

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

RAYMOND HENRY,	)	
	)	CIVIL NO. ST-08-CV-72
Plaintiff,	)	
	)	ACTION FOR
v.	)	NEGLIGENCE AND
	)	DAMAGES
VIRGIN ISLANDS WATER AND POWER	)	
AUTHORITY and ROY GUMBS, SR.,	)	
	)	
Defendants.	)	JURY TRIAL DEMANDED
_____	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Roy Gumbs, Sr.'s Motion for Summary Judgment filed on February 3, 2011.¹ The Court, having considered the Motion for Summary Judgment, the opposition thereto, and other papers supporting and opposing the Motion for Summary Judgment, will grant the Defendant's Motion.

FACTS

On the morning of Sunday, June 10, 2007, Plaintiff Raymond Henry was invited by Defendant Roy Gumbs, Sr.'s daughter, Lydia Gumbs, to pick mangos from a tree located on Parcel No. 11-3-M Estate Contant, No 7-BA Southside Quarter, St. Thomas, Virgin Islands.² Gumbs owned Parcel No. 11-3-N Estate Contant, No. 7-BA Southside Quarter, St. Thomas, Virgin Islands.³ At the time Henry was picking mangos from the tree, Gumbs was not present on his property or the neighboring property. He was selling food at Lindbergh Bay.⁴ Henry was aware that Gumbs was not present, as he knew that Gumbs went to Lindbergh Bay every Sunday morning.⁵

Henry entered onto Gumbs's land to retrieve Gumbs's fruit picker and then entered the neighboring property to climb the mango tree.⁶ While Henry was picking mangos from the tree, he made contact with a low-lying, high-voltage electric wire, which was placed and maintained

¹ Plaintiff Raymond Henry is represented by Amos W. Carty, Jr., Esq. of the Law Office of Pedro K. Williams. Defendant Virgin Islands Water and Power Authority is represented by Robert L. King, Esq. of the Law Office of Robert L. King. Defendant Roy Gumbs, Sr. is represented by George Marshall Miller, Esq. of the Law Office of George M. Miller.

² Def.'s Statement of Undisputed Facts ¶ 1; Pl.'s Statement of Disputed Facts ¶¶ 3-4; Pl.'s Ex. B.

³ Def.'s Statement of Undisputed Facts ¶ 4.

⁴ *Id.* ¶ 1; Def.'s Ex. A.

⁵ Pl.'s Ex. A.

⁶ Def.'s Ex. E.

by the Defendant Virgin Islands Water and Power Authority.⁷ Henry was severely burned when the fruit picker touched the high-voltage wire.⁸

On February 8, 2008, Henry filed an action for negligence and damages against WAPA and Gumbs. The Complaint named Gumbs as “Roy Gumbs, Sr.,” though Gumbs has never been known by that name.⁹ Also, the Complaint alleges that the incident occurred in a mango tree located on “Parcel 11-7B Contant, Northside Quarters, St. Thomas, Virgin Islands;” however, no such property exists.¹⁰ The Recorder of Deeds, Wilma Hart Smith, stated in her sworn affidavit that there is no such property as Parcel No. 11-7B Contant, Northside Quarters, St. Thomas, Virgin Islands.¹¹

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Summary judgment is a “drastic remedy.”¹² It is only appropriate if 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 moving party is entitled to judgment as a matter of law.”¹³

First, the Court must determine whether there is any genuine issue of material fact.¹⁴ It is initially the movant’s burden to prove that there is none.¹⁵ If the movant succeeds, the burden shifts and the nonmovant must show—not just allege—that there is a genuine issue for trial. The mere existence of an alleged factual dispute as to an immaterial issue will not defeat an otherwise properly supported motion for summary judgment.¹⁶ A fact is material only if its existence or non-existence will affect the outcome of a lawsuit under applicable law, and a dispute over a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.¹⁷ If there is no genuine issue of material fact, the Court must then determine whether the movant is entitled to judgment on the merits.¹⁸

⁷ Compl. ¶ 12.

⁸ *Id.* ¶ 13.

⁹ Def.’s Statement of Undisputed Facts ¶ 7.

¹⁰ Compl. ¶ 12; Def.’s Statement of Undisputed Facts ¶ 7.

¹¹ Def.’s Statement of Undisputed Facts ¶ 2; Def.’s Ex. B.

¹² *Williams v. United Corp.*, 50 V.I. 191, 194-95 (2008).

¹³ Fed. R. Civ. P. 56(c)(2); The Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of the District Court of the Virgin Islands apply to matters before this Court whenever they are not inconsistent with the Rules of the Superior Court. Super. Ct. R. 7.

¹⁴ See *Skopbank v. Allen-Williams Corp.*, 39 V.I. 220, 227 (D.V.I. 1998).

¹⁵ *Rifenberg v. Varlack Ventures, Inc.*, Civil No. 2005-174, 2008 WL 4371502, at *1 (D.V.I. Sept. 18, 2008).

¹⁶ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

¹⁷ *Id.*

¹⁸ *Anchorage Assocs. v. V.I. Bd. of Tax Review*, 922 F.2d 168, 175 (3d Cir. 1990).

The role of the Court is not to weigh the evidence for its truth or credibility, but merely to ascertain whether a triable issue of fact remains in dispute,¹⁹ and, if not, who ought to succeed on the merits. The nonmoving party receives “the benefit of all reasonable doubts and inferences drawn from the underlying facts”;²⁰ the nonmovant’s allegations will only be taken as true if they are supported by the record.²¹ The nonmovant’s “evidence must ‘amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.’”²² If the party that carries the burden of proof on a claim fails to present “pertinent evidence on an essential element . . . in resistance to a motion for summary judgment, it is presumed that no such evidence exists” and the movant will be entitled to judgment as a matter of law.²³

II. PLAINTIFF’S NEGLIGENCE CLAIM

In order to establish a claim for negligence, a plaintiff must prove:

(a) facts which give rise to a legal duty on the part of the defendant to conform to the standard of conduct established by law for the protection of the plaintiff, (b) failure of the defendant to conform to the standard of conduct, (c) that such failure is a legal cause of the harm suffered by the plaintiff, and (d) that the plaintiff has in fact suffered harm of a kind legally compensable by damages.²⁴

Henry asserts that Gumbs and his daughter Lydia Gumbs, though she is not a named defendant, breached the duty of reasonable care owed to him as a licensee²⁵ on their land. He contends that he was an “invitee”²⁶ on Gumbs’s property because Lydia invited him onto the land to pick mangoes from the mango tree on the day of the incident. The Restatement (Third) of Torts § 51 states that a possessor of land owes a duty of reasonable care to entrants on the land regarding:

(a) conduct by the land possessor that creates risks to entrants on the land; (b) artificial conditions on the land that pose risks to entrants on the land; (c) natural conditions on the land that pose risks to entrants on the land; and (d) other risks to entrants on the

¹⁹ *Suid v. Phoenix Fire & Marine Ins. Co., Ltd.*, 26 V.I. 223, 225 (D.V.I. 1991).

²⁰ *Aristide v. United Dominion Constructors, Inc.*, 30 V.I. 224, 226 (D.V.I. 1994) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

²¹ *Williams*, 50 V.I. at 194-95.

²² *Id.* (quoting *Saldana v. Kmart Corp.*, 43 V.I. 361, 364 (3d Cir. 2001)).

²³ 3 *Litigating Tort Cases* § 31:22 (Roxanne Barton Conlin & Gregory S. Cusimano eds., 2012).

²⁴ Restatement (Second) of Torts § 328A. In the absence of “local law to the contrary,” the Restatements apply in the Virgin Islands. V.I. Code Ann. tit. 1, § 4 (1995).

²⁵ The Plaintiff cites to Restatement (Second) of Torts § 342, which discusses a land possessor’s liability to a licensee.

²⁶ On page 4 of the Plaintiff’s Memorandum of Law in Support of His Opposition to Roy Gumbs, Sr.’s Motion for Summary Judgment, Henry argues that he was an invitee on the land because Lydia Gumbs invited him onto the land to pick mangos.

land when any of the affirmative duties provided in Chapter 7 is applicable.²⁷

In his Motion for Summary Judgment, Gumbs argues that, as a matter of law, Henry cannot support a claim of negligence because he did not possess the land where the incident occurred. Gumbs states that Henry's allegation that Gumbs owned the property where the incident occurred at 11-7B Contant, Northside Quarters, St. Thomas, Virgin Islands is erroneous with respect to the location of Gumbs's property and the location of the subject mango tree. In fact, the Recorder of Deeds, Wilma Hart Smith, states in her sworn affidavit that there is no such property as Parcel No. 11-7B Contant, Northside Quarters, St. Thomas, Virgin Islands. At the time of the incident, Gumbs owned Parcel No. 11-3-N Estate Contant, No. 7-BA Southside Quarter, St. Thomas, Virgin Islands. Further, the mango tree involved in the incident was located on the neighboring property at 11-3-M Estate Contant.

Though Henry concedes that the subject mango tree is located on 11-3-M Estate Contant, Henry later states that he entered Gumbs's property at 11-3-N Estate Contant and climbed the mango tree. Perhaps Henry accessed the mango tree by entering onto Gumbs's property after retrieving Gumbs's fruit picker, but such an act does not support Henry's contention that Gumbs possessed the land where the tree was located. A possessor of land is defined as

(a) a person who occupies the land and controls it; (b) a person entitled to immediate occupation and control of the land if no other person is a possessor of the land under Subsection (a); or (c) a person who had occupied the land and controlled it if no other person subsequently became a possessor under Subsection (a) or (b).²⁸

Despite the evidence provided by Gumbs demonstrating that he was not the owner or possessor of the parcel where the mango tree was located, Henry states that Gumbs possessed the land. However, Henry provides no evidence attesting to such a fact. Instead, Henry merely points to a portion of Gumbs's deposition where he is read a statement from his signed affidavit stating that "Mr. Raymond Henry came onto my property, [and] climbed my mango tree" This statement does not demonstrate that Gumbs occupied and controlled the portion of 11-3-M Estate Contant where the mango tree was located. Occupation and control can be demonstrated by ownership of the land, adverse possession, or any other control of the land where the person has the ability to take precautions to reduce the risk of harm to entrants on the land.²⁹ Gumbs was not the possessor of the subject mango tree or the land where the incident occurred. Therefore, Gumbs had no duty of reasonable care to Henry, his motion for summary judgment will be granted, and he will be dismissed from the case.

²⁷ Restatement (Third) of Torts: Physical & Emotional Harm § 51 (Tentative Draft No. 6, 2009).

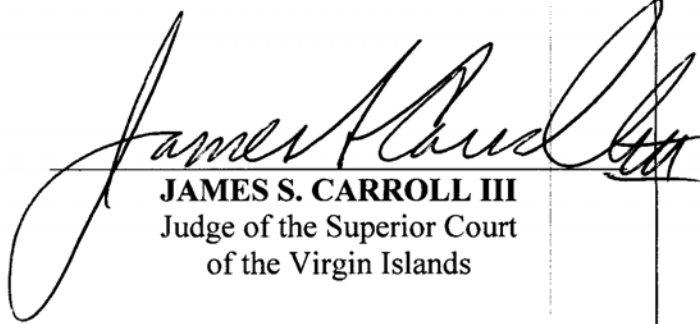
²⁸ *Id.* § 52.

²⁹ *Id.* § 52 cmt. c.

CONCLUSION

The Court will grant Defendant Roy Gumbs, Sr.'s Motion for Summary Judgment. There is no genuine issue as to any material fact. Gumbs was not the possessor of the land where the mango tree was located. Henry has failed to provide any pertinent evidence to the contrary and has failed to rebut the assertions of Gumbs by any evidence in the record. Therefore, Gumbs did not owe Henry a duty of reasonable care, his Motion for Summary Judgment will be granted, and he will be dismissed from the case.

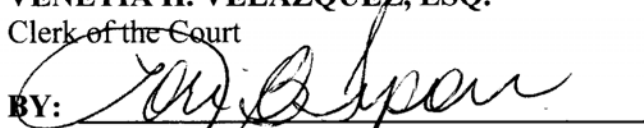
DATED: October 26, 2012


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:


LORI BOYNES-TYSON

Court Clerk Supervisor 10/29/12

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RAYMOND HENRY,

Plaintiff,

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VIRGIN ISLANDS WATER AND POWER
AUTHORITY and ROY GUMBS, SR.,

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CIVIL NO. ST-08-CV-72

ACTION FOR
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JURY TRIAL DEMANDED

ORDER

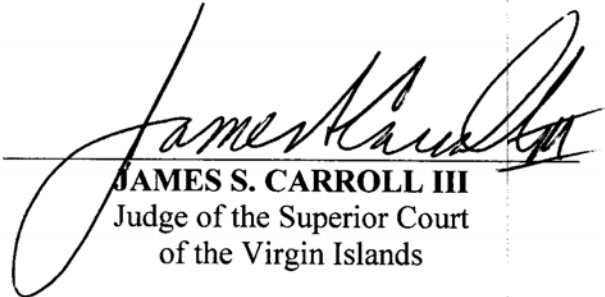
AND NOW, consistent with the Court's Memorandum Opinion of the same date in which the Court finds that there is no genuine issue of material fact regarding Defendant Roy Gumbs, Sr.'s liability to Plaintiff Raymond Henry and that Defendant Roy Gumbs, Sr. is entitled to judgment as a matter of law, it is hereby

ORDERED and ADJUDGED that summary judgment is **GRANTED** in favor of Defendant Roy Gumbs, Sr. and against Plaintiff Raymond Henry; and it is further

ORDERED and ADJUDGED that the Complaint in this matter is **DISMISSED** as to Roy Gumbs, Sr. only; and it is further

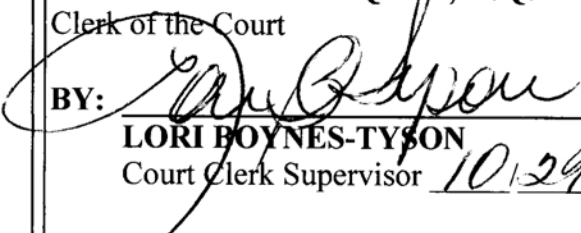
ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record.

DATED: October 26, 2012


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: 

LORI BOYNES-TYSON
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