as next )  
friend of **WAYNE GLASGOW,** )

Plaintiffs,

vs.

**LISAR MUSTAFA and ALI IDHELIEH,**

Defendants.

**CIVIL NO. 610/1996**

**ACTION FOR DAMAGES**

**JURY TRIAL DEMANDED**

**NOT FOR PUBLICATION**

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**Cabret, Presiding Judge**

**MEMORANDUM OPINION**

(February 23, 2000)

This matter is before the Court on Defendant, Ali Idhelieh's, Motion for Summary Judgment. For reasons which follow, the motion is denied.

## I. SUMMARY JUDGMENT STANDARD

To prevail on a motion for summary judgment, the moving party must show that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [it is] entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Under this standard, the moving party "bears the initial burden of showing that no genuine issue of material fact exists. But once the moving party properly supports a motion for summary judgment, the nonmoving party 'may not rest upon the mere allegations or denial of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial.' Any doubts are resolved in favor of the nonmoving party whose allegations are taken to be true." Mingolla v. Minnesota Mining and Mfg. Co., 893 F. Supp. 499, 503 (D.V.I. 1995). In determining whether the moving party has met its initial burden, the Court must view the evidence in a light most favorable to the nonmoving party and grant all reasonable inferences from the evidence to the nonmoving party. See Peter Bay Owners Assn. Inc. v. Stillman, 58 F.Supp.2d 640 (D.V.I. 1999); Fleming v. Frett, 33 V.I. 58, 60 (Terr. Ct. 1995).

## II. EVIDENCE AND PROCEDURAL BACKGROUND

The undisputed evidence in this case shows that Idhelieh is the owner of a 1985 Ford LTD. On June 22, 1996, Defendant Lisar Mustafa was driving Idhelieh's car when he collided into the rear-end of a car driven by Plaintiff Samuel Veira. Veira, and the other plaintiffs who were passengers in Veira's car, were injured in the accident.

Immediately after the collision, Mustafa and his passenger, Idhelieh's son, exited the Ford and ran to a nearby business where they telephoned Idhelieh and informed him of the accident. Idhelieh and the police arrived at the scene shortly thereafter. The police investigation revealed that Mustafa was an unlicensed driver and that he was following Veira's car too closely when the accident occurred. Police arrested Mustafa for driving without a licence, but before he was taken into custody, Idhelieh gave him \$500 to use for posting bail.

Approximately two weeks later, Veira contacted Idhelieh about repairing the damage to Veira's car. Veira went to a gas station Idhelieh owned, and gave him two repair estimates. In an affidavit, Veira stated:

[Idhelieh] first represented that the estimates were too high. He then said he was not responsible for the repairs because Mr. Mustafa had stolen his vehicle. I found this difficult to believe because while I was there, I saw Mr. Mustafa working at Mr. Idhelieh's gas station pumping gas. Additionally, Mr. Idhelieh had not informed the police that his car was stolen.<sup>1</sup>

On October 8, 1996, Veira and the other plaintiffs sued Mustafa and Idhelieh for damages allegedly resulting from the accident. Plaintiffs alleged that Mustafa is liable for their damages because of his negligent driving. They alleged that Idhelieh is liable because he "negligently entrusted his vehicle to a non-licensed driver[.]"<sup>2</sup> Both defendants were served with the complaint, and Plaintiffs obtained a default judgment against Mustafa. Idhelieh answered the complaint denying liability for Plaintiffs' damages.

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<sup>1</sup> Affidavit of Samuel Veira at paragraphs 14-17 (paragraph indentions omitted).

<sup>2</sup> Complaint at paragraph 9.

Following discovery, Idhelieh filed the instant Motion for Summary Judgment asserting that the undisputed evidence shows that he did not entrust his car to Mustafa. In support of his motion, Idhelieh points to his own affidavit in which he states:

At the time of the accident the vehicle had been taken without my authorization by Lisar Mustafa. On the day of the accident, I had left my vehicle behind the building of Queen Mary Service Station to be worked on by a mechanic. The key to the vehicle was left inside the store to be given to the mechanic and no one else. When I returned to the service station in the afternoon, a tow truck was bringing my vehicle back after having been involved in the accident. At no time had authorization ever been given to Lisar Mustafa to operate the vehicle, I did not know him well and I had no intention of entrusting the vehicle to him. . . . I had no knowledge that Lisar Mustafa had stolen my vehicle.<sup>3</sup>

In response to Idhelieh's motion, Plaintiffs cite the evidence discussed above and argue that from this evidence a jury could reasonably infer that Idhelieh entrusted his vehicle to Mustafa.

### III. DISCUSSION

Plaintiffs' claim for negligent entrustment is governed by the Restatement (Second) of Torts.<sup>4</sup> Section 308 of the Restatement provides that it is:

negligence to permit a third person to use a thing or engage in an activity 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 or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

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<sup>3</sup> Affidavit of Ali Idhelieh at paragraphs 2-5, 7 (paragraph indentions omitted).

<sup>4</sup> See V.I. Code Ann. tit. 1, § 4 (1995) (providing that "[t]he rules of the common, law, as expressed in the restatements of the law approved by the American Law Institute . . . shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary."

Restatement (Second) of Torts § 308 (1977). In order to prevail on their claim of negligent entrustment, Plaintiffs must establish the following elements:

- (1) entrustment of a chattel to a party;
- (2) likelihood that such party because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the entruster should expect to be endangered;
- (3) knowledge or reason to know by the entruster of such a likelihood;
- (4) proximate cause of the harm to plaintiff by the conduct of the entrustee.

Baron v. Rosario, 37 V.I. 82, 85, 982 F.Supp. 1037 (D.V.I. 1997).

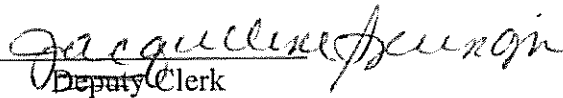
In this case, Idhelieh's motion is based solely on an asserted lack of evidence of the first element: entrustment of the Ford to Mustafa. Upon reviewing the evidence concerning entrustment, the Court concludes that Plaintiffs' claim for negligent entrustment must be resolved by a jury. Though Idhelieh is correct that a jury could find from his own testimony that he did not entrust the car to Mustafa, viewing all the evidence in a light most favorable to Plaintiffs, a jury could also reasonably infer that he did entrust the car to Mustafa. Specifically, in light of Plaintiffs' evidence that Idhelieh did not inform the police that the car was stolen and that he gave Mustafa, his employee, \$500 for bail, a jury could reject Idhelieh's testimony that Mustafa had stolen his car earlier that day. Certainly, Idhelieh's benevolence toward Mustafa is inconsistent with his assertion that Mustafa had just stolen and wrecked his car. Similarly, a jury could infer that Idhelieh offered to pay for Veira's car repairs because Idhelieh had earlier entrusted the car to Mustafa. Because this evidence and the inferences it permits create a material issue of fact for a jury to resolve, Idhelieh's Motion for Summary Judgment must be denied.

## VI. CONCLUSION

For the reasons stated above, the Court concludes that Idhelieh is not entitled to summary judgment on Plaintiffs' claim of negligent entrustment. The evidence permits a reasonable inference that Idhelieh had entrusted his car to Mustafa at the time of the collision. Accordingly, Idhelieh's motion will be denied.

  
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MARIA M. CABRET  
Territorial Court Judge

A T T E S T:  
DENISE D. ABRAMSEN  
Clerk of the Court

By:   
\_\_\_\_\_  
Deputy Clerk

Dated: 2-24-00