SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

GUARDIAN INSURANCE COMPANY, **Plaintiff,** vs. **ESTATE OF VALERIE KNIGHT-DAVID, EUSTON DAVID, JESSICA GRELL, MYRTLE KNIGHT, and E.D. PLUMBING CONTRACTORS, INC.,** **Defendants.**	**) CASE NO. ST-08-CV-189**

MEMORANDUM OPINION

Pending before the Court is Plaintiff Guardian Insurance's motion for summary judgment seeking dismissal of Defendant Euston David's Counterclaim. For the following reasons, Plaintiff's motion will be granted in part and denied in part.

FACTUAL AND PROCEDURAL HISTORY

On or about July 24, 1996, Plaintiff entered into a Broker Agreement with Decedent Valerie Knight-David, principal of Val's Insurance.[1] Decedent was responsible for selling Guardian Insurance policies in the Virgin Islands, collecting related insurance premiums, and remitting those premiums to Guardian.[2] Decedent passed away on September 1, 2006, and shortly thereafter, Guardian discovered that Decedent had failed to remit some insurance premiums to Guardian between the years of 2003 and 2006 as required under the Broker Agreement.[3] Guardian filed a claim with the Virgin Islands Division of Banking and Insurance ("DBI"), and an

---

[1] Complaint, at page 2. See also David's Exhibit I (Insurance Broker Agreement).

[2] *Id.*

[3] Guardian asserts it discovered Decedent's malfeasance in either September or October of 2006. Complaint, at pages 3 and 4.

examination of Val's Insurance began on November 8, 2006.[4] The DBI issued a report in 2007 finding that Decedent failed to remit $696,825.20 in premiums to Guardian.[5]

Guardian filed a Complaint on April 18, 2008, that was amended on October 21, 2014.[6] Defendant Euston David, Decedent's husband, filed an Answer to the First Amended Complaint and a twelve count Counterclaim asserting claims of negligence (Count 1)[7]; libel per se (Count 2); libel (Count 3); infliction of emotional distress (Count 4); negligent hiring (Count 5); negligent training (Count 6); negligent supervision (Count 7); civil racketeering (Count 8); false light (Count 9); fraudulent misrepresentation (Count 10); compensatory damages (Count 11); and punitive damages (Count 12). Plaintiff now moves for summary judgment on David's Counterclaim.

STANDARD

Rule 56 of the Virgin Islands Rules of Civil Procedure provides that summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law." An issue is "genuine" if a reasonable jury could possibly hold in the non-movant's favor with regard to that issue.[8] A party "asserting that a fact cannot be or is genuinely disputed must ... support the assertion by ... citing to a particular part of materials in the record ... or showing that the materials cited do not establish the absence or presence of a genuine dispute."[9] In considering a motion for summary judgment, a court must "draw ... all reasonable inferences from the underlying facts in the light most favorable to the non-moving party."[10]

---

[4] David's Exhibit H (Report of Examination of Val's Insurance), at page 2.
[5] *Id.*
[6] See Order dated July 21, 2015.
[7] David labeled each count in the Counterclaim as an individual "Cause of Action." For the sake of clarity, the Court will hereafter refer to each numbered "Cause of Action" in the Counterclaim as a separate count.
[8] *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).
[9] V.I. R. Civ. P. 56(c).
[10] *Battaglia v. McKendry*, 233 F.3d 720, 722 (3d Cir. 2000).

ANALYSIS

a) Counts 2 and 3 (Libel per se and Libel)

In Counts 2 and 3 of the Counterclaim, David asserts that Plaintiff has made "statements that [David] embezzled money, aided and abetted in conversion of money and engaged in civil conspiracy."[11]

Plaintiff contends that the allegations of conspiracy, conversion, and embezzlement were only stated in the Complaint[12] and are subject to an absolute privilege under Restatement (Second) of Torts § 587.

Restatement (Second) of Torts § 587 establishes that a "party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding."

The Supreme Court of the Virgin Islands has adopted the absolute privileges stated in §§ 583-592A of the Second Restatement of Torts.[13] As a consequence, any libelous statements made in the Complaint are privileged. In addition, David has failed to present any other evidence of written defamatory material produced by Plaintiff about him. As a result, Plaintiff is entitled to summary judgment on Counts 2 and 3.

Notwithstanding, David has also presented evidence that Plaintiff's representative "made statements to members of the construction industry that [David] had stolen money from Guardian,"[14] and "made statements at the WAPA's payment office … [and] in the parking lot of

---

[11] Count 2.

[12] See Complaint, at pages 4 and 7.

[13] *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 586, 2012 V.I. Supreme LEXIS 80, *30, 2012 WL 5419155 (VI. 2012).

[14] David's Exhibit F (Affidavit of Euston David), at page 3.

the United States Post Office that [David] had stolen money from Guardian."[15] These statements could support a claim for slander, and, given the alleged circumstances surrounding these statements, there may be a genuine issue of material fact as to whether these statements are protected by an absolute or conditional privilege. As a result, the Court will grant David leave to amend his Counterclaim to assert a claim for slander so that the pleadings conform to the evidence.[16]

b) Count 9 (False Light)

In Count 9, David asserts a claim for publicity that unreasonably places him in a false light before the public. However, a false light claim is not recognized in the Virgin Islands.[17] Consequently, Plaintiff is entitled to summary judgment concerning Count 9.

c) Counts 1, 5, 6, and 7 (Negligence, Negligent Hiring, Negligent Training, and Negligent Supervision)

Counts 1, 5, 6, and 7 are all based on the premise that Plaintiff was negligent because it failed to audit Val's Insurance sooner than 2006 and this failure to act caused David damages.

"[T]he foundational elements of negligence [are] (1) a legal duty of care to the plaintiff [and] (2) a breach of that duty of care by the defendant, (3) constituting the factual and legal cause of (4) damages to the plaintiff."[18] Claims for negligent supervision, negligent hiring or retention, or negligent training all require a showing of "(1) the existence of an employment relationship; (2)

---

[15] *Id.*
[16] See Virgin Islands Rule of Civil Procedure 15(b), which establishes that a party may amend its pleadings by the court's leave, and that "the court should freely give leave when justice so requires."
[17] *Donastorg v. Daily News Publishing Co., Inc.*, 2015 V.I. LEXIS 105, *202, 63 V.I. 196, 325 (V.I. Super. Ct. 2015) ("this Court will not embrace the questionable protection afforded by false light claims where the attendant potential for their abuse is so great"). In a well-reasoned opinion, the *Donastorg* court performed an extensive *Banks* analysis and concluded that a false light claim should not be recognized in this jurisdiction. The *Donastorg* opinion is persuasive, and David has not presented a meaningful counterargument to induce this Court to change course.
[18] *Machado v. Yacht Haven U.S.V.I.*, 2014 V.I. Supreme LEXIS 51, at *7 (V.I. 2014) (citations omitted); see also *White v. Spenceley, LLC*, 53 V.I. 666, 673 (V.I. 2010) (citing Restatement (Second) of Torts § 281).

the employee's incompetence; (3) the employer's actual or constructive knowledge of such incompetence; (4) the employee's act or omission causing plaintiff's injuries; and (5) the employer's negligence in hiring or retaining the employee was the proximate cause of the plaintiff's injuries."[19]

Plaintiff asserts that David has failed to demonstrate that it owed him a legal duty to perform an audit of Val's Insurance. In opposition, David alleges that Plaintiff owed him a legal duty for the following reasons:

> [Plaintiff] met and conferred with [David] as the husband of the deceased;
> [Plaintiff] made numerous oral representations to [David];
> [Plaintiff] presented a letter of intent to buy [Val's Insurance]; and
> [Plaintiff] proposed a Management Agreement with one if its sister company (sic).[20]

David concludes that Plaintiff's "oral representations, the letter of intent, and the proposed management agreement create a legal duty to [him]."[21]

Oral representations, if made in a negligent manner, can create a legal duty. For instance, negligent misrepresentation is a recognized cause of action that requires a showing "(1) that defendants supplied false information; (2) that the information was supplied in the course of defendants' business; (3) that plaintiffs were guided by the information in their business transactions; (4) that plaintiffs suffered pecuniary loss as a result of their justifiable reliance upon the information; and (5) that defendants failed to exercise reasonable care or competence in obtaining or communicating the information."[22]

---

[19] *Canonier v. Mahogany Run Condo. Ass'n*, 2011 V.I. LEXIS 10, *15, 54 V.I. 210, 219-220, 2011 WL 635295 (V.I. Super. Ct. 2011).
[20] David's opposition to Plaintiff's motion for summary judgment, at page 10.
[21] *Id.*
[22] *Charleswell v. Chase Manhattan Bank, N.A.*, 308 F. Supp. 2d 545, 568, 2004 U.S. Dist. LEXIS 7399, *43, 45 V.I. 495, 520, 2004 WL 905782 (D.V.I. 2004).

However, David has not presented any evidence describing these "oral representations," and this bare statement in counsel's brief cannot support a claim for negligent misrepresentation.[23]

David's argument that a legal duty was created by virtue of the proposed Management Agreement[24] is also unavailing. While it is true that "accompanying every contract is a common-law duty to perform with care, skill, reasonable expediency and faithfulness the thing agreed to be done,"[25] the duty is contingent upon the execution of the contract. A proposed agreement does not create a contractual duty.

The letter of intent ("LOI")[26] also does not establish that Plaintiff owed David a duty. The LOI indicates that it "is intended to constitute a binding contract between Seller and Buyer,[27] subject to the preparation of the Definitive Agreement."[28] The LOI also provides that "[t]he proposal made in this letter of intent will remain open for six (6) business days … after which it will be considered withdrawn and null and void."[29] Notably, the LOI was not signed by any party, which by its terms renders it null and void.

In addition, there is no representation in the LOI relating to audits of Val's Insurance. Drawing all inferences from the evidence in the light most favorable to David, there is no genuine issue of material fact as to whether Plaintiff owed David a duty to perform regular audits of Val's Insurance.[30] As a consequence, Plaintiff is entitled to summary judgment on David's negligence claim.

---

[23] See, e.g., *Commonwealth v. Bowers*, 245 Pa. Super. 214, 224, 369 A.2d 370, 375, 1976 Pa. Super. LEXIS 2131, *12-13 (Pa. Super. Ct. 1976) ("An attorney should never make a 'factual allegation' in a brief without being able to support it by citations to evidence of record").
[24] See David's Exhibit N.
[25] *Engeman Enters., LLC v. Tolin Mech. Sys. Co.*, 2013 COA 34, P25, 320 P.3d 364, 370, 2013 Colo. App. LEXIS 345, *13 (Colo. Ct. App. 2013) (quoting 23 Williston on Contracts § 63:25 (4th ed. 2012)).
[26] David's Exhibit J.
[27] The letter of intent was sent by Premier Insurance Agency, Inc., an "affiliate of Guardian Insurance."
[28] *Id.*, at page 5.
[29] *Id.*
[30] David also has not presented any evidence or made any legal arguments supported by legal authority indicating that a duty of care was created when Plaintiff "met and conferred" with David.

Similarly, David has failed to provide any evidence suggesting that Plaintiff's employees were incompetent for not regularly auditing Val's Insurance. In the absence of a contractual or legal duty on the part of Plaintiff to conduct audits of Val's Insurance, no reasonable jury could find Plaintiff's employees were incompetent for not regularly performing those audits.

Moreover, David has failed to provide any evidence suggesting that Plaintiff's failure to train and supervise its employees to regularly audit Val's Insurance proximately caused David's damages. For instance, David describes his damages as those affecting his business reputation and his person. He states that "[p]eople in places that I frequented repeated Guardian's statements that I had stolen money from Guardian [and] [b]usinesses and Governmental entities became reluctant to hire my company … [and] I became upset, lost sleep, and suffered headaches."[31] Based on David's affidavit, his damages appear to stem from potentially slanderous comments made by Guardian's representative(s). No reasonable jury could determine that Guardian's failure to train and supervise its employees to regularly audit Val's Insurance caused David's damages. As a consequence, Plaintiff is entitled to summary judgment on David's claims for negligent hiring, negligent supervision, and negligent training.

d) Count 4 (Infliction of Emotional Distress)

Because Count 4 incorporates by reference the allegations in David's negligence claim and in his libel claims, Count 4 effectively consists of two claims, a claim for negligent infliction of emotional distress and a claim for intentional infliction of emotional distress.

"To prevail on a claim of negligent infliction of emotional distress under a theory that the plaintiff was the direct victim of a defendant's negligent conduct, a plaintiff must prove: (1) that the defendant owed the plaintiff a duty of care to ensure the plaintiff does not suffer serious or

[31] David's Exhibit F (Affidavit of David), at page 4.

severe emotional injury, which duty either arose by contract or was imposed as an independent legal obligation; (2) that the defendant breached its contractual or legal obligation, i.e. its duty; and (3) that, as a direct and proximate result of defendant's breach, the plaintiff suffered a serious or severe emotional injury."[32]

David has failed to present any evidence demonstrating that Plaintiff breached a contractual duty or a duty of care due to an act of negligence. However, considering that David may amend the pleadings to assert a slander claim, an intentional tort, David may have a viable intentional infliction of emotional distress claim.[33] As a result, the Court will defer ruling on Count 4.

e) Count 8 (Civil Racketeering)

A successful civil racketeering claim requires proof of four elements: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity."[34] With regards to the first two elements, a claimant must show that the "defendant was employed by or associated with the enterprise that he participated, either directly or indirectly, in the conduct of the affairs of the enterprise."[35] Concerning the last two elements, a "pattern of racketeering activity is established by showing that the defendants engaged in at least two predicate acts within ten years of each other."[36] Moreover, it must be shown that the "predicate acts of racketeering activity are related and that they amount to or pose a threat of continued criminal activity."[37] Additionally, a claim of

---

[32] *Donastorg v. Daily News Publishing Co., Inc.*, 2015 V.I. LEXIS 105, *185-186, 63 V.I. 196, 314 (V.I. Super. Ct. 2015).
[33] See, e.g., *Miles v. Ramsey*, 31 F. Supp. 2d 869, 878, 1998 U.S. Dist. LEXIS 19978, *24, 27 Media L. Rep. 1876 (D. Colo. Dec. 14, 1998) ("intentional infliction of emotional distress claims are ancillary to the libel and slander claims").
[34] *Amos v. Franklin Fin. Servs. Corp.*, 509 Fed. Appx. 165, 167 (3d Cir. 2013) (internal quotations omitted).
[35] *United States v. Alvarez*, 860 F.2d 801, 818, 1988 U.S. App. LEXIS 14468, *43-44 (7th Cir. Ill. 1988).
[36] *Id.* at 168.
[37] *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 232, 109 S. Ct. 2893, 2897, 106 L. Ed. 2d 195, 203, 1989 U.S. LEXIS 3239, *1, 57 U.S.L.W. 4951 (U.S. 1989).

racketeering based on fraud "must plead with particularity the circumstances of the alleged fraud."[38]

David alleges the following in support of his civil racketeering claim:

> Over the last several years, [Guardian] has acquired a number of insurance companies;[39]
> Upon information and belief, before acquiring the companies, [Guardian] would allege that the agencies owed it money;[40]
> Upon information and belief, [Guardian] would take over the agencies in lieu of payment for funds allegedly owed;[41]
> Upon information and belief, [Guardian] committed two or more acts of claiming agencies owed it money, and then taking over the agencies;[42]
> Upon information and belief, [Guardian] is an enterprise;[43]
> [Guardian] conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs;[44]
> [Guardian's] conduct of, or participation in, the enterprise's affairs was through a pattern of racketeering activity;[45]
> [Guardian's] acts proximately caused injury to [David's] business and property;[46] and
> [David] having suffered damage to his reputation hereby requests treble damages.[47]

Foremost, David's civil racketeering claim was improperly pled because he does not identify a separate enterprise through which Guardian conducted illegal activity. Instead, David alleges that Guardian was "the enterprise." However, a viable racketeering claim requires the existence of an enterprise separate and distinct from the defendant.[48]

In addition, David's allegations that Guardian "would allege that the agencies owed it money and would take over the agencies in lieu of payment for funds allegedly owed" fail to

---

[38] *Mierzwa v. Safe & Secure Self Storage, LLC*, 493 Fed. Appx. 273, 276 (3d Cir. 2012).
[39] Counterclaim, at page 13.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*, at page 14.
[46] *Id.*
[47] *Id.*
[48] See, e.g., *United States v. Garfinkle*, 842 F. Supp. 1284, 1291, 1993 U.S. Dist. LEXIS 19046, *12-13 (D. Nev. 1993) ("the existence of an enterprise as a separate entity is a separate element of proof for a RICO conviction")

clearly state illegal activity committed by Guardian. Assuming, for a moment, that David is alleging that Guardian's allegations are false, David would be obligated to plead the underlying acts of fraud with particularity, which he has not done.

David has also not cured his pleading deficiencies with the documents he has filed. In his affidavit, David asserts that on September 8, 2006, Raymond Fournier made a proposal to buy Val's Insurance and that "Premier Insurance Agency, Inc., or its assigns offered to buy certain assets of Val's Insurance on September 8, 2006."[49] David's affidavit evokes the letter of intent, which was sent to David by Raymond Fournier on behalf of Premier Insurance Agency, Inc., on September 8, 2006. The letter of intent states that "we are prepared to take over [Val's Insurance] … [to] allow us to satisfy the debt owed to Guardian Insurance."[50] However, the letter of intent does not, in any way, support David's contention in the pleadings that Guardian took over Val's Insurance. Even assuming, arguendo, that the letter of intent constitutes evidence of racketeering by Guardian, David has not presented other evidence of racketeering on the part of Guardian or its affiliates to suggest a pattern of racketeering.

Drawing all inferences in the light most favorable to David, there is no genuine issue of material fact concerning his civil racketeering claim, and Plaintiff is entitled to summary judgment on this claim.

f) Count 10 (Fraudulent Misrepresentation)

"To succeed on a claim of fraudulent misrepresentation, one must prove that the maker of the contract intends his assertion to induce a party to manifest his assent and the maker (a) knows or believes that the assertion is not in accord with the facts, or (b) does not have the confidence

---

[49] David's Exhibit F (Affidavit of David), at page 4.
[50] David's Exhibit J (Letter of Intent), at page 1.

that he states or implies in the truth of the assertion, or (c) knows that he does not have the basis that he states or implies for the assertion."[51]

"It is generally recognized … that the elements of fraud and fraudulent misrepresentation are essentially identical."[52] Consequently, to set forth a false or fraudulent misrepresentation claim one must plead with particularity "matters such as the time, place, and content of the false misrepresentations, the misrepresented fact, and what the opponent retained or the claimant lost as a consequence of the alleged fraud."[53]

David asserts the following allegations relevant to his fraudulent misrepresentation claim:

> [Plaintiff] represented … that it would buy Val's Insurance;[54]
> [Plaintiff] knew or believed that the condition of Val's Insurance was not as [Plaintiff] represented it to be;[55]
> [Plaintiff] did not have confidence in the accuracy of the representation that [Plaintiff] stated or implied;[56]
> The misrepresentation was made with the purpose or expectation of inducing [David] to refrain from action in reliance upon the misrepresentation;[57]
> After Mrs. David's death, several entities expressed an interest in buying Val's Insurance;[58]
> Because of the representation by [Plaintiff], [David] did not aggressively pursue the sale of the business;[59]
> [David's] justifiable reliance on the misrepresentation caused his injury.[60]

---

[51] *Pollara v. Chateau St. Croix*, LLC, 58 V.I. 455, 471, 2013 V.I. Supreme LEXIS 22, *28, 2013 WL 2948081 (VI. 2013).
[52] *Isaac v. Crichlow*, 2015 V.I. LEXIS 15, *22, 63 V.I. 38, 57 (V.I. Super. Ct. 2015). See, e.g., *Fenster v. Dechabert*, 2016 V.I. LEXIS 214, *40 (V.I. Super. Ct. Aug. 8, 2016) (a claim for fraudulent misrepresentation [requires a showing of] … a misrepresentation of fact, opinion, intention, or law that [one] either knew or had reason to know was false, and that was made for the purpose of inducing another to act or refrain from acting on it,…[which] subject[s one] to liability to the other for pecuniary loss caused by the other's justifiable reliance on the misrepresentation").
[53] *Antoine v. U.S. Bank Nat'l Ass'n*, 547 F. Supp. 2d 30, 35-36, 2008 U.S. Dist. LEXIS 32584, *10-11 (D.D.C. 2008). See also VI Rules of Civil Procedure 9 ("In alleging fraud … a party must state with particularity the circumstances constituting the fraud").
[54] Counterclaim, at page 15.
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*, at page 16
[59] *Id.*
[60] *Id.*

David did not properly plead his false misrepresentation claim because he has not indicated the content of the misrepresentation, or the time or place of the misrepresentation.

In addition, David has only presented factual support for some of his allegations. By virtue of the letter of intent, dated September 8, 2006, Premier Insurance Agency, Inc., expressed an interest in buying Val's Insurance. However, David has not submitted any evidence indicating that Premier Insurance made representations about the condition of Val's Insurance that Premier knew to be false.

David also submits an unsigned Management Agreement drafted in December 2006. While it is unclear who drafted the Management Agreement, presumably the document was drafted by Select Insurance Services, Inc., that, under the terms of the proposed agreement, would "manage the affairs of Val's Insurance."[61] The proposed agreement also states "Guardian has agreed, subject to the terms of this agreement, to consent to the operation of the agency by its affiliate, Select Insurance Services, Inc. "[62] However, David has not submitted any evidence indicating that either Select Insurance Services or Plaintiff made representations about the condition of Val's Insurance that either entity knew to be false.

In addition, David has failed to establish a nexus between Plaintiff's representations and his damages. For instance, David has presented evidence that on December 13, 2006, another entity, Edison Capital Partners, LLC, expressed an interest in purchasing the assets of Val's Insurance Agency.[63] However, David has not presented any evidence suggesting that he was unable to sell Val's Insurance to Edison, or to another entity, due to the representations of Guardian, Premier, or Select Insurance.

---

[61] David's Exhibit N (Management Agreement), at page 1
[62] *Id.*
[63] David's Exhibit M.

Drawing all inferences in the light most favorable to David, there is no genuine issue of material fact concerning David's false misrepresentation claim, and Plaintiff is entitled to summary judgment on that claim.

g) Counts 11 and 12 (Compensatory and Punitive Damages)

Counts 11 and 12 will be dismissed because they are not causes of action. It is well settled that "punitive damages are not a stand-alone claim."[64] Similarly, "any other type of damages … whether nominal, compensatory, liquidated, or exemplary … are just one element of a cause of action" is not itself a cause of action.[65] As a consequence, the Court will grant summary judgment in favor of Plaintiff concerning Counts 11 and 12.

An Order consistent with this Opinion shall follow.

Dated: April 7, 2017

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

ATTEST: Estrella H. George
Clerk of Court __/__/__

by: 4/10/17
Lori Boynes-Tyson
Court Clerk Supervisor __/__/__

CERTIFIED A TRUE COPY
DATE: 4-10-17
ESTRELLA H. GEORGE
Clerk of the Court
By:
Carnell A. Clarke
Court Clerk II

[64] *Der Weer v. Hess Oil Virgin Island Corp.*, 2014 V.I. LEXIS 109, *21-22, 61 V.I. 87, 102 (V.I. Super. Ct. 2014) (citing *Anthony v. FirstBank V.I.*, 58 V.I. 224, 227 n.4 (V.I. 2012). See also *Auster Oil & Gas, Inc. v. Stream*, 835 F.2d 597, 604 (5th Cir. 1988) ("Punitive damages are not an independent claim or cause of action, but are a remedy available in various causes of action.");

[65] *Der Weer.*, 2014 V.I. LEXIS 109, *21-22 (citing *Thomas v. Casford*, 1961 OK 158, 363 P.2d 856, 858 (1961) ("injury or damage is an element of a cause of action and is not of itself a cause of action).