

DIVISION OF ST. THOMAS AND ST. JOHN

Defendants

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) **CIVIL NO. ST-18-CV-218**
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Before the Court is Defendant's motion to dismiss Plaintiff's claims for negligence and *res ipsa loquitur* under V.I. R. Civ. P. 12(b)(6). Because Plaintiff has adequately pled a claim for negligence under Count I, the Court will deny the motion to dismiss that claim. But because Plaintiff's claims for negligence and premises liability constitute duplicate claims under Virgin Islands law, rather than alternate forms of relief, the Court will strike Count III, which pleads premises liability, but permit Plaintiff to file an Amended Complaint to either streamline the factual allegations of Counts I and III under a single count or to distinguish the counts by arguing a theory of negligence different from negligence under a premises-liability theory or by setting out alternative statements of a claim. Further, because the doctrine of *res ipsa loquitur* adequately provides notice of a negligence claim, the Court will deny the motion to dismiss that doctrine but give Plaintiff an opportunity to amend the Verified Complaint to place the doctrine under the negligence claim.

FACTUAL & PROCEDURAL HISTORY

On April 23, 2018, Shanika Stout filed a Verified Complaint alleging that on March 16, 2017, Stout sustained injuries after slipping and falling on a transparent liquid on the floor of Defendant's Long Bay Pueblo Supermarket.¹ The Verified Complaint asserts claims for negligence, *res ipsa loquitur*, and premises liability.² On May 8, 2018, Pueblo filed a motion to dismiss the negligence and *res ipsa loquitur* claims under V.I. R. Civ. P. 12(b)(6), arguing that the negligence claim is redundant of the premises liability claim and that *res ipsa loquitur* is a doctrine in support of the negligence claim rather than an independent claim.³

STANDARD

V.I. R. Civ. P. 12(b)(6) governs motions to dismiss for failure to state a claim upon which relief can be granted. In evaluating a motion to dismiss for failure to state a claim, the Court does not address the merits of the claim but merely tests whether the claim has been adequately stated in the pleading.⁴

The Virgin Islands is a notice pleading jurisdiction, and V.I. R. Civ. P. 8(a)(2) requires a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief."⁵ The Reporter's Note to V.I. R. Civ. P. 8(a)(2) provides that, under the notice pleading approach, Virgin Islands courts decline "to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief."⁶ A complaint is sufficient "so long as it 'adequately alleges facts that put an accused party on notice of claims

¹ See Verified Complaint, ¶¶ 1-14.

² See *id.*, ¶¶ 14-34.

³ Stout filed an Opposition on June 7, 2018, and Pueblo replied on June 18, 2018.

⁴ *Hans Lollik Corp. v. Gov't of the V.I.*, 1981 V.I. LEXIS 79, at *24 (V.I. Terr. Ct. Mar. 6, 1981).

⁵ *In re Adoption of the V.I. Rules of Civil Procedure*, No. 2017-001, 2017 V.I. Supreme LEXIS 22, at *49 (Apr. 3, 2017).

⁶ *Id.* at *51-52.

brought against it.”⁷ Additionally, the Court must accept all well-pled factual allegations in the pleading as true and view them in the light most favorable to the pleader.⁸

ANALYSIS

First, Pueblo asks the Court to dismiss Count I, a claim for negligence, as redundant of Count III, a claim for premises liability.⁹ In response, Stout argues that the negligence and premises liability claims constitute alternative theories of liability, since the negligence claim alleges that the acts of Pueblo or its agents caused her injuries while the premises liability claim alleges that an unsafe condition on the premises caused her injuries.¹⁰

The Court must dismiss a claim for which relief cannot be granted on motion made by a party under V.I. R. CIV. P. 12(b)(6), and the Court may strike “any redundant, immaterial, impertinent, or scandalous matter” in a party’s pleadings on motion made by a party or on its own under V.I. R. CIV. P. 12(f). Here, Pueblo does not challenge whether the negligence claim has been adequately stated in the pleading but merely asserts that the claim is duplicative of the premises liability claim.¹¹ Because duplicative or redundant claims may still be valid claims, Pueblo has improperly challenged the negligence claim using V.I. R. CIV. P. 12(b)(6) and instead, should have moved to strike the claim as redundant under V.I. R. CIV. P. 12(f).¹² Accordingly, Pueblo’s motion to dismiss the negligence claim must be denied.

⁷ *Mills-Williams v. Mapp*, 67 V.I. 574, 585 (V.I. 2017) (quoting *Brathwaite v. H.D.V.I. Holding Co.*, 2017 V.I. LEXIS 76, at *3 (V.I. Super. Ct. May 24, 2017)).

⁸ See *In re Tutu Water Wells Contamination Litig.*, 40 V.I. 279, 287-288 (D.V.I. Dec. 15, 1998) (citations omitted).

⁹ See Motion to Dismiss, pgs. 1-2.

¹⁰ See Plaintiff’s Opposition to Motion to Dismiss, pg. 2.

¹¹ See Motion to Dismiss, pg. 2.

¹² See, e.g., *Coffman v. Wilson Police Dep’t*, 739 F. Supp. 257, 261-262 (E.D. Pa. 1990) (“[A] Rule 12(b)(6) motion does not address the redundancy of claims; it questions only their validity. Redundant claims may all be valid. The alleged superfluity is thus improperly challenged using Rule 12(b)(6). The Rules do permit redundant material to be stricken from the complaint. Fed. R. Civ. P. 12(f)”). Because FED. R. CIV. P. 12(b)(6) and V.I. R. CIV. P. 12(b)(6) are identical, and because FED. R. CIV. P. 12(f) and V.I. R. CIV. P. 12(f) are also identical, the aforementioned federal case is persuasive.

Nonetheless, “[i]t is well established that as a matter of judicial economy, courts may dismiss duplicative claims in their discretion.”¹³ “Claims are duplicative when they stem from identical allegations, that are decided under identical legal standards, and for which identical relief is available.”¹⁴ In *Antilles School, Inc. v. Lembach*,¹⁵ the Virgin Islands Supreme Court held that negligence and premises liability claims are duplicative under Virgin Islands law.¹⁶ The Court determined that “negligence under a premises-liability theory” is a single cause of action.¹⁷ The Court endorsed the characterization that “[p]remises liability is a theory of negligence, where the basis of the duty of care is the possession or control of the premises where [an] injury occurred,’ for ‘[t]he elements are the same — a plaintiff must prove: (1) duty, (2) breach, (3) causation, and (4) damages.’”¹⁸

Here, Pueblo correctly argues, though in support of its motion to dismiss, that Stout’s claim for premises liability is duplicative of the negligence claim under Virgin Islands law,¹⁹ since the foreseeability of harm test applies to both claims and affords identical relief.²⁰ Further, the factual allegations underpinning the two claims are substantively identical. Though Stout

¹³ *Halmon-Daniels v. Experts, Inc.*, 2016 U.S. Dist. LEXIS 125235, at *75 (D.D.C. Sept. 15, 2016).

¹⁴ *Id.* (quoting *DTCC Data Repository (U.S) LLC v. U.S. Commodity Futures Trading Comm’n*, 25 F. Supp. 3d 9, 18-19 (D.D.C. 2014) (internal quotation and citation omitted)).

¹⁵ 64 V.I. 400 (V.I. 2016).

¹⁶ *Id.* at 413.

¹⁷ *Id.*

¹⁸ *Id.* (quoting Defendant Antilles School).

¹⁹ See Motion to Dismiss, pg. 2.

²⁰ See *Antilles Sch., Inc.*, 64 V.I. at 409 (“As this Court has previously held, ‘the foundational elements of negligence’ are: ‘(1) a legal duty of care to the plaintiff, (2) a breach of that duty of care by the defendant (3) constituting the factual and legal cause of (4) damages to the plaintiff.’” *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014). In the context of a negligence claim based on a premises-liability theory, this Court has eliminated the traditional common-law distinction between invitees, licensees, and trespassers, and has instead concluded ‘that the foreseeability of harm is the touchstone of [a land possessor’s] duty.’” *Id.* at 384 (citation and internal quotation marks omitted)); see also *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 394 (V.I. 2014) (explaining 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”).

argues the claims differ because the negligence claim alleges that Pueblo and its employees caused Stout's injuries while the premises liability claim alleges that an unsafe condition caused her injuries,²¹ the allegations in the Verified Complaint are substantively the same. Under the negligence claim, the Verified Complaint states that Pueblo had a "duty to provide a safe facility for...customers"²² and "to maintain and regularly inspect its aisles and floor to ensure they were free of foreign matter that could cause injury to its customers."²³ The Verified Complaint further provides that Pueblo breached its duty because "[t]hrough its employees and/or agents . . . [it] allow[ed] the liquid to accumulate on the floor and neglect[ed] to timely clean the floor"²⁴ when it "knew, or in the exercise of reasonable care, should have known about the unsafe condition created by the slippery, liquid substance pooled on the floor of Aisle 11"²⁵ and thus "should have corrected the unsafe condition or warned Plaintiff of its existence."²⁶ Similarly, under the premises liability claim, the Verified Complaint alleges that Pueblo had a duty to "make reasonable inspections and perform routine clean-up"²⁷ for the safety of the store's customers and breached its duty because it "failed to properly clean up the substance and remedy said condition",²⁸ "failed to warn or take reasonable measures to warn Plaintiff",²⁹ and "failed to properly train and/or supervise its employees to look out for unsafe, hazardous, or dangerous

²¹ See Opposition to Motion to Dismiss, pg. 2.

²² Verified Complaint, ¶ 17.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶ 28.

²⁸ *Id.* at ¶ 30.

²⁹ *Id.* at ¶ 31.

conditions on its premises”,³⁰ when it “knew or should have known its premises were in an unsafe and dangerous condition”.³¹

V.I. R. Civ. P. 8(d)(2) provides that “[a] party may set out two or more statements of a claim or defense alternatively or hypothetically, in separate counts or defenses”, but here, Stout’s statements are substantively identical statements, not alternative statements, that set out a claim for negligence under a premises-liability theory. Because Stout’s claims for negligence and premises liability invoke an identical legal standard, the foreseeability of harm test, afford identical relief, and stem from essentially identical allegations, the Court will strike the premises liability claim as redundant of the negligence claim under V.I. R. Civ. P. 12(f) but provide Stout with an opportunity to amend the Verified Complaint to integrate the claims under the single count of negligence under a premises-liability theory. Alternatively, Stout may distinguish the counts—for example, by arguing a theory of negligence different from negligence under a premises-liability theory or by setting out alternative statements of the claim.

Second, Pueblo moves to dismiss the *res ipsa loquitur* claim on the ground that it is a doctrine in support of the negligence claim rather than an independent claim.³² In response, Stout asserts that *res ipsa loquitur* is not an independent claim but that the Court should permit it to be pled as an alternative theory of liability.³³ According to the Restatement (Second) of Torts, § 328D, *res ipsa loquitur*, Latin for “the thing speaks for itself”, constitutes a doctrine used in support of a negligence claim and which operates as follows:³⁴

(1) It may be inferred that harm suffered by the plaintiff is caused by negligence of the defendant when

³⁰ *Id.* at ¶ 32.

³¹ *Id.* at ¶ 30.

³² See Motion to Dismiss, pgs. 3-4.

³³ See Opposition to Motion to Dismiss, pg. 3.

³⁴ *Restatement (Second) of Torts* § 328D cmt. a. (1979).

- (a) the event is of a kind which ordinarily does not occur in the absence of negligence;
 - (b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and
 - (c) the indicated negligence is within the scope of the defendant's duty to the plaintiff.
- (2) It is the function of the court to determine whether the inference may reasonably be drawn by the jury, or whether it must necessarily be drawn.
- (3) It is the function of the jury to determine whether the inference is to be drawn in any case where different conclusions may reasonably be reached.³⁵

In *Coastal Air Transp. v. Royer*,³⁶ the Virgin Islands Supreme Court adopted *res ipsa loquitur* as the best rule for the Virgin Islands, and as permitting, but not requiring, a jury to infer a defendant's negligence from the happening of an extraordinary event under the defendant's control, as articulated in the Restatement (Second) of Torts.³⁷ The Court declined to adopt an approach to *res ipsa loquitur* taken by some courts that would require a jury to presume negligence, and consequently, a court to enter a directed verdict in the plaintiff's favor when the defendant fails to present evidence rebutting the plaintiff's negligence claim.³⁸ Instead, the Court favored an interpretation of *res ipsa loquitur* permitting the jury to decide whether any negligence on the part of the defendant caused the plaintiff's harm, despite the existence of rebuttal or contrary evidence.³⁹

³⁵ Restatement (Second) of Torts § 328D (1979).

³⁶ 64 V.I. 645 (V.I. 2016).

³⁷ *Id.* at 655.

³⁸ *Id.*

³⁹ *Id.* ("The chief distinction between permitting a jury to merely infer negligence rather than allowing it to presume such negligence, is not to be taken lightly. If the doctrine of *res ipsa loquitur* were deemed to give rise to a *presumption*, should the defendant not present rebuttal evidence, the trial court would correctly act to enter directed verdict in plaintiff's favor on the issue of negligence. 167 A.L.R. 658. However, should the doctrine give rise only to an inference, negligence remains a matter for the jury to decide even if the defendant does not present contrary evidence, because the jury is not compelled to presume negligence; instead, jurors are permitted to draw that conclusion on their own, based on the facts presented. *Id.* Thus, if the jury were to conclude that the plaintiff has

Regarding whether Stout's pleading of *res ipsa loquitur* under a count separate from the negligence count warrants dismissal, the pleading of the doctrine puts Pueblo on notice of a negligence claim, and thus, Pueblo's motion to dismiss the doctrine of *res ipsa loquitur* is denied. As to whether Stout's pleading of *res ipsa loquitur* under a count separate from the negligence count is permissible, V.I. R. Civ. P. 8(a)(2) states that "the pleading shall be set forth in separate numbered paragraphs as provided in Rule 10(b),⁴⁰ with separate designation of counts and defenses for each claim identified in the pleading". Accordingly, separate counts in the pleading should correspond to separate claims. Thus, Stout should incorporate the doctrine of *res ipsa loquitur* under the negligence claim. Though V.I. R. Civ. P. 8(a)(3) provides that a pleading "may include relief in the alternative or different types of relief", and similarly, V.I. R. Civ. P. 8(d)(2) provides that "[a] party may set out two or more statements of a claim or defense alternatively or hypothetically, in separate counts or defenses", *res ipsa loquitur* is not a claim separate from negligence, and thus, does not provide any alternative or different type of relief. In the interest of promoting clarity of the Verified Complaint, the Court will permit Stout to amend the Verified Complaint, pleading the doctrine of *res ipsa loquitur* in support of the negligence claim.

CONCLUSION

For the foregoing reasons, the Court will deny Defendant's motion to dismiss Plaintiff's claims for premises liability and *res ipsa loquitur* without prejudice. But, the Court will strike

not met his burden of proof (because they could not draw that inference) it may return a verdict in favor of the defendant. Moreover, in matters where negligence is presumed, once the defendant introduces evidence to the contrary, the presumption disappears, and the plaintiff must then rely on independent evidence to meet its burden; but, when an *inference* is permitted to be drawn, the ability to infer negligence remains — even with differing evidence admitted by the defendant. *Montgomery v. Hutchins*, 118 F.2d 661, 664-65 (9th Cir. 1941)".

⁴⁰ V.I. R. Civ. P. 10(b) provides, in part, "[i]f doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense."

Count III, premises liability, as redundant of Count I, negligence, and permit Plaintiff to file an Amended Complaint to merge Counts I-III into a single count for a claim of negligence under a premises-liability theory, pleading the doctrine of *res ipsa loquitur* in support of that claim.

Alternatively, Stout may distinguish the counts, for example, by arguing a theory of negligence different from negligence under a premises-liability theory or by setting out alternative statements of her claim. An Order consistent with this Memorandum Opinion shall follow.

Dated: December 10, 2018

ATTEST: Estrella George
Clerk of Court

by

Lori Boynes-Tyson

Court Clerk Supervisor


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

12/11/2018