

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: CHRISTIANSTED

RITA CREQUE,	)	
	)	
Plaintiff,	)	CIVIL NO. 471/1982
	)	
v.	)	ACTION FOR DAMAGES
	)	
SOFARELLI ASSOCIATES, INC.,	)	
	)	
Defendant.	)	

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SILVERLIGHT, J.

MEMORANDUM OPINION AND ORDER
September 9, 1983

In this negligence action the determinative issue for resolution is simply the duty, if any, owed by defendant, Sofarelli Associates, Inc., to the plaintiff, Rita Creque, and the alleged breach thereof.

Plaintiff, on March 4, 1982, visited the downtown Christiansted post office for the purpose of conducting some personal business. The post office was, and for several weeks prior thereto, had been in the process of renovation, such renovation being performed by defendant, Sofarelli Associates, Inc., by and through its admitted agent, Phillip Marchant, among others. As part of the renovation operations already in progress several weeks prior to Mrs. Creque's

visit, defendant had erected various scaffolding, barricades, and signs which, to passers-by, indicated that work was in progress. On the date in question, the work was almost complete, as plaintiff proceeded inside the post office and to a writing table affixed to a wall therein, where she stopped to address some correspondence. Resting against the side of this same table was a small piece of plywood which had been used in the construction and placed there by Mr. Marchant. In some unexplained way the plywood fell from against the table, striking plaintiff's left foot and producing the injury of which she complains.

In order for the plaintiff to recover damages, she must, by a preponderance of evidence, first prove that Sofarelli owed to her a duty, that Sofarelli breached that duty, and that as a proximate result of that breach plaintiff sustained her injuries. Bauman v. Canton, 7 V.I. 60 (D.V.I. 1968). As to each element of proof, plaintiff carries the entire burden.

The evidence adduced at the trial clearly showed that plaintiff sustained injuries to her left foot. Furthermore, plaintiff has established that defendant owed a duty of reasonable care to invitees who visited the post office while the premises were under construction. Restatement (Second) of Torts §§328E, 343A (1964). Plaintiff has, however, failed to prove by a preponderance of the evidence that defendant has breached that duty of care owed to Mrs. Creque.

Mrs. Creque testified that she did not know how the board fell. Mr. Marchant denied that he touched the board or caused it to move. While this court is not unsympathetic to the injuries sustained by the plaintiff, it may not substitute sympathy for liability. The mere occurrence of an accident without fault of another may never be the basis of a negligence action since negligence is never presumed. Myers v. Kaufman Department Stores, Inc., 57 F.Supp. 577 (W.D.Pa. 1944), aff'd 149 F.2d 968 (3d Cir. 1945). Plaintiff has not established fault resulting from a breach of the duty of reasonable care owed by defendant, Sofarelli. Henry v. Government of the Virgin Islands, 11 V.I. 727 (D.V.I. 1975); Restatement (Second) of Torts §§284, 341A (1964). 1/ Sofarelli, as part of its renovation of the post office building, took affirmative action to forewarn potential users of the premises that construction work was in progress. From the totality of then existing circumstances, the invitee plaintiff was under a correlative duty to tend to her own personal safety from obvious dangers. Restatement (Second) of Torts §343A (1964).

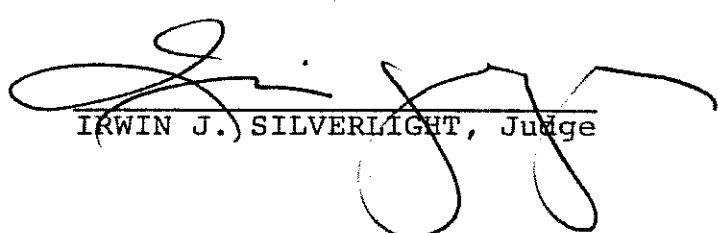
1/ Plaintiff and defendant appear to disagree as to whether defendant was a possessor of land as defined in Restatement (Second) of Torts §328E (1964). For a determination of liability of the case at bar, such a distinction is immaterial.

Perhaps any premises under construction yet remaining open to the public presents certain dangers to invitees and passers-by. However, from the facts adduced in the case at bar, this Court cannot say that the danger was unreasonable or the injury foreseeable.

Accordingly, plaintiff's complaint will be dismissed on the merits. Costs will be awarded in accordance with the standards enunciated in Lindy Brothers, Inc. v. American Radiator and Standard Sanitary Corp., 484 F.2d 161 (3d Cir. 1973); Bedford, et al. v. Pueblo Supermarkets of St. Thomas, Inc., et al., 18 V.I. 275 (D.V.I., Div. St. T and St. J., 1981).

Done at Christiansted, St. Croix this 9th day of September, 1983.

E N T E R :


IRWIN J. SILVERLIGHT, Judge