

DIVISION OF ST. THOMAS AND ST. JOHN

Defendant.

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) **CIVIL NO. ST-17-CV-40**

Pending before the Court is Defendant's February 21, 2017, Motion to Dismiss Count II of Plaintiff's Complaint for Failure to State a Claim of Gross Negligence, and Defendant's June 9, 2017, supplement to that motion asking the Court to strike from the Amended Complaint Plaintiff's Count II a claim for premises liability and Plaintiff's request for punitive damages. Because Plaintiff has removed the gross negligence allegations of the original Complaint from the Amended Complaint, Defendant's motion to dismiss is moot. Further, under Virgin Islands law, Plaintiff's claims for negligence and premises liability constitute duplicate claims, as opposed to alternate forms of relief, and therefore, the Court will grant Defendant's request to strike Plaintiff's Count II and permit Plaintiff to file a Second Amended Complaint merging the counts. Finally, because Plaintiff has not pled a basis for an award of punitive damages, Defendant's request to strike Plaintiff's demand for punitive damages from the Amended Complaint will be granted.

FACTUAL & PROCEDURAL HISTORY

On January 25, 2017, Weatherill filed a Complaint for negligence and gross negligence against Walgreens, alleging that a heavy object fell onto and injured him in a Walgreens store on September 16, 2015.¹ On February 21, 2017, Walgreens filed a motion to dismiss Weatherill's claim for gross negligence under V.I. R. CIV. P. 12(b)(6), after which this Court granted Weatherill leave to amend the complaint and held in abeyance Walgreens' motion to dismiss pending the filing of the Amended Complaint and related supplements.² On May 22, 2017, Weatherill filed his Amended Complaint, after which Walgreens supplemented its Motion to Dismiss.

STANDARDS

The Superior Court has jurisdiction over civil actions under 4 V.I.C. §76(a).³

I. Mootness

"A motion becomes moot when something occurs after a motion is filed that resolves the issues raised in that motion"⁴ so that a "court's decision on [the] pending motion [would] be 'hypothetical or academic' or without any 'practical significance[.]'"⁵ "In that instance, the

¹ Compl., ¶¶ 4-25.

² On March 24, 2017, Plaintiff filed an Opposition to Defendant's Motion to Dismiss Count II, Gross Negligence, of Plaintiff's Complaint for Failure to State a Claim and a Motion for Leave to Amend Complaint, the latter of which this Court granted on May 3, 2017, holding in abeyance Defendant's Motion to Dismiss until after the filing of the Amended Complaint and corresponding supplements.

³ 4 V.I.C. § 76(a) provides, in pertinent part: "Subject to the original jurisdiction conferred on the District Court by section 22 of the Revised Organic Act of 1954, as amended, effective October 1, 1991, the Superior Court shall have original jurisdiction in all civil actions regardless of the amount in controversy."

⁴ *Der Weer v. Hess Oil V.I. Corp.*, 2014 V.I. LEXIS 22, at *11 (V.I. Super. Ct. 2014) (citations omitted).

⁵ *Id.* at *12 (citing BLACK'S LAW DICTIONARY 1099 (9th ed. 2009)); *see also id.* at *12-13 (citing *Oparaji v. N.E. Auto-Marine Terminal*, 437 Fed. Appx. 190, 193, n.1 (3d Cir. 2011) ("A motion is moot when a court is unable to fashion any form of meaningful relief") and *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 489 S.E.2d 99, 104 (1997) ("A motion is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.")).

motion should be dismissed or denied as moot because a decision [would] have no practical impact in the case however the court decides the motion.”⁶

II. V.I. R. CIV. P. 12(f)

Under V.I. R. CIV. P. 12(f), a court may, either on its own or on motion made by a party, strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. “Mere redundancy, immateriality, impertinence or scandalousness is not sufficient to justify striking an allegation[,]”⁷ and “[b]ecause of the drastic nature of the remedy ... motions to strike are usually ‘viewed with disfavor’ and will generally ‘be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues.’”⁸ “[P]rejudice exists when a contested claim or defense would confuse the issues or inject the possibility of unnecessarily extensive and burdensome discovery, improperly increase the time, expense, and complexity of the trial or otherwise unduly burden the moving party.”⁹

ANALYSIS

I. Because the Amended Complaint lacks allegations of gross negligence, Defendant’s Motion to Dismiss that claim is moot.

The Amended Complaint replaces the original Complaint’s claim for gross negligence with one for premises liability, omitting the gross negligence claim.¹⁰ Accordingly, Walgreens’

⁶ *Id.* at *13.

⁷ *Flanagan v. Wyndham Int’l. Inc.*, No. Civ. 2002/237-M/R, 2003 U.S. Dist. LEXIS 24211, at *4, [WL], at *4 (D.V.I. Apr. 21, 2003) (citation omitted).

⁸ *Benjamin v. Esso Standard Oil Co.*, No. 1:08-cv-101, 2009 U.S. Dist. LEXIS 48677, at *1-2, [WL], at *1 (D.V.I. June 4, 2009) (citations omitted).

⁹ *Merchs. Commercial Bank v. Tillet*, 55 V.I. 121, 124 (V.I. Super. Ct. 2011) (citations omitted).

¹⁰ *Cf.* Compl., ¶¶ 20-25 with the Amended Compl. ¶¶ 12-17.

Motion to Dismiss Count II to the extent it seeks to dismiss a gross negligence claim, must be denied as moot.¹¹

II. Counts I and II plead duplicate claims, rather than alternate theories of recovery, resulting in confusion, and thus, the Court will permit Plaintiff to file a Second Amended Complaint integrating the two counts.

Walgreens asks the Court to strike the entirety of Count II,¹² a claim for premises liability, as redundant of Count I, a negligence claim, contending that “the presence of these identical claims would cause confusion of the issues and prejudice W[algreens].”¹³ In response, Weatherill argues that the factual allegations underlying the two counts differ, asserting that Count I is “based on a person or persons [sic] negligence” whereas Count II alleges a claim for premises liability against Walgreens.¹⁴ According to the Amended Complaint, Count I asserts that Walgreens breached its duty to keep Weatherill safe from injury and harm “by failing to have its employee (s) [sic] inspect, maintain, and ensure that any overhanging objects in its store were securely attached and would not cause plaintiff to be injured[,]”¹⁵ and Count II alleges that Walgreens breached its duty to maintain a reasonably safe premises by “negligently permitt[ing] and allow[ing] a heavy overhanging object . . . to be unsecure, loose and unsafe.”¹⁶

¹¹ *Der Weer*, 2014 V.I. LEXIS 22, at *11-12 (V.I. Super. Ct. 2014) (citations omitted).

¹² Supplement to Defendant’s Motion to Dismiss Plaintiff’s Gross Negligence Claim for Failure to State a Claim, page 4.

¹³ Walgreens has not filed a motion to strike Weatherill’s Count II and instead asks the Court to strike Weatherill’s claim for premises liability in its Supplement to Defendant’s Motion to Dismiss Plaintiff’s Gross Negligence Claim for Failure to State a Claim at page 4.

¹⁴ Plaintiff’s Opposition to Defendant’s Supplement to Motion to Dismiss Count II, Gross Negligence, of Plaintiff’s Complaint for Failure to State a Claim, page 5.

¹⁵ Amended Complaint, ¶¶ 6-7.

¹⁶ *Id.* at ¶ 14(a).

Importantly, Virgin Islands law does not recognize a claim for negligence as separate from one for premises liability as a theory of negligence,¹⁷ applying the foreseeability of harm test to both claims.¹⁸ Accordingly, the “negligence” and “premises liability” labels on Weatherill’s claims¹⁹ suggest redundant claims as opposed to alternate theories of recovery.²⁰ Even overlooking the labels—recognizing that Count I’s negligence claim is “based on a person or persons negligence [sic][.]”²¹ conceivably suggesting a claim for negligence under the doctrine of *respondeat superior*²²—the facts underlying Count I also fail to allege that a Walgreens employee committed a tort for which Walgreens was vicariously liable, and thus, a *respondeat superior* claim cannot be inferred. Because only a single negligence claim with

¹⁷ *Antilles School, Inc. v. Lembach*, 64 V.I. 400, 413 (V.I. 2016) (“We agree that Lembach’s causes of action for negligence and premises liability were duplicative. As Antilles School correctly noted in its objection, ‘[p]remises liability is a theory of negligence, where the basis of the duty of care is the possession or control of the premises where [an] injury occurred,’ for ‘[t]he elements are the same — a plaintiff must prove: (1) duty, (2) breach, (3) causation, and (4) damages.’ (J.A. 277-78.) This Court reached this same conclusion in *Machado*, in which it analyzed a premises liability claim through the lens of the four elements of negligence. 61 V.I. at 380-81. Consequently, even though Lembach asserted two separate causes of action in his complaint, the Superior Court should have instructed the jury on only a single cause of action: negligence under a premises-liability theory”).

¹⁸ See *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 394 (V.I. 2014) (explaining that in the context of premises liability, foreseeability means that “if a possessor could anticipate that the conditions on its property would result in injury to those foreseeably using the property, the possessor can be held liable for those injuries”).

¹⁹ Although the Amended Complaint fails to label either count with a cause of action, and instead asserts a series of factual allegations under each count, Plaintiff’s Opposition to Defendant’s Supplement to Motion to Dismiss Count II, Gross Negligence asserts that Count I is a claim for “negligence” and Count II, for “premises liability.” (Cf. Amended Compl. and Plaintiff’s Opposition to Defendant’s Supplement to Motion to Dismiss Count II, Gross Negligence, pgs. 4-5).

²⁰ See V.I. R. CIV. P. 8(a)(3) and V.I. R. CIV. P. 12(f).

²¹ Plaintiff’s Opposition to Defendant’s Supplement to Motion to Dismiss Count II, Gross Negligence, of Plaintiff’s Complaint for Failure to State a Claim, page 5.

²² Recognizing that the Virgin Islands Supreme Court has not adopted the common law claim for negligence under the doctrine of *respondeat superior*, for the purposes of this analysis the Court hereby adopts as the soundest rule for the Virgin Islands the standard set forth in *Nicholas v. Damian-Rojas*, 62 V.I. 123 (V.I. Super. Ct. 2015) after reviewing the *Banks* analysis and agreeing with the methodology and conclusions adopted therein. See *Nicholas*, 62 V.I. 123 at 130-131 (providing that an employer is vicariously liable for the negligence of an employee under a *respondeat superior* theory when the employee’s negligent act occurred within the course and scope of employment). With respect to the effect of factual allegations versus the labels on their respective claims, see *Moore v. Richmond Hill Sav. Bank*, 120 Misc.2d 488, 489 (Civ. Ct. 1983) (“The fact that a complaint mislabels the conduct does not change the legal force and effect of the factual allegations. Where, as here, the defendant has notice of the allegedly improper conduct so it may adequately defend its behavior, the plaintiff may rely on any theory of recovery supported by the facts”) (citation omitted).

respect to premises liability between Count I and II can be deduced, the counts allege duplicative claims, rather than alternate forms of relief.²³ Thus, in the interest of streamlining the Amended Complaint, the Court will permit Weatherill to file a Second Amended Complaint, merging Count II into Count I.

III. Punitive damages are not recoverable in a negligence action, and therefore, the Court will strike Plaintiff's demand for those damages.

Punitive damages “are not meant to compensate an aggrieved plaintiff but to punish a defendant's outrageous behavior and deter others from engaging in similar behavior[,]” and “[t]o recover punitive damages, a plaintiff must prove that a defendant acted outrageously and with either an evil motive or a reckless indifference to the rights of others.”²⁴ Here, because the Amended Complaint does not allege that Walgreens is liable for outrageous or reckless behavior, the Court will grant Walgreens' request to strike its demand for punitive damages.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Count II of Plaintiff's Complaint for Failure to State a Claim of Gross Negligence will be denied as moot. Further, the Court will grant Defendant's request to strike as redundant Count II of the Amended Complaint and permit Plaintiff to file a Second Amended Complaint. Finally, the Court will grant

²³ Under V.I. R. CIV. P. 8(a)(3) a pleading may contain relief in the alternate or different types of relief, as opposed to duplicative. Additionally, considering that V.I. R. CIV. P. 8(a)(3) mirrors F. R. CIV. P. 8(a)(3), *see US LEC Communs. LLC v. Qwest Communs. Co., LLC*, No. 10-4106 (JBS/JS), 2011 U.S. Dist. LEXIS 66652, at *9-10 (D.N.J. June 20, 2011) (“Alternative pleading, which is permitted, allows a party to plead different theories of a claim when the relevant factual or legal issues differ, or they afford different relief. Redundant pleading, which is not permitted, pleads as separate claims causes of action with identical elements and potential relief. *See e.g., Sudul v. Computer Outsourcing Servs.*, 868 F. Supp. 59, 61 (S.D.N.Y. 1994) (holding that a redundant claim should be stricken because it contained the same elements as another claim); *Garlanger v. Verbeke*, 223 F. Supp. 2d 596, 609 (D.N.J. 2002) (striking redundant claims)”).

²⁴ *Bertrand v. Cordiner Enters.*, 2013 V.I. LEXIS 67, at *27-28 (V.I. Super. Ct. 2013).

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Defendant's request to strike Plaintiff's demand for punitive damages from the Amended Complaint. An Order consistent with this Opinion shall follow.

Dated: December 14, 2017

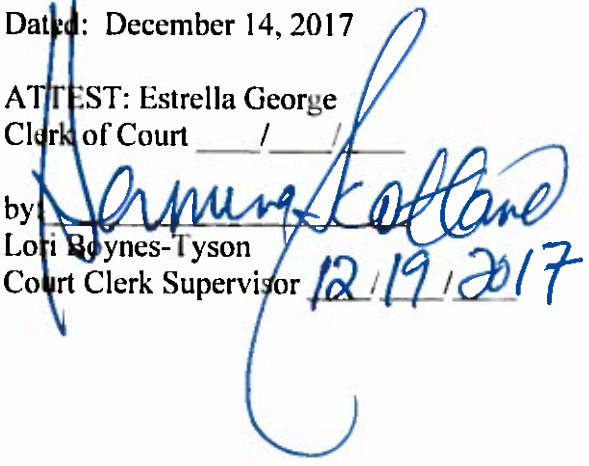
ATTEST: Estrella George
Clerk of Court ____ / ____ / ____

by

Lori Boynes-Tyson

Court Clerk Supervisor


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

for 
12 / 19 / 2017