

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

**Breanna St. Louis (minor) by and through
Whitney St. Louis (as mother and next of kin),**

Plaintiff,

v.

**George's Christian Academy and Happy
Children Preschool, Inc. and Sheila Gumbs,**

Defendants.

SX-12-CV-210

ACTION FOR TORT AND DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants George's Christian Academy, Happy Children Preschool, Inc. and Sheila Gumbs's (hereinafter "Defendants") Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(a)¹ filed on September 30, 2014. Plaintiffs filed an opposition on April 27, 2015. For the reasons stated *infra*, the Court will deny Defendant's Motion.²

FACTS AND PROCEDURAL HISTORY

On February 23, 2012, Breanna St. Louis was a student attending George's Christian Academy and Happy Children Preschool Inc. Breanna was enrolled in the afterschool program at George's Christian Academy and Happy Children Preschool Inc. Alyce Carter Orange was the aftercare teacher. SUMF. Para. 1. The Complaint alleges that Plaintiff's grandmother gave both written and verbal instructions that Breanna was allergic to grass.³ Breanna was injured when Ms. Orange was playing with older children on the grass in the afterschool program and fell on Breanna. (Compl.¶12.). Shelia Gumbs, the school principal, examined Breanna and that

¹ The Federal Rules of Civil Procedure are made applicable to the Superior Court through Superior Court Rule 7.

² This Court performed an analysis of the other jurisdictions to determine the soundest rule as required through *Vanterpool. Vanterpool v. Gov't of the Virgin Islands*, 2015 V.I. Supreme LEXIS 23, *

³ Compl.¶10.)

Breanna's arm was okay.(Compl. ¶14.). Shelia Gumbs told Ms. Orange to advise Breanna's parents when they came to pick her up about the incident.(Compl.¶ 16). As a result of the fall, Breanna severely broke her arm requiring emergency surgery. Plaintiff filed a complaint alleging both direct negligence and vicarious negligence through a theory of *respondeat superior*.

STANDARD OF REVIEW

A motion for summary judgment shall be granted if the record shows that: (1) there are no genuine issues, (2) as to any material fact, and (3) the moving party is entitled to judgment as a matter of law.⁴ Defendants, the moving parties, bear the initial burden of pointing out to the court that there is no genuine issue of material fact⁵ —or in other words, an absence of evidence to support Plaintiffs' case.⁶ Plaintiffs, the non-moving parties, then have the burden of setting out specific facts showing a genuine issue for trial.⁷ 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."⁸

Because summary judgment is a drastic remedy, it should be granted only when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law.⁹ Defendants are entitled to summary judgment if, after analyzing all the supporting materials, the Court concludes no reasonable trier of fact could find for Plaintiffs.¹⁰

⁴ *Walters v. Walters*, 60 V.I. 768, 794 (VI. 2014) (citing *Burd v. Antilles Yachting Servs.*, 57 V.I. 354, 358 (V.I. 2012)); Fed. R. Civ. P. 56(a).

⁵ See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

⁶ *Williams v. United Corp.*, 50 V.I. 191, 194 (VI. 2008) (citations omitted).

⁷ Fed. R. Civ. P. 56(e)(internal quotation marks omitted).

⁸ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986)

⁹ *Anthony v. FirstBank V.I.*, 58 V.I. 224, 228-29 (V.I. 2013) (internal quotation marks omitted).

¹⁰ *Matsushita Elec. Indus., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

DISCUSSION

Defendants move this Court for summary judgement on two grounds (1) Plaintiffs have failed to include a necessary party and thus should be barred from recovering from the defendants (2) the causes of action against Defendants fail to show that they proximately caused injury to the Plaintiff.

Plaintiffs Failure to Join a Necessary Party

In their motion, Defendants state that Plaintiffs have failed to include a necessary party and are thus barred from recovery. Defendants state that because Plaintiff failed to join Ms. Orange to the lawsuit, the school is not vicariously liable. Plaintiff asserts two arguments stating that (1) the affirmative defense was untimely and (2) that Ms. Orange was neither necessary nor indispensable.

The Virgin Islands does not have a law or rule addressing this issue, thus an analysis as outlined in *Vanterpool* was conducted. This court, after looking at both majority and minority jurisdictions to determine whether the federal rule should apply does find that Fed. R. Civ. P. 12(b)(7) does serve a valid purpose in the Superior court.¹¹ Fed. R. Civ. P. 12(b)(7) provides that a party may move for summary judgment pursuant to Fed. R. Civ. P. 19(a) for failure to join a necessary party.¹² A party is considered necessary if:

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

¹¹ *Vanterpool v. Gov't of the Virgin Islands*, 2015 V.I. Supreme LEXIS 23, *1 (VI. 2015)

¹² *but see* *Vanterpool*. calling into question whether the federal rules apply

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the act 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.

If the Court determines a party is necessary and that party cannot be joined, the Court must then determine whether the party is indispensable based on the balancing factors provided by Fed. R. Civ. P. 19(b). The burden is on the party moving for dismissal to prove a party is necessary and indispensable.¹³

This motion, however, must be asserted before pleading if a responsive pleading is allowed. Here, Defendants failed to raise this defense upon its initial response on October 4, 2012, when it raised defenses of contributory negligence, failure to mitigate and failure to state a cause of action. Even assuming arguendo that this defense was timely raised, Ms. Orange does not meet the factors to be considered an indispensable party cited above. Even in the absence of Ms. Orange, this court can accord complete relief among the parties. Pursuant to Fed. R. Civ. P. 22 (2), “[a] defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.” Here, the Defendants have remedies available to them that they failed to use prior to filing this Motion for Summary Judgment. Thus, based on the untimeliness of this defense, and the ability of the Defendant to seek relief from Ms. Orange, this court will not grant summary judgment for failure to join a necessary party.

¹³ *Walsh v. Daly*, 2014 V.I. LEXIS 36, *5 (V.I. Super. Ct. June 18, 2014)

**Whether Plaintiffs failed to plausibly plead factual allegations such that give rise
Defendants' liability for negligence.**

It is Plaintiff's assertion that the Defendants failed to provide adequate supervision for the Plaintiff Breanna, which resulted in her injury. Plaintiff further alleges that Defendants failed to provide Plaintiff Breanna with adequate medical care and further aggravated the injury when attempting to assess the condition. In their motion, Defendants state that Plaintiff's cannot prove that Defendants proximately caused Plaintiff's injury to her arm, and that because the primary tortfeasor was not sued, there is no vicarious liability. Defendants further argue that there are no genuine issues of material fact; the Court disagrees.

The Supreme Court of the United States has stated that the "trial courts should act ... with caution in granting summary judgment[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, (1986). This is because a motion for summary judgment acts as a balance between the complainant's right to be heard and the need for judicial economy.¹⁴ The Court may not weigh the evidence or determine the credibility of witnesses, and instead views all inferences from the evidence in the light most favorable to the nonmoving party, construing any conflicting allegations in the non-movant's favor if properly supported." *Bertrand v. Mystic Granite & Marble, Inc.*, 2015 V.I. Supreme LEXIS 36, *1 (2015)

It is undisputed that Plaintiff, Breanna, was at the George's Christian Academy and Happy Children Preschool, Inc., participating in the afterschool program on February 23, 2012. It is also undisputed that Alyce Orange, an afterschool teacher, while playing with the children fell on Breanna which resulted in her breaking her arm. Plaintiff alleges that the school failed to

¹⁴ *Sealey-Christian v. Sunny Isle Shopping Ctr., Inc.*, 52 V.I. 410, 419 (VI. 2009)

supervise Plaintiff and the other approximately twenty children present. Plaintiffs further assert that had the school provided adequate supervision, Breanna would not have been on the grass which she was allergic to, and ultimately been fallen on which resulted in her injury. Breanna was assessed by the Principal and deemed to not have a medical emergency or require emergency attention. Breanna, after being assessed at the emergency room, was given emergency surgery for her broken arm.

Comparing the parties' respective positions, it is clear that a genuine issue of material fact remain as to causation.

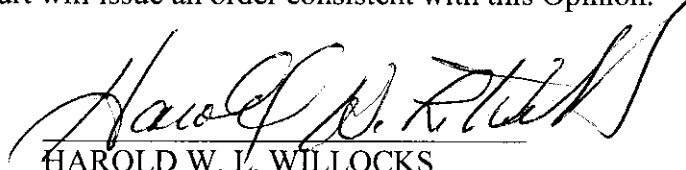
IV. CONCLUSION

This court also finds that the argument that Plaintiffs failed to join a necessary party was untimely. Additionally, considering the facts in the light most favorable to the Plaintiff, the Court finds that there are genuine issues of material fact. Accordingly, Defendant's Motion for Summary Judgment will be denied. The Court will issue an order consistent with this Opinion.

ATTEST:

Estrella George
Acting Clerk of the Court

By: 
Deputy Clerk


HAROLD W. L. WILLOCKS

Administrative Judge of the Superior Court

Dated: 6/8/14