

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

CHELSEA TURNBULL,	)	
	)	CASE NO. SX-15-CV-343
v.	)	
	)	ACTION FOR DAMAGES
WENDELL PARRIS,	)	
	)	
Defendant.	)	(JURY)
	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant Wendell Parris' Motion to Dismiss (Motion),¹ filed August 17, 2016; Plaintiff Chelsea Turnbull's Corrected Memorandum of Law in Opposition to Defendant's Motion to Dismiss (Opposition),² filed August 31, 2016; and Defendant's Reply thereto, filed September 19, 2016. Because Plaintiff has failed to include in her Complaint any factual allegations from which a reasonable trier of fact could infer that Defendant's actions constituted wanton or reckless behavior demonstrating a conscious indifference to the health and safety of persons or property, Plaintiff has failed to allege a plausible claim of gross negligence and accordingly Defendant's Motion to Dismiss could be granted. Nonetheless, the Court will, *sua sponte*, grant Plaintiff leave to amend her Complaint to address this deficiency.³

Background

On August 28, 2015, Plaintiff filed her Complaint including one claim for relief for gross negligence, alleging that "on November 13, 2014, Wendell Parris was driving near the Superior Court on St. Croix when he collided with the car in front of him, setting in motion a four-car collision."

¹ Defendant presents his Motion as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), however, because Defendant previously filed his Answer on March 18, 2016, the pleadings are closed and the Motion is properly construed as a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), applicable to proceedings in the Superior Court as a rule of last resort pursuant to Superior Court Rule 7.

² Plaintiff filed the original version of her Memorandum of Law in Opposition on August 30, 2016 before filing her Corrected Memorandum of Law in Opposition on August 31, 2016.

³ Curiously, Plaintiff's Complaint presents a cause of action for gross negligence only, with no mention of ordinary negligence. If Plaintiff seeks to present a claim for ordinary negligence, then such a claim should be set forth properly in any amended pleading subsequently filed with the Court.

Complaint ¶ 4. According to Plaintiff, “the car Parris hit was pushed into the car in front of it, and that car rear-ended Chelsea Turnbull’s car,” causing injury to her neck and back. *Id.* Plaintiff further alleges that Defendant “had a duty to use reasonable care while driving his car,” which he breached by “failing to keep a safe distance from the car in front of him and by failing to pay attention to the flow of traffic in front of him.” *Id.* ¶¶ 7-8.

Standard

The Supreme Court of the Virgin Islands has established that the standard for reviewing motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is substantially similar to the standard for reviewing motions to dismiss pursuant to Rule 12(b)(6), stating:

A motion for judgment on the pleadings should not be granted unless the moving party has established that there is no material issue of fact to resolve, and that it is entitled to judgment in its favor as a matter of law. As with a Rule 12(b)(6) motion, this Court views the facts alleged in the pleadings and the inferences to be drawn from those facts in the light most favorable to the plaintiff. Like the trial court, we are foreclosed from considering evidence from any source outside of the pleadings and the exhibits attached to the pleadings in determining whether it was proper to grant a motion for judgment on the pleadings.

Benjamin v. AIG Ins. Co. of P.R., 56 V.I. 558, 566 (V.I. 2012) (internal citations and quotations omitted).

Thus, the same three-prong analysis established by the Supreme Court of the Virgin Islands for use in reviewing motions to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6) is equally applicable in reviewing motions for judgment on the pleadings:

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 factual 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. If there are sufficient remaining facts that the court can draw a reasonable inference that the defendant is liable based on the elements noted in the first step, then the claim is plausible.

Joseph v. Bureau of Corrections, 54 V.I. 645, 649-650 (V.I. 2011) (internal quotations and citations omitted); *see also Pollara v. Chateau St. Croix, LLC*, 58 V.I. 455, 471-472 (V.I. 2013).

Discussion

After conducting an extensive *Banks* analysis—which the Court adopts and incorporates by reference herein—this Court recently concluded that “the soundest rule of law for the Virgin Islands is to define gross negligence as wanton or reckless behavior demonstrating a conscious indifference to the health and safety of persons or property.” *Yusuf v. Ocean Props.*, 2016 V.I. LEXIS 19, at *11-12. Accordingly, to successfully make out a claim of gross negligence a plaintiff must allege sufficient facts to establish, if subsequently proven by evidence, the following elements: 1) defendant owed plaintiff a legal duty of care; 2) *defendant breached that duty in such a way as to demonstrate a wanton, reckless indifference to the risk of injury to plaintiff*; 3) and defendant’s breach constituted the proximate cause of 4) damages to plaintiff. *Id.* at *13-15 (emphasis added).

Here, while it is clear that Defendant, in operating a motor vehicle, owed Plaintiff a duty of reasonable care, the only factual allegations included in the Complaint concerning the nature of Defendant’s breach are that by “failing to keep a safe distance from the car in front of him and by failing to pay attention to the flow of traffic in front of him,” he “collided with the car in front of him, setting in motion a four-car collision,” resulting in injury to Plaintiff’s neck and back. Complaint ¶ 4, 8. In response to Defendant’s assertion that these allegations indicate nothing more than a “run-of-the-mill auto accident,” Plaintiff argues that her Complaint presents sufficient factual information to permit a “reasonable inference that Parris was driving far too fast, as well as not paying attention to the traffic in front of him.” *See* Motion, at 15; Opposition, at 3. However, Plaintiff’s argument is unpersuasive.

Although Plaintiff has pled sufficient facts to permit an inference that the collision resulted from Defendant's inattention and failure to maintain a safe distance between himself and the vehicle in front of his own, relative to the rate of speed at which he was travelling,⁴ Plaintiff has failed to allege any facts suggesting that Defendant's actions constituted the type of "highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent," that is required to support a claim for gross, as opposed to ordinary, negligence. *See Yusuf*, 2016 V.I. LEXIS 19, at *13 (citations omitted). As the Court has previously observed, a claim for gross negligence is defined in terms of conduct "demonstrating some *conscious indifference* to the health and safety of persons or property," and accordingly such a claim must be based upon factual allegations indicating that the plaintiff's injuries resulted from something "more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention." *Id.* (emphasis added) (citations omitted).

As Defendant rightly argues, Plaintiff's Complaint alleges facts supporting an inference that Defendant, in failing to pay proper attention to the flow of traffic in front of him, caused a multiple vehicle automobile collision resulting in injury to Plaintiff. However, Plaintiff's allegations fail to describe any particular action or inaction of Defendant that could plausibly give rise to an inference that Defendant acted with the kind of conscious indifference to the health and safety of persons or property required to sustain a claim for gross negligence. As the District Court of the Virgin Islands has observed, "if the sort of inattentiveness alleged here is sufficient to state a claim for gross

⁴ Plaintiff argues that the Court may infer that Defendant was travelling at an excessively high rate of speed based upon the allegation that Defendant's vehicle collided with the vehicle directly in front of his own with enough force to make that vehicle collide with the vehicle directly in front of it, and finally to make that third vehicle collide with Plaintiff's vehicle. However, these vague allegations are devoid of factual enhancement and permit no reasonable inference as to the rate of speed with which Defendant was travelling, or as to the relative distance between the four vehicles involved in the collision, or whether those vehicles were stopped or in motion at the time of the collision.

negligence, it is difficult to fathom a car accident that does not also 'plausibly' involve gross negligence." *Thomas v. Rijos*, 780 F.Supp.2d 376, 387 (D.V.I. 2011).⁵

Conclusion

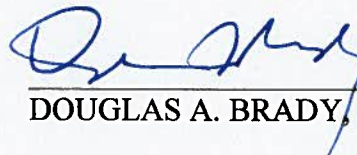
Although Plaintiff has alleged facts sufficient to permit an inference that Defendant owed her a duty of reasonable care, which he breached by failing to pay proper attention to the traffic in front of him, thereby causing a collision resulting in injuries to Plaintiff, she has failed to allege any facts suggesting that Defendant demonstrated a *conscious indifference* to the health and safety of persons or property, and therefore Plaintiff has failed to state a claim for gross negligence. However, the Court will defer ruling on Defendant's Motion and, *sua sponte*, grant Plaintiff leave to amend her Complaint, within thirty (30) days of the date of entry of this Order, to address this deficiency, failing which the Court will rule on Defendant's Motion.

Therefore, on the basis of the foregoing, it is hereby

ORDERED that the Court defers ruling Defendant Wendell Parris' Motion to Dismiss. It is further

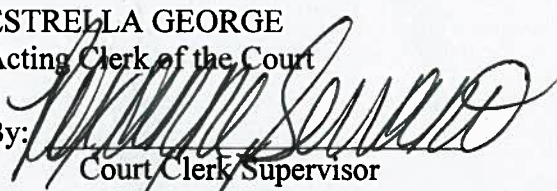
ORDERED that Plaintiff is granted thirty (30) days from the date of entry of this Order within which to file an amended complaint.

Dated: November 3, 2016.


DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GEORGE
Acting Clerk of the Court

By: 

Court Clerk Supervisor

11/4/16
⁵ Although the Court herein adopts and applies a slightly different standard of gross negligence than that applied by the District Court to a different set of facts, the District Court's salient observation applies with equal force here.