IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

INTER OCEAN INSURANCE AGENCY, INC.,	)	
Plaintiff,	)	
v.	)	CASE NO. SX-06-CV-177
	)	ACTION FOR DAMAGES
CAMIRA JOSEPH,	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiff's Motion for Summary Judgment, and Defendant's Opposition thereto. For the following reasons, Plaintiff's Motion will be granted.

I. Facts and Procedural History

On November 8, 2002, the Defendant's vehicle, insured by the Plaintiff, was involved in an accident on the Melvin H. Evans Highway. At the time of the accident, the Defendant's vehicle was being driven by Sheldon K. Joseph, an 18 year old male, who had the Defendant's permission to operate the vehicle. According to the Virgin Islands Police Department ("VIPD") Uniform Traffic Accident Report, two people (not including Sheldon K. Joseph) were injured and a guard rail was damaged. Sheldon K. Joseph was cited by VIPD for reckless driving.

On January 23, 2003, the Plaintiff paid the Defendant's insurance policy limit of $10,000 to satisfy the claims of one of the injured parties. The Plaintiff also paid $287.25 to the Government of the Virgin Islands to satisfy its claim for damage to the guard rail. After making the payments, the Plaintiff sought restitution of the money paid from the Defendant alleging that the Defendant breached her insurance policy and was required to reimburse any amount expended by the Plaintiff. The Defendant disagreed with the Plaintiff's position and refused to reimburse the Plaintiff. The Plaintiff subsequently filed suit in the Small Claims Division. The Defendant filed a Motion to Transfer to Civil Docket and the matter was transferred to the Civil Division by Order dated March 6, 2006.

Defendant chose not to purchase coverage for persons under 25 years old, and thus signed an endorsement, which provided that:

> It is hereby understood and agreed that the insurance afforded by this policy shall not apply while any vehicle covered by this policy is being driven or operated by any person under the age of twenty-five (25) years or by any person normally resident in the insured's household unless such person is named in the policy and shown as a Named Driver or additional Insured.

Furthermore, the plan included a provision that entitled Plaintiff to seek subrogation of any payment made under the policy when the policy holder was in breach of the contract.

II. Standard of Review

Summary judgment is 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 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). At this stage, the court makes all reasonable inferences from the evidence in the light most favorable to the non-movant. *In re Flat Glass Antitrust Litig.*, 385 F.3d 350, 357 (3rd Cir. 2004).

Summary judgment may be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Texaco Antilles Ltd. v. Creque*, 273 F.Supp.2d 660, 662 (D. V.I. 2003). Once the moving party properly supports its motion for summary judgment, the non-moving party must establish a genuine issue of material fact in order to preclude a grant of summary judgment. *Id.* The evidence and inferences drawn therefrom must be viewed in the light most favorable to the non-movant. *Id.* "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Id.*

In 1999 the Virgin Islands Legislature revived the territory's compulsory automobile liability insurance laws. See generally Title 20 V.I.C. Chapter 47. The primary purpose of compulsory motor vehicle liability insurance laws is to compensate innocent victims who have been injured by the negligence of financially irresponsible motorists. V.I. CODE ANN. tit. 20 § 704(c) provides that "Policies may not be canceled ... with respect to an accident or occurrence which took place prior to the cancelation ..." regardless of the reason. Thus, the Legislature established a public policy to require insurance companies to initially pay claims regardless of whether the insured is in breach, because the insurance companies are in a better position to bear the initial monetary burden, and then seek subrogation through the judicial system.[1]

III. Analysis

It is clear to this Court that Defendant signed an agreement whereby she would not be covered if she allowed someone under the age of twenty-five (25) to drive her vehicle. It is also clear that Defendant breached that agreement by allowing her son to drive the car. Even though

[1] See *Krind v. Barlow*, 44 V.I. 293 (Sup. Ct. 2002). The *Krind* court, in denying the Defendant's Motion to Dismiss, essentially held that when a seller of an automobile fails to record the change in title of the vehicle, then the seller (and seller's insurance) remain liable for any injuries or damages caused by the buyer of the vehicle because the seller is still officially registered as the owner. Furthermore, the Court stated that "[t]o hold otherwise would undermine the public policy concerns that led the Legislature to revive the compulsory automobile liability insurance laws of the Virgin Islands." *Id.* at 299.

Defendant was in breach of the contract, Plaintiff was still required under 20 V.I. CODE ANN. § 704(c) to make payments totaling Ten Thousand Two Hundred Eighty-Seven dollars and Twenty Five Cents ($10,287.25). Finally, it is clear that Plaintiff has reserved the right to seek subrogation of any monies paid on a claim when the insured is in breach of the agreement. Plaintiff is entitled to subrogation in this case.

IV. Conclusion

There is clearly no genuine issue of material fact in this matter. Therefore, Plaintiff is entitled to judgment as a matter of law. An appropriate Order of even date will accompany this Memorandum Opinion.

Dated: September 28, 2011

Julio A. Brady
Judge

ATTEST:

VENETIA H. VELÁZQUEZ
Clerk of the Court

By: Court Clerk Supervisor 9/28/11