

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

GERALD GREAX,	)	
	)	CASE NO: ST-18-CV-078¹
Plaintiff,	)	
v.	)	ACTION FOR DAMAGES
	)	
DARREN D. FRETT, ROSEMARY SAUTER,	)	JURY TRIAL DEMANDED
PATRICK SMITH, CHRISTOPHER	)	
RICHFORD AND HAUGLAND GROUP,	)	
LLC.,	)	
	)	
Defendants.	)	

Cite as: 2019 VI Super 77U

MEMORANDUM OPINION AND ORDER

¶1 Before the Court is Defendants Rosemary Sauter and Darren D. Frett's Motion to Dismiss, which was filed on May 16, 2018. Plaintiff Gerald Greaux filed an opposition, and Sauter and Frett filed a reply. The motion being fully briefed, the Court will grant in part and deny in part Sauter and Frett's Motion.

I. BACKGROUND

¶2 Around December 5, 2017, while traveling along Mafolie Road, Greaux was involved in an accident with four other vehicles. According to Greaux, the five vehicle collision began with Defendant Christopher Richford colliding into the rear of a vehicle driven by Frett, which "propelled Defendant Frett's vehicle into the rear of Defendant, [sic] Smith's vehicle which was propelled into Plaintiff's vehicle, which . . . pushed Plaintiff's vehicle into the rear of the vehicle in front of him."² As a result, Greaux suffered injuries and damages, and subsequently filed this action. In his First Amended Complaint, Greaux asserts one count of negligence against Frett, and a count of negligent entrustment and *respondeat superior* against Sauter.³

¶3 In response, Sauter and Frett filed a Motion to Dismiss under Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure in which they move the Court to dismiss Count I as to Frett and Counts II-III as to Sauter.

II. LEGAL STANDARD

¶4 Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure allows a party to challenge a pleading for "failure to state a claim upon which relief can be granted."⁴ To survive a 12(b)(6) motion, the plaintiff must provide "a short and plain statement of the claim showing that the

¹ The Court has corrected the above-captioned case number because the First Amended Complaint incorrectly lists the case number as ST-CV-18-078.

² First Am. Compl. ¶ 8.

³ First. Am. Compl. ¶¶ 10-17.

⁴ V.I.R. Civ. P. 12(b)(6).

pleader is entitled to relief,”⁵ and “[t]he facts alleged in the pleadings, and any inferences drawn therefrom, must be viewed in the light most favorable to the plaintiff.”⁶ Since Virgin Islands Rule 8(a)(2) explicitly states that the Virgin Islands is a notice pleading jurisdiction, a plaintiff merely needs to provide a basic legal and factual basis for her claim so as to put a defendant on fair notice of the claims brought against him.⁷ In fact, “[t]he complaint need not identify the particular legal theories that will be relied upon, but it must describe the essence of the claim and allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief.”⁸ This standard is reinforced by the policy that litigants should not be expected to win their cases on the pleadings but rather be given their day in court,⁹ and the standard is necessarily a more liberal and forgiving approach that is different from the *Twombly* plausibility standard.¹⁰ Essentially, Rule 8(a)(2) allows the Court to proceed with the discovery process and address pleadings based on the merits of each asserted claim,¹¹ and “[p]leadings . . . must be fatally defective before they may be rejected as insufficient.”¹²

III. ANALYSIS

¶5 Sauter and Frett urge the Court to dismiss Counts I, II, and III. Regarding Count I, Sauter and Frett essentially argue that Frett could not have negligently operated his vehicle and been the proximate cause of Greaux’s injuries because, as Greaux stated in his First Amended Complaint, Frett’s vehicle was propelled into the vehicle in front of him as a result of the chain reaction that started with Richford’s initial collision. Regarding Count II, Sauter and Frett argue that Greaux provides no factual basis to support a cause of action for negligence on behalf of either Sauter and Frett, and even if a factual basis existed for negligent entrustment on behalf of Sauter, proximate causation is absent. Sauter and Frett assert similar arguments in support of dismissing Count III.

¶6 The Court will address each Count individually.

⁵ V.I.R. Civ. P. 8(a)(2).

⁶ *Adams v. North West Company (International), Inc.*, 63 V.I. 427, 438 (Super. Ct. 2015) (citing *Benjamin v. AIG Ins. Co. of Puerto Rico*, 56 V.I. 558, 566 (V.I. 2012)).

⁷ See *Bank of Nova Scotia v. Flavius*, Super. Civ. No. SX-16-CV-125, 2018 WL 745958, at *6 (Super. Ct. Feb. 2, 2018).

⁸ *Howe v. MMG Ins. Co.*, 95 A.3d 79, 81-82 (Me. 2014) (internal quotation marks omitted).

⁹ See *Carrillo v. Boise Tire Co., Inc.*, 274 P.3d 1256, 1267 (Idaho 2012) (“The Idaho Rules of Civil Procedure set forth a system of notice pleading intended to free litigants from what were once rigid pleading requirements.”).

¹⁰ See *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604-05 (Minn. 2014) (“After all, Minnesota is a notice-pleading state and ‘does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it.’”); *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011) (“Tennessee follows a liberal notice pleading standard, . . . which recognizes that the primary purpose of pleadings is to provide notice of the issues presented to the opposing party and court.”); *McCurry v. Chevy Chase Bank, FSB*, 233 P.3d 861, 864 (Wash. 2010) (en banc) (“Under CR 12(b)(6) a plaintiff states a claim upon which relief can be granted if it is *possible* that facts could be established to support the allegations in the complaint.”) (emphasis in original).

¹¹ See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) (“The liberal notice pleading of [Federal] Rule [of Civil Procedure] 8(a) . . . was adopted to focus litigation on the merits of a claim.”).

¹² *Corwin v. British American Tobacco PLC*, 796 S.E.2d 324, 333 (N.C. Ct. App. 2016).

A. Greaux has provided a basic factual and legal basis for a claim of negligence to put Frett on notice of that claim.

¶7 To establish a successful claim of negligence, a plaintiff must show that a defendant owed (1) a legal duty of care to the plaintiff, that (2) the defendant breached that legal duty of care which (3) served as the factual and legal cause of (4) damages suffered by the plaintiff.¹³ Of course, at the pleading stage, the plaintiff need only provide a basic factual and legal basis for each element to put a defendant on notice.

¶8 The Court finds that Greaux has provided such a basis here. Greaux alleges that Frett owed him a duty of care that Frett breached by failing to keep his vehicle under proper or any control, failing to make timely application of his brakes, failing to keep a proper lookout at the time for the vehicle in which Greaux was operating, and failing to keep a safe distance between his vehicle and Greaux's vehicle.¹⁴ Greaux further alleges that the actions and omissions of Frett served as the proximate cause of his injuries and damages. Certainly, this information is enough to put Frett on notice of the claim brought against him so that he may prepare his defense accordingly.

¶9 Sauter and Frett fault Greaux's First Amended Complaint for not providing specific factual allegations as to Frett's actions or inactions that constituted negligence, especially in the face of Greaux's statements – statements that Sauter and Frett insist are judicial admissions from which Greaux cannot depart – that Frett's vehicle was propelled as a part of chain reaction caused by Richford's vehicle. Sauter and Frett assert that none of the actions or inactions alleged by Greaux, such as Frett's failure to brake or keep a safe distance from Greaux's vehicle, would have had any bearing on the ultimate damages suffered by Greaux because of the fact that Frett's vehicle was propelled. This, they argue, means that, assuming that Frett's actions or inactions were negligent, no proximate cause existed between those actions or inactions and Greaux's injuries.

¶10 The Court is simply unpersuaded by Sauter and Frett's arguments. In essence, Sauter and Frett move the Court to make factual determinations about Count I by relying on the phraseology used in paragraph 8 of the First Amended Complaint, i.e., since Greaux stated X, it is impossible for Y and Z to have occurred. The Court would surely be remiss, however, if it undertook the role of combing through pleadings to make factual determinations based on what it believes to be possible or impossible as opposed to what the evidence might show.¹⁵ In other words, whether the statements made in paragraph 8 are judicial admissions is irrelevant here because, assuming that Greaux is bound by his statements in paragraph 8, the Court will not dismiss Count I based solely on the Court's opinion of what could or could not have happened. Furthermore, Sauter and Frett's arguments relating to whether Frett's actions constitute proximate cause are more properly

¹³ *Coastal Air Transport v. Royer*, 64 V.I. 645, 651 (V.I. 2016).

¹⁴ First Am. Compl. ¶¶ 11(a)-(c), 11(e).

¹⁵ See *Camacho v. Micronesian Dev. Co.*, 8 N. Mar. I. 62, 65 (2008) (“[F]actual determinations may not be made in a Rule 12(b)(6) motion.”).

addressed on a motion for summary judgment.¹⁶ All that is required here is to put Frett on notice of the claim brought against him, and Count I certainly does just that.

¶11 Therefore, the Court will deny Sauter and Frett's Motion to Dismiss as to Count I.

B. Greaux has provided a basic factual and legal basis for a claim of negligent entrustment to put Sauter on notice of that claim.

¶12 Negligent entrustment requires a plaintiff to show four elements: (1) the defendant supplied a chattel to a third person; (2) likelihood that such third person because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the defendant should expect to be endangered; (3) the defendant knew or had reason to know of such a likelihood; and (4) proximate cause of the harm to plaintiff by conduct of the third person.¹⁷

¶13 Greaux has met the pleading requirements for Count II. He asserts that Sauter entrusted her vehicle to Frett when she knew or should have known that Frett was incompetent to operate that vehicle due to his age, driving experience, and driving record.¹⁸ He further states that Frett's actions and inactions were the proximate cause of Greaux's injuries and damages.¹⁹ These assertions provide a basic factual and legal basis for his claim of negligent entrustment so as to put Sauter on notice.

¶14 Therefore, the Court will deny Sauter and Frett's Motion to Dismiss as to Count II.

C. Greaux has not met the Rule 8(a) pleading standard for Count III.

¶15 Under the theory of *respondeat superior*, an employer may be held vicariously liable for the tortious conduct of its employees that occurs within the scope of employment.²⁰ In Count III, Greaux fails to articulate how or why Sauter is liable under *respondeat superior*: "As the owner of the vehicle driven by Defendant Frett, Defendant Sauter, is liable to Plaintiff, under the legal doctrine of Respondeat Superior." Though notice pleading in the Virgin Islands is more forgiving than the former *Twombly/Iqbal* standard, it still requires that plaintiffs assert a factual and legal basis for each of his claims. Here, Greaux merely states that Sauter, as the vehicle owner and employer of Frett, is liable under the theory of *respondeat superior*. This single assertion alone is not enough to pass Rule 8(a) scrutiny. Greaux mentions nothing about scope of employment, which is crucial to alleging a claim for *respondeat superior*.

¹⁶ In fact, one of the cases relied upon by Sauter and Frett – *Mohamed v. Town of Niskayuna*, 700 N.Y.S.2d 551, 552 (N.Y. App. Div. 1999) – to support their assertion that no proximate cause existed here was decided on a motion for summary judgment as opposed to a motion to dismiss.

¹⁷ *Dorsett v. Blomquist*, Super. Ct. Civ. ST-2014-CV-233, 2017 V.I. LEXIS 23, at *3-4 (V.I. Super. Ct. Feb. 6, 2017).

¹⁸ First Am. Compl. ¶ 14.

¹⁹ First Am. Compl. ¶ 12.

²⁰ *Bowen v. Zacko*, 50 V.I. 22, 28 (V.I. Super. Ct. 2008).

¶16 Therefore, the Court will grant Sauter and Frett's Motion to Dismiss as to Count III.

IV. CONCLUSION

¶17 Under Rule 8(a) of the Virgin Islands Rules of Civil Procedure, Greaux needed only provide a basic factual and legal basis for his claims against Sauter and Frett so as to put them on notice of those claims. In his First Amended Complaint, Greaux satisfied that requirement for Counts I and II, but he failed to do so for Count III. The Court will therefore grant in part and deny in part Sauter and Frett's Motion to Dismiss. Accordingly, it is hereby

ORDERED that Defendants Rosemary Sauter and Darren D. Frett's Motion to Dismiss is **GRANTED IN PART and DENIED IN PART**; and it is further

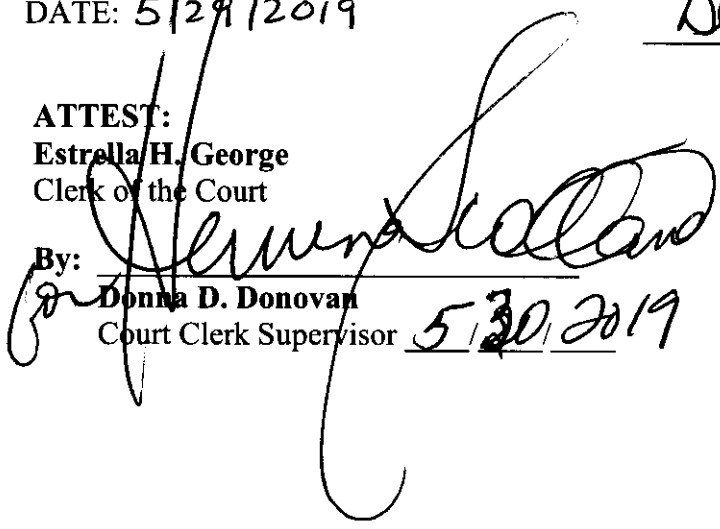
ORDERED that Count III – Respondeat Superior – Rosemary Sauter is legally insufficient under Rule 8(a) of the Virgin Islands Rules of Civil Procedure and is therefore **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that, on or before June 11, 2019, Defendants Rosemary Sauter and Darren D. Frett **SHALL** file a response to the First Amended Complaint; and it is further

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

DATE: 5/29/2019

ATTEST:
Estrella H. George
Clerk of the Court

By: 
Donna D. Donovan
Court Clerk Supervisor 5/30/2019


DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands