

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

VALENTINE PANT, personally, and as)
personal representative of THE)
ESTATE OF TERRY CURTIS PANT,)
deceased, DOREEN FRANCIS PANT,)
personally, and as guardian ad)
litem for her minor children.)

Plaintiffs,)

vs.)

GOVERNMENT OF THE VIRGIN ISLANDS,)

Defendant.)

CIVIL NO. 903/1990

ACTION FOR DAMAGES

GERTRUDE LECOINTE, ESQUIRE
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(Attorney for Plaintiffs)

JESSE P. GOODE, ESQUIRE
Assistant Attorney General
Department of Justice
GERS Building 2nd Floor
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802
(Attorney for Defendant)

FINCH, Judge

MEMORANDUM OPINION AND ORDER
(November 9, 1992)

This motion is before the Court on the defendant's motion for summary judgment and the plaintiff's motion for sanctions. For reasons hereinafter stated, both motions shall be denied.

The standard for granting summary judgment is a stringent one. Federal Rules of Civil Procedure, Rule 56(c) and 5 V.I.C.

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App. I, Rule 56(c), in providing for summary judgment, state in part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

It is improper to deprive a party of a full hearing on the merits unless it is clear that no material issues of fact remains for resolution. Mayle v. City of New Castle, 71 F.R.D. 674, 675 (W.D.Pa. 1976). In deciding whether an issue of material fact exists, the Court's posture is to "resolve all doubts, inferences and issues of credibility against the moving party." Id. Unless otherwise stated, the facts are undisputed or taken in the light most favorable to the plaintiff, the non-moving party. See, Cropper v. Rego Distribution Center, Inc., 542 F.Supp. 1142, 1145 (Del. 1982).

Plaintiffs, the immediate family of the deceased, have filed this action against the defendant, Government of the Virgin Islands, seeking compensation for the alleged wrongful death of their son and brother, Terry Pant. On or about June 24, 1990, Terry Pant, a minor, was fatally struck by an automobile while riding his bicycle. The driver of the automobile, who has remained unidentified, is not a party to

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this matter. Plaintiffs allege the Government was negligent, and thereby liable for their damages, because of the Government's failure to post speed signs, entrance road signs, and road markings and for improperly designing the intersection where the deceased was struck.

It is well kept in mind the well-settled doctrine that issues of negligence are ordinarily inappropriate for summary judgment adjudication. Western Union Telegraph Co. v. City of Philadelphia, 442 F.Supp. 1, (E.D.Pa. 1977). Summary judgment is appropriate, however, where it is determined that the defendant had no legal duty. Id.

The Government's motion provides alternative grounds for its request for summary judgment¹. First, the Government asserts that the plaintiffs' complaint fails to state a claim for which relief may be granted inasmuch as the plaintiffs have failed to show that the Government owed a special duty to the deceased. In support of its motion, the Government relies on several New York cases that have used a general-duty/special-duty distinction to find governmental immunity to liability in those instances where the government owes a duty to the public

¹The Government's third argument was disposed of at an earlier hearing. On August 6, 1992, this Court ruled against the Government's claim that plaintiffs failed to fully comply with the Virgin Islands Tort Claims Act stating that the Tort Claims Act does not require plaintiffs to name a specific Government employee or department in its complaint.

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in general. The cases referenced involve suits, some of which are §1983 civil rights actions, against the Government for failing to provide adequate police protection to particular individuals against the negligent or criminal acts of third-parties.

The Government's use of those cases is inappropriate in this situation. Here, we are dealing with the maintenance of a public road, a governmental service provided for the direct use by the public. A showing of special duty was not intended in such instances. Riss v. City of New York, 22 N.Y.2d 583, ___, 293 N.Y.S.2d 897, 899 (1968). Indeed, the Riss case clearly distinguishes itself from present circumstances by stating:

"To be equally distinguished are certain activities of government which provide services and facilities or the use of the public, such as highways, public buildings and the like, in the performance of which the municipality or the State may be liable under ordinary principles of law." Id.

The government makes an unsuccessful attempt to analogize the present fact situation to those involved in the cases it references. Our facts are clearly distinguishable.

Further, a Virgin Islands case has specifically expressed that "[o]rdinary principles of negligence define the duty of care owed by the Government to users of its highways." Lubick v. Government of the Virgin Islands, Civ. No. 1981\37, at 4

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(D.V.I. January 1987). The facts in Lubick are similar to those involved here inasmuch as it involved a suit against the Government for injuries allegedly sustained as a result of the Government's failure to maintain the roads. Although dismissed on other grounds, the plaintiff in Lubick was not required to make a showing of a special duty. Likewise, the plaintiffs in this matter are not required to make such a showing.

Under circumstances where a private individual would be liable to the claimant under applicable law, the Government, in like circumstances, waives its immunity from liability. 33 V.I.C § 3408. If the plaintiffs can show that the law would permit the bringing of a negligence action against a private individual under these circumstances, an action against the Government may be maintained. The plaintiffs would then be required to prove the four elements of ordinary negligence: duty, breach, causation, and damages. Thus, given that proof of a special duty is not required, the issue of whether the Government owed the plaintiffs a general duty to maintain the roads is a genuine issue of fact ripe for adjudication. Based on the aforementioned reasons, triable issues of fact exist which preclude entry of summary judgment.

In the alternative, the Government claims that even if its alleged omissions are proven to be negligent, such omissions were not a substantial contributing factor resulting in the

plaintiff's harm. It is the Government's position that the automobile actually involved in the accident, in conjunction with the deceased's own negligent operation of his bicycle, provided a superseding force which completely absolves the Government of liability. The Government's argument centers on Comment (b) of the Restatement (Second) of Torts, Section 440 which states, in part: "a superseding cause relieves the actor from liability irrespective of whether his antecedent negligence was or was not a substantial factor in bringing about the harm." In essence, the Government asserts that its omissions were not the proximate cause of the deceased's death.

Except in very rare cases is the issue of proximate cause appropriate for summary judgment. Cropper, at 1150; See, Merriweather v. E.W. Bliss, Co., 636 F.2d 42 (3d. Cir. 1980); Hollinger v. Wagner Mining Equipment Co., 667 F.2d 402 (3d. Cir. 1982). Only where there exists undisputed facts which would compel a reasonable person to draw only one conclusion is summary judgment appropriate. Cropper, at 1150. Such circumstances do not exist here. The Government does not offer any evidence which this Court could justifiably rely upon in concluding the Government is entitled to a judgment as a matter of law. As the plaintiffs point out in their opposition, the Government relies on evidence, namely a police report, that has neither been authenticated nor subject to cross-examination,

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thus, calling into question its trustworthiness. Without more, there still remains genuine issues of material fact to be resolved. Further investigations would be required to determine whether or not the Government's assertions have any merit. As it stands now, it is just as plausible that the automobile driver's actions were a contributing factor in producing the harm, thus making both parties concurrently liable. Therefore, at this juncture, the Court is unable to conclude as a matter of law that a trier of fact could not reasonably find that the deceased would not have met with such a fatal accident had it not been for the Government's failure to post the appropriate signs.

Furthermore, the U.S. Supreme Court has recently recognized that proper summary judgment procedure mandates the entry of summary judgment after adequate time for discovery has been made. Celotex Corporation v. Cartrett, 106 S.Ct. 2584, 2553 (1986) (emphasis added). A review of the record indicates that further discovery is anticipated. In fact, the Government brought this motion after plaintiffs served their discovery request but before any discovery had commenced. The Government's motion for summary judgment is, therefore, premature. Thus, the question of whether the Government's negligence was the proximate cause of the plaintiff's harm is a genuine issue of material fact to be determined after full

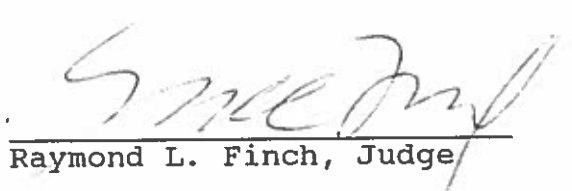
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discovery and review of all evidence presented by a trier of fact.

Plaintiffs bring a motion for sanctions pursuant to Rule 11 of Federal Rules of Civil Procedure. Plaintiffs contend that the Government has filed several frivolous motions and undertaken numerous tactics in an effort to delay litigation. After navigating through the labyrinth of interrelated motions filed in this matter, the Court is not convinced that the Government has engaged in any misconduct. The Government may have been somewhat overzealous in its efforts, however, such action, in this instance, does not rise to a level that warrants the chilling effect of Rule 11 sanctions being imposed. Plaintiffs' motion is denied.


Raymond L. Finch, Judge