

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

RAMON REYES	)	
	)	
	)	
Plaintiff,	)	
vs.	)	CIVIL NO. ST-14-CV-148
	)	
KAZI FOODS OF THE VIRGIN ISLANDS, d/b/a	)	
KENTUCKY FRIED CHICKEN,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Defendant's Motion for Summary Judgment. Because material facts remain in dispute with respect to the issues raised in Defendant's Motion, the portion of Defendant's Motion based on negligence will be denied and the portion of Defendant's Motion based on immunity will be denied without prejudice.

FACTUAL & PROCEDURAL HISTORY

This matter arises out of a Verified Complaint filed March 12, 2014, in which Plaintiff Ramon Reyes alleges Defendant Kazi Foods of the Virgin Islands d/b/a/ Kentucky Fried Chicken is liable for negligence, strict liability, and damages. According to the Verified Complaint, in August 2012 Reyes suffered injuries from an electric shock that occurred while Reyes was performing his job as a construction worker on the Fort Mylner Kentucky Fried Chicken restaurant renovation project.¹ Kazi employed Juan Perdomo Dominici to supervise the renovation of the canopy area of the KFC,² and, in turn, Dominici hired six workers, including

¹ Compl. ¶ 7, ¶ 8, and ¶ 11.

² Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Memo. In Support, Page 8.

Reyes.³ While assisting with the removal of the canopy, Reyes balanced on a steel scaffold and simultaneously held metal sheets in place.⁴ While doing so, Reyes came into contact with a piece of metal that sent a severe electric shock throughout his body.⁵ Reyes was unable to release his hold upon the metal,⁶ but another worker pulled Reyes from the scaffold and saved Reyes' life.⁷ KFC employee Vanzell "Tony" Bass later told Reyes that the metal Reyes handled was attached to a wall containing live and exposed wiring⁸ such that, when Reyes held the scaffold and touched the metal, the electric current travelled between the wall and the scaffold through Reyes.⁹ As a result of the electric shock, Reyes suffered injuries, including radicular and other physical pain, paresthesia, muscle weakness, tissue damage, mental anguish, and medical expenses.¹⁰

In the Verified Complaint, Reyes contends that Kazi breached its duty of care to maintain the worksite in a reasonably safe condition for the workers because: (1) Kazi knew or should have known, by the exercise of reasonable care, of the dangerous condition of the exposure of high voltage wires behind metal walls; (2) Kazi allowed the exposure of high voltage wires behind metal walls; (3) Kazi failed to disconnect the electricity while work was being done; and (4) Kazi failed to warn Reyes and others of the danger of electric shock.¹¹ Further, Reyes claims that, because Kazi's breach of the duty of care was the direct and proximate cause of Reyes'

³ Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Memo. In Support, Page 1.

⁴ Compl. ¶ 10.

⁵ Compl. ¶ 11.

⁶ Compl. ¶ 12.

⁷ Compl. ¶ 13.

⁸ Compl. ¶ 14.

⁹ Compl. ¶ 15-16.

¹⁰ Compl. ¶ 27 and ¶ 29.

¹¹ Compl. ¶ 21-22, 24-27.

injuries, Kazi is liable in negligence,¹² and that, because the live wires behind the metal wall were an inherently dangerous condition that Kazi allowed on the premises, Kazi is strictly liable for Reyes' injuries.¹³

On February 15, 2017, Kazi filed a Motion for Summary Judgment arguing that, although Kazi owed a duty of care to Reyes, Kazi did not breach that duty and that the Virgin Islands Worker's Compensation Act ("WCA") bars Reyes' claims for negligence and strict liability.¹⁴ Reyes filed an Opposition to Defendant's Motion for Summary Judgment on March 20, 2017, contending that genuine issues of material fact exist with respect to Reyes' negligence claim and that the WCA does not bar Reyes' claims.¹⁵

STANDARDS

"Because summary judgment is a drastic remedy, it is only appropriate where 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 the movant is entitled to judgment as a matter of law."¹⁶ The party moving for summary judgment must show — by "citing to particular parts of materials in the record, including depositions, documents ... admissions, interrogatory answers, or other materials"¹⁷ — that there is no "genuine issue of material fact, at which point the burden

¹² Compl. ¶ 26.

¹³ Compl. ¶ 30-32.

¹⁴ Defendant's Motion for Summary Judgment, Pages 10-11.

¹⁵ Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 1 and Page 15.

¹⁶ *Der Weer v. Hess Oil V.I. Corp.*, 2014 V.I. LEXIS 51, 6 (V.I. Super. Ct. Mar. 4, 2014) (citing *Defoe v. Phillip*, 56 V.I. 109, 117 (2012) (internal quotation marks and citation omitted), *aff'd on other grounds*, 702 F.3d 735 (3d Cir. 2012)). The Virgin Islands Supreme Court promulgated the Virgin Islands Rules of Civil Procedure effective March 31, 2017. By their terms, the Virgin Islands Rules of Civil Procedure are applicable to cases pending in the Superior Court at the time of their promulgation. Because most provisions of the V.I. Rules are substantially identical to the Federal Rules, the Court determines that prior decisions interpreting the Federal Rules are at least persuasive authority in those instances when the two sets of rules are substantively identical.

¹⁷ V. I. R. Civ. P. 56(c)(1)(B)(i).

shifts to the non-moving party to present ‘affirmative evidence’ from which a jury might reasonably return a verdict in his favor.”¹⁸ In reviewing a summary judgment motion, the Superior Court must view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor.¹⁹ “Facts that could alter the outcome are ‘material facts’ and disputes are ‘genuine’ if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct.”²⁰ “A defendant meets this standard when there is an absence of evidence that rationally supports the plaintiff's case. A plaintiff, on the other hand, must point to admissible evidence that would be sufficient to show all elements of a prima facie case under applicable substantive law.”²¹ “Therefore, to survive summary judgment, the nonmoving party's evidence must amount to more than a scintilla, but may amount to less in the evaluation of the court than a preponderance.”²²

ANALYSIS

I. The Facts Do Not Entitle Kazi to Summary Judgment as a Matter of Law With Respect to Reyes’ Negligence Claim

Kazi asserts that summary judgment is appropriate because there are no genuine issues of material fact.²³ In order to establish a claim of negligence in the Virgin Islands, a plaintiff must “demonstrate that the defendant owed the plaintiff a legal duty, that the defendant breached that duty, and that the defendant's negligence caused the plaintiff's injury.”²⁴ In *Machado v. Yacht*

¹⁸ *Der Weer v. Hess Oil V.I. Corp.*, 2014 V.I. LEXIS 51, 2014 WL 3974548 (V.I. Super. Ct. Mar. 4, 2014) (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (2013)).

¹⁹ *Id.* (citing *Defoe*, 56 V.I. at 117).

²⁰ *Id.* at 6-7 (citing *Clark v. Modern Group, Ltd.*, 9 F.3d 321, 326 (3d Cir. 1993)).

²¹ *Id.* at 7 (citing *Clark v. Modern Group, Ltd.*, 9 F.3d 321, 326 (3d Cir. 1993)).

²² *Id.* citing *Defoe*, 56 V.I. at 117 (internal quotation marks, parentheses, and citation omitted).

²³ Defendant's Motion for Summary Judgment, Page 1.

²⁴ See *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014) (finding the foundational elements of negligence to be unquestionably the soundest rule for the Virgin Islands); see *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011).

Haven U.S.V.I., LLC, the Supreme Court of the Virgin Islands pronounced that “the foreseeability of harm ‘is the touchstone of the existence of [a land possessor’s] duty of reasonable or ordinary care’”²⁵ and abandoned the traditional approach to premises liability in which a landowner’s duty to individuals injured on its property was determined by the individual’s classification as either an invitee, licensee, or trespasser.²⁶ The *Machado* Court explained 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.”²⁷

Kazi concedes it owed a duty of reasonable care to Reyes.²⁸ Reyes first argues that Kazi breached its duty of care by failing to take reasonable steps to ensure the safety of the premises for workers by allowing high voltage wires to be exposed behind metal walls.²⁹ Reyes supports this argument with an expert opinion that Kazi’s allowance of the exposure of high voltage wires fell below industry standards, creating hazardous conditions for the public and employees on the premises, including construction workers such as Reyes.³⁰ Reyes also contends that Kazi breached its duty of care by failing to disconnect the electricity while Reyes and others were working³¹ and by failing to warn Reyes and others of the danger of electric shock.³²

²⁵ See *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 386 (V.I. 2014) (citing *Perez*, 59 V.I. at 533). See also *Alleyne v. Diageo USVI, Inc.*, 2015 V.I. LEXIS 110, *24 (V.I. Super. Ct. 2015) (“Plaintiffs plead duty in terms of foreseeability by alleging that Defendants knew or should have known that their actions would cause harm to the Plaintiffs.”).

²⁶ *Id.*

²⁷ *Id.* at 394.

²⁸ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 8.

²⁹ Compl. ¶ 21.

³⁰ Exhibit E (Report by Plaintiff’s electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 3-4.

³¹ Compl. ¶ 24.

³² Compl. ¶ 25.

In response, Kazi first contends that it did not breach its duty of care to Reyes because it took reasonable steps to ensure the premises were safe for workers.³³ In support, Kazi asserts that its employee, Bass, turned off the power breakers that led to the rooftop area where Reyes received the electric shock and that Bass taped the wires in the light fixtures as a safety precaution.³⁴ Second, Kazi argues that, although it owed a duty of care to Reyes, Kazi could not have breached that duty since Kazi lacked actual or constructive notice of the electrified bolt that Kazi asserts caused Reyes' electric shock,³⁵ calling the bolt a hidden condition.³⁶ Kazi contends that it did not and could not have known of the existence of the electrified bolt because there was "absolutely no way of knowing that one bolt was negligently drilled through a live wire connected to another electrical system of the building."³⁷ Kazi further submits that it had "no connection with the installation of the canopy or the electrified bolt when it was installed over twenty years ago."³⁸

To survive summary judgment, Reyes is required to provide support for his contention that Kazi breached its duty to take reasonable steps to protect Reyes against foreseeable harm by producing evidence that could support a finding that Kazi had actual or constructive notice of a dangerous condition.

First, Reyes' production of the deposition of KFC's general manager Jafar Djavadi, in which Djavadi testified that Djavadi instructed workers to make sure the power was off while they

³³ Defendant's Motion for Summary Judgment, Page 8.

³⁴ Defendant's Motion for Summary Judgment, Page 8.

³⁵ Defendant's Motion for Summary Judgment, Page 2.

³⁶ Defendant's Motion for Summary Judgment, Page 8.

³⁷ Defendant's Motion for Summary Judgment, Page 8-9.

³⁸ Defendant's Motion for Summary Judgment and Memo. In Support, Page 4.

were working “because of the possibility of getting electric shock,”³⁹ could support a finding that Kazi had actual notice of the dangerous condition of electricity not having been disconnected.

Second, Reyes’ submission of the following evidence, taken together, shows that there is rational support for a finding that Kazi breached its duty of care to protect Reyes against the foreseeable harm of electric shock by allowing the existence of the hazardous conditions:

- The deposition of Djavadi, who testified that Djavadi did not recall whether he got an electrical permit for the renovation;⁴⁰
- Djavadi’s testimony that he could not confirm whether the KFC was completely closed down during the time that Reyes was working⁴¹ and, thus, whether all of the electricity was shut off;
- Djavadi’s testimony that after Djavadi found out about Reyes’ electric shock, Djavadi did not personally check to see whether the electricity was off;⁴²
- Djavadi’s testimony that Bass, the maintenance worker who was directed to perform the electrical work related to the project, including disconnecting power to the relevant areas to ensure the safety of the workers, was not a licensed electrician;⁴³

³⁹ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 12. (citing Exhibit B, Djavadi Deposition p. 34).

⁴⁰ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 11. (citing Exhibit B, Djavadi Deposition p. 9).

⁴¹ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 11. (citing Exhibit B, Djavadi Deposition pgs. 24-25).

⁴² Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 11. (citing Exhibit B, Djavadi Deposition p. 16).

⁴³ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 11. (citing Exhibit B, Djavadi Deposition p. 17).

- Bass' testimony that Bass turned off only one power breaker,⁴⁴ suggesting that all of the electricity may not have been disconnected;
- The expert opinion of Robert I. Basulto that Kazi did not adhere to the industry standards of care or proper procedures that would have prevented Reyes' injury⁴⁵—Reyes' expert opined that Kazi failed in the following ways to take steps to identify and either eliminate or isolate hazardous workplace conditions:
 - Kazi did not rely on a competent electrical worker but, rather, a maintenance employee who was not qualified and lacked the electrical training to adequately provide for the safety of the workers.⁴⁶ Because Bass testified that Bass turned off one power breaker, disconnected wires, taped them, and put them back, Bass flouted the acceptable practice of removing the wires not being used.⁴⁷ Additionally, because Bass' testimony indicated that Bass did not investigate or make any effort to determine whether there were other circuits feeding the area where the work was to be performed, Bass did not perform the functions a competent electrician would have performed.⁴⁸ Further, because Bass' testimony indicated that Bass did not provide any means to lock out the circuit or to confirm that the breaker Bass had turned off was still off the day the

⁴⁴ Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 10. (citing Exhibit B, Bass Deposition pgs. 29-30).

⁴⁵ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 4.

⁴⁶ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 4.

⁴⁷ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 3-4.

⁴⁸ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 4.

demolition was to be performed, Bass failed to verify that the power was disconnected to potential sources in the areas where workers could come in contact with power.⁴⁹

- Kazi failed to hire a qualified, licensed General Contractor to oversee the renovation.⁵⁰ A competent General Contractor would have had the proper experience and training and followed proper procedures and industry standards of care so as to prevent injury and to provide for a safe work environment.⁵¹

Accordingly, the Court finds that Reyes has set forth specific facts showing that there are genuine issues for trial with respect to Reyes' negligence claim—specifically, whether Kazi breached its duty of care to protect Reyes against the foreseeable harm of electric shock.

Third, Kazi's argument—that the sole dangerous condition in this case was a hidden electrified bolt—is similarly unpersuasive, since the live wire that shocked Reyes also constituted a dangerous condition, which demonstrates both a failure to comply with proper procedures to remove wires prior to starting work⁵² and a failure to disconnect or de-energize all of the electricity to the premises so that no electrical current was present.⁵³ Even ignoring Reyes' evidence that Kazi had actual notice of the dangerous condition created when all of the electricity was not disconnected, Reyes produced evidence that would support a rational finding that Kazi had

⁴⁹ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 4.

⁵⁰ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 4.

⁵¹ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 4.

⁵² Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 3-4.

⁵³ Exhibit E (Report by Plaintiff's electrical expert, Robert I. Basulto, P.E., MSEM) attached to Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Page 3-4.

constructive notice of the existence of the wire itself. In addition to actual notice, “[a]nother way that notice of a dangerous condition can be imputed to a land possessor is through evidence that the condition persisted over a long enough period of time that the owner should have become aware of it through the exercise of reasonable care.”⁵⁴ Because Reyes submitted that Kazi was the long-time possessor of the business premises,⁵⁵ and because Kazi indicated that the bolt drilled through the live wire was present in the canopy for over twenty years,⁵⁶ a rational factfinder could conclude that Kazi should have become aware of the dangerous condition of the wire on the premises, since a proper investigation and job hazard analysis prior to the commencement of the canopy renovation would have revealed its existence. As a result, the Court determines that Kazi has not met its burden to prove that there is an absence of evidence that rationally supports Reyes’ claim that Kazi had actual or constructive notice of a dangerous condition that led to Reyes’ electric shock.

For the foregoing reasons, viewing all of the evidence in the light most favorable to Reyes, and drawing all reasonable inferences in Reyes’ favor, a reasonable jury could conclude that Kazi had actual or constructive notice of the dangerous condition which caused Reyes’ electric shock and that Kazi did not take reasonable steps to prevent workers like Reyes from the foreseeable harm of electric shock. Thus, the portion of Kazi’s Motion for Summary Judgment based on an absence of a genuine issue of material fact with respect to breach of duty must be denied.

⁵⁴ See *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 393 (V.I. 2014) (citing *Williams v. United Corp.*, 50 V.I. at 195-96) (in the absence of actual notice, evidence that the owner “should have discovered the danger and taken steps to remedy it” can establish constructive notice). See also *Machado* at 393 (citing *Daughter v. City of New York*, 137 A.D.2d 441, 524 N.Y.S.2d 703, 706 (1988) (evidence that a dangerous condition persisted for “many months prior to the incident” is sufficient to create a jury question of notice); *Bartholomee v. Casey*, 103 Md. App. 34, 651 A.2d 908, 919-20 (Md. Ct. Spec. App. 1994) (evidence of a “constant state of disrepair” for one month was sufficient to create a jury question as to notice).

⁵⁵ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Page 14.

⁵⁶ Defendant’s Motion for Summary Judgment and Memo. In Support, Page 4.

II. The Facts Currently Before the Court Do Not Entitle Kazi to Summary Judgment as a Matter of Law Under the V.I. Worker's Compensation Act

Additionally, Kazi asserts that, because Reyes was hired and paid directly by Dominici, a subcontractor hired by Kazi that did not carry up to date worker's compensation insurance, the duty of coverage is statutorily imputed to Kazi under Title 24 V.I.C. §284(b) – and, thus, Reyes' sole recovery at law is limited to a worker's compensation claim.⁵⁷

The Virgin Islands Workers' Compensation Act is intended to “redress[] injuries received by workers ... [and] afford expeditious compensation to employees or their dependents without regard to the fault or negligence of employer or employee.”⁵⁸ The WCA “creates a trade-off in legal rights.”⁵⁹ “If an employee becomes disabled or dies ‘from a personal injury or occupational disease arising out of and in the course of his employment,’ the employer must pay compensation to the employee or the employee's dependents ‘irrespective of fault as the cause of the injury or death.’”⁶⁰ “Part of this ‘trade-off’ means that neither the employee nor the employer has to endure ‘the burden of civil litigation.’”⁶¹ Additionally, “the employee's right to compensation under the Act is ‘the only remedy against the employer’ so long as the employer ‘is insured.’”⁶² Thus, “if an employer is insured, the employee may not sue her or his employer to recover money damages for a work-related injury.”⁶³

With respect to an injured employee of an uninsured subcontractor, Title 24 V.I.C. §284(b) provides:

⁵⁷ Defendant's Motion for Summary Judgment, Page 11.

⁵⁸ *Der Weer v. Hess Oil V.I. Corp.*, 2014 V.I. LEXIS 51, 7-8 (V.I. Super. Ct. Mar. 4, 2014) (quoting 24 V.I.C. § 250(a)).

⁵⁹ *Id.* at 8 (citing *Robles v. HOVENSA, LLC*, 49 V.I. 491, 495 (2008)).

⁶⁰ *Id.* (quoting 24 V.I.C. § 252(a)).

⁶¹ *Id.* (citing *Robles*, 49 V.I. at 495 (internal quotation marks and citations omitted)).

⁶² *Id.* (quoting 24 V.I.C. § 284(a)).

⁶³ *Id.* (citing 24 V.I.C. § 284(a)).

[A] contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to comply with the provisions of this chapter with respect to being an insured employer. The “statutory employer and borrowed servant” doctrine are not recognized in this jurisdiction, and an injured employee may sue any person responsible for his injuries other than the employer named in a certificate of insurance issued under section 272 of this title.⁶⁴

Accordingly, under Title 24 V.I.C. §284(b), an employee of a subcontractor may sue the contractor only if the contractor is responsible for the employee’s injuries and is not deemed the insured employer of the employee. Here, Reyes may sue Kazi, the contractor, only if Kazi is not deemed the insured employer of Reyes and if Kazi is also responsible for Reyes’ injuries.

Assuming for argument that Kazi is responsible for Reyes’ injuries, with respect to whether Kazi is deemed the insured employer of Reyes, and, thus, immune from suit under the WCA, the Court finds that Kazi has not presented the requisite evidence to prove its claimed status as the insured employer of Reyes. An employer’s insured status under the WCA “is a mixed question of law and fact” for Virgin Islands courts.”⁶⁵

In *Island Tile & Marble, LLC v. Bertrand*, the Virgin Islands Supreme Court clarified that “an employer is deemed uninsured...if it fails to ‘comply with all of the statutory provisions’ of the WCA.”⁶⁶ The Court noted that “the legislature has decreed that a Certificate of Government Insurance Coverage only establishes ‘prima facie evidence’—as opposed to ‘conclusive evidence’—of one’s status as an insured employer,”⁶⁷ and opined that the “issuance of a Certificate of Government Insurance Coverage only establishes a rebuttable presumption that an employer is insured.”⁶⁸ Additionally, the Court held that, under the WCA, an employer who has not filed the

⁶⁴ Title 24 V.I.C. §284.

⁶⁵ *Id.* (quoting *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 612 (2012)).

⁶⁶ *Id.* at 9 (citing *Island Tile & Marble*, 57 V.I. at 624-25).

⁶⁷ *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 625 2012 V.I. Supreme LEXIS 81 (VI. 2012).

⁶⁸ *Id.* at 625.

required reports and paid the premium to which V.I. Code Ann. Tit. 24, § 272(c) refers within the fixed term is considered an uninsured employer.⁶⁹ The Court explained that the WCA “requires that the employers pay insurance premiums each year and file annual reports detailing the number of employees, the type of work they do, and the amount of wages paid.”⁷⁰ “Once employers pay their premiums, they receive a receipt from the Commissioner of Finance ‘which shall be prima facie evidence’ that the employer paid for insurance coverage and is an ‘insured employer.’”⁷¹

Because the foregoing indicates that a defendant’s status as the deemed employer of a plaintiff under Title 24 V.I.C. §284(b), together with mere allegations of insurance coverage, is not sufficient to immunize a defendant from a lawsuit and make a worker’s compensation claim a plaintiff’s sole remedy, Kazi’s status as the deemed employer of Reyes, taken together with Kazi’s assertion that Kazi had insurance coverage for Reyes, is not enough to immunize Kazi from Reyes’ suit. While the parties do not dispute that Reyes was employed by Dominici on the date of the incident⁷² or that Dominici was uninsured under the WCA on the date of the incident,⁷³ Reyes disputes that Kazi is entitled to immunity.⁷⁴ Because Kazi did not attach to its Motion for Summary Judgment or otherwise submit to this Court a certificate of insurance, affidavits, or other appropriately authenticated documents to support Kazi’s claim that it maintained worker’s compensation insurance coverage as Reyes’ employer at the time of Reyes’ injury, Kazi has not

⁶⁹ *Id.* at 625 (“We hold that the VIWCA simply means what it says: “[e]very employer who has not filed the required reports and paid the premium due to which this section refers within the term herein fixed shall be considered an uninsured employer.” 24 V.I.C. § 272(c)).

⁷⁰ *Id.* (citing 24 V.I.C. §§ 272-730).

⁷¹ *Id.* at 8-9 (citing 24 V.I.C. §§ 273(d)).

⁷² Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment and Memo. In Support, Page 5, ¶ 17. See also Defendant’s Motion for Summary Judgment and Memo. In Support, Page 4.

⁷³ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment and Memo. In Support, Page 6, ¶ 23. See also Defendant’s Motion for Summary Judgment and Memo. In Support, Page 4.

⁷⁴ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment and Memo. In Support, Page 15-16.

provided sufficient evidence to entitle Kazi to immunity under Title 24 V.I.C. §284(b). Accordingly, disputed material facts remain as to Kazi's status as Reyes' insured employer, and the Court will deny without prejudice the portion of Kazi's Motion for Summary Judgment based on immunity grounds.

CONCLUSION

For the foregoing reasons, the Court will deny the portion of Defendants' Motion for Summary Judgment with respect to negligence, and the Court will deny without prejudice the portion of Defendants' Motion for Summary Judgment based on immunity grounds.

An Order consistent with this Memorandum shall follow.

Dated: April 20, 2017.

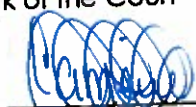
ATTEST: Estrella H. George
Clerk of the Court

by: 
Lori Boynes-Tyson
Court Clerk Supervisor


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

CERTIFIED A TRUE COPY
DATE: 4-25-17

ESTRELLA H. GEORGE
Clerk of the Court

By: 

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Court Clerk II