

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

GLORIA ANN HAUGHTON-TAVERNIER,	)	
	)	CASE NO. ST-15-CV-588
Plaintiff,	)	
	)	
vs.	)	ACTION FOR
	)	DAMAGES
SBP INTERNATIONAL PLAZA, LLC and	)	
SBP ST. THOMAS, LLC and ROE	)	
CORPORATIONS 1 through V. Inclusive,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on a Motion to Dismiss filed by Defendants SBP International Plaza, LLC and SPB St. Thomas, LLC, pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons set forth herein, the motion will be granted with leave to amend.

BACKGROUND

Defendant SBP International Plaza, LLC is a limited liability corporation incorporated under the laws of the Virgin Islands. SBP St. Thomas, LLC is also a limited liability corporation incorporated under the laws of the Virgin Islands (together "SBP Defendants"). Plaintiff Gloria Ann Haughton-Tavernier ("Tavernier" or Plaintiff") is a resident and citizen of the Virgin Islands. Roe Corporations I through V ("Roe Corporations") are unknown to Plaintiff but are allegedly Virgin Islands corporations.

Tavernier alleges that on or about April 16, 2015, she was walking along the “waterfront sidewalk of International Plaza” where she tripped and fell over broken tiles.¹ She alleges that since the fall, she has experienced serious and permanent injuries and will continue to suffer pain, emotional distress, and mental anguish.² She contends that Defendants' negligence in maintaining the exterior tiles on the sidewalk outside of International Plaza caused her fall and resulting severe injuries. Plaintiff initiated this matter by filing a complaint on October 30, 2015. Her Complaint alleges that SBP Defendants and Roe Corporations are liable for negligence.

LEGAL STANDARD

SBP Defendants now move to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). SBP Defendants argue that Tavernier's claim of negligence fails to allege sufficient facts to support a negligence claim. When considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6),³ the Court must conduct its analysis under the assumption that all facts (as opposed to mere legal conclusions) pleaded by the non-movant are true.⁴ In evaluating the sufficiency of pleadings, courts usually must identify the legal elements of the claimant's cause of action; identify well-pleaded factual allegations;

¹ Compl. ¶¶ 9-10.

² Compl. ¶ 20.

³ Applicable through SUPER. CT. R. 7.

⁴ See, e.g., *Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011).

and compare the well-pleaded allegations against the legal elements and assess whether those allegations, if true, would plausibly lead to the conclusion that the claimant is entitled to relief.⁵ “[W]here there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief.”⁶ “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”⁷ When deciding whether to grant a 12(b)(6) motion, a court may consider extrinsic materials attached to the pleadings.⁸ When considering if there are facts in the Complaint sufficient to show plausible entitlement to relief, the Court disregards any allegations in the Complaint which are merely “labels and conclusions [or] a formulaic recitation of the elements.”⁹

ANALYSIS

Plaintiffs Complaint states a single cause of action for negligence. To establish a claim for negligence, Tavernier must show: 1) that Defendant owed her a duty of care; 2) that Defendants breached that duty; 3) that Tavernier suffered damages; and 4) that Defendant’s breach of duty caused Tavernier’s damages.¹⁰

⁵ *Id.* at 649-650.

⁶ *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011).

⁷ *Fleming v. Cruz*, 62 V.I. 702, 710 (V.I. 2015) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 678 (U.S. 2007)).

⁸ *See Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 566 (V.I. 2012).

⁹ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

¹⁰ *Machado v. Yacht Haven U.S.V.I., L.L.C.*, 61 V.I. 373, 380 (V.I. 2014).

SBP Defendants move to dismiss on grounds that Plaintiff failed to allege which Defendants own of the property in question. SBP Defendants argue that absent an allegation of ownership, Plaintiffs cannot demonstrate a duty of care required for a negligence claim. In addition, Defendants argue that the Complaint lumps all of the Defendants (both known and unknown) together in the allegations, and thus, no single defendant has notice of the allegations against them.

Plaintiffs argue that the Complaint satisfies the minimal pleading requirements under Fed. R. Civ. P. 8.¹¹ She argues that the Complaint provides sufficient notice to Defendants regarding duties and suggests that she will amend her Complaint to include the proper names of the Roe Corporation Defendants when she discovers them. In their Reply, SBP Defendants urge the Court to dismiss the Complaint with prejudice based on a drawing attached to their exhibit, which purports to indicate that the accident in question did not occur on SBP premises. They argue that any amendment would prove futile because neither SBP Defendant could possibly owe a duty of care.

I. DUTY OF CARE

SBP Defendants argue that Tavernier's Complaint fails to describe how any single defendant has a duty of care. More specifically, they contend that the Complaint fails to identify which Defendant owns the sidewalk where Plaintiff allegedly fell and it also "lumps the Defendants together in such an impermissibly

¹¹ Applicable through SUPER. CT. R. 7.

convoluted way such that SBP Defendants cannot discern what actions relate to them.”¹² In addition, SBP Defendants’ Reply to Plaintiff’s Opposition includes a map which purports to demonstrate that the sidewalk in question is not within the boundary of the International Plaza property. But, on a motion to dismiss for failure to state a claim, the Court will only consider the pleadings and attached exhibits.¹³ Thus, the Court will disregard SBP Defendants’ exhibit and construe all factual allegations in favor of Tavernier, the non-movant.

SBP Defendants cite to *Appalachian Enterprises, Inc. v. ePayment Solutions, Ltd.*,¹⁴ to support their argument that Tavernier’s Complaint impermissibly “lumps” defendants together such that they cannot tell which action applies to which defendant. In *Appalachian Enterprises*, the plaintiff named seventeen defendants in a complaint with two causes of action, one for breach of contract and one for fraudulent inducement. The plaintiff not only referred to all seventeen defendants collectively throughout the complaint but also failed to identify the party with which it allegedly entered a contract. In contrast, here Tavernier brings a singular cause of action against only two named defendants (and up to five currently unnamed

¹² Def. Reply to Pl.’s Opp’n to Def.’s Mot. to Dismiss, at 1.

¹³ See *Castillo v. St. Croix Basic Servs.*, 2016 V.I. LEXIS 4, *10 (V.I. Super. Ct. Jan. 10, 2016) (“The exhibits attached to Plaintiffs’ Opposition are considered “matters outside the pleadings” because the District Court lawsuit was never referred to in the pleadings and these exhibits were not attached to the pleadings”); see also *Frederico v. Home Depot*, 507 F.3d 188, 201 (3d Cir. 2007) (refusing to consider factual allegations raised for the first time in plaintiff’s briefs). Assuming arguendo that SBP Defendants attached the map to the pleadings rather than their Reply to Plaintiff’s Opposition, their argument may still fail. Recently, in *Simkins v. Gov’n’t of the Virgin Islands*, the Superior Court of the Virgin Islands held that a property owner carries a duty of care with regard to an adjacent public sidewalk if the property owner created a dangerous condition on that public sidewalk.

¹⁴ 2004 U.S. Dist. LEXIS 24657, *21, 2004 WL 2813121 (S.D.N.Y. Dec. 7, 2004).

defendants) which she believes to be interrelated corporate entities. Thus, defendants can rest assured that Tavernier alleges that each defendant acted negligently in maintaining the sidewalk on which she was injured.

In her Opposition to Defendants' Motion to Dismiss, Tavernier correctly states that the law of the Virgin Islands does not require a plaintiff to name the owner of the premises in a premises liability case. Rather, the law requires a plaintiff to identify the party possessing or controlling the premises, thus possibly owing a duty to the claimant.¹⁵

Tavernier alleges "Plaintiff believes that the Defendants designated herein as a Roe Corporation I through V are the owners, operators, lessors, lessees and all other persons who have an interest at relevant times herein, in International Plaza."¹⁶ She further asserts "Roe Corporations I through V are, and at all times mentioned herein were, the duly appointed qualified, and acting agent or agents, employee or employer or employees and/or servant or servants of the Defendants SBP International Plaza, LLC and/or SBP St. Thomas, LLC."¹⁷ When considering these excerpts from Plaintiff's Complaint in context, the Court finds Plaintiff's allegations of duty confusing at best.

¹⁵ *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 529 (V.I. 2013); see also *Adams v. North West Co., Inc.*, 2015 V.I. LEXIS 123, *12 (V.I. Super. Ct. Oct. 6, 2015) (dismissing plaintiff's complaint, in part because she failed to allege that North West was a property owner or proprietor); *Devitt v. Marriott Hotel Mgmt. Co. Virgin Islands*, 2014 U.S. Dist. LEXIS 5595, *8 (D.V.I. Jan. 16, 2014) (finding plaintiff's complaint sufficient at the 12(b)(6) stage with respect to duty because plaintiff alleged that defendant "controlled and possessed" premises).

¹⁶ Compl. ¶ 5.

¹⁷ Compl. ¶ 6.

Tavernier has not alleged that either SBP Defendant possessed or controlled the property in question. In her Opposition to Motion to Dismiss, Tavernier contends that “Defendants know that they own the property in question” and refers to interactions between Plaintiff’s counsel and Defendant to reinforce the notion that SBP Defendants are aware of the claims.¹⁸ But, in deciding a motion to dismiss for failure to state a claim, the Court may only consider the pleadings and extrinsic materials attached to the pleadings.¹⁹ In light of the foregoing discussion, the Court finds that Tavernier has failed to allege a duty on the part of SBP Defendants because a duty only arises on the part of one who possesses or controls property.

II. BREACH

In order to demonstrate a breach of a duty of care, a claimant must show that the party owing a duty had actual or constructive knowledge of the unsafe condition which lead to the claimant’s damages.²⁰ Constructive knowledge may be established “through evidence that the condition persisted over a long enough period of time that the owner should have become aware of it through the exercise of reasonable care.”²¹

In *Adams v. North West Co, Inc.*,²² the Superior Court dismissed a plaintiff’s negligence complaint because the complaint only alleged that the defendant maintained its store in an unsafe condition and stacked pallets in a negligent

¹⁸ Pl.’s Opp’n to Def.’s Mot. to Dismiss, at 6.

¹⁹ See *Castillo*, 2016 V.I. LEXIS 4, *10; *Home Depot*, 507 F.3d at 201.

²⁰ *Machado*, 61 V.I. at 392-393.

²¹ *Id.* at 393.

²² 2015 V.I. LEXIS 123 (V.I. Super. Ct. Oct. 6, 2015).

manner.²³ The Court found that these allegations constituted mere legal conclusions.²⁴ Tavernier's Complaint contends, "Defendants were responsible for properly constructing, maintaining, and inspecting the sidewalk and area immediately outside International Plaza."²⁵ She further alleges that "Prior to the time of Plaintiff's injuries, Defendants knew or, in the exercise of reasonable care, should have known that the tiled area in question was unsafe and constituted a danger and hazard to persons such as Plaintiff." ²⁶ Finally, Tavernier alleges "The area where Plaintiff fell was not marked, covered, or railed...No warning signs were posted by the Defendants warning that the sidewalk was unsafe, nor were warning cones placed in and around the area, nor was the area covered over with a board."²⁷ Unlike *Adams*, here Tavernier alleges more than the rote elements of negligence; she provides substantial factual content to bolster the allegation of breach. The Court finds that Tavernier has alleged sufficient factual matter to support a breach (though she was unsuccessful in alleging a duty).

²³ See *Id.* at *12; see also *Bynoe v. CULUSVI, Inc.*, 2016 V.I. LEXIS 32, *12 (V.I. Super. Ct. Apr. 1, 2016) (finding that the plaintiff had alleged sufficient factual matter to survive a 12(b)(6) motion when she alleged that she had observed the proprietor's employees in the immediate area of the alleged incident immediately prior to his fall).

²⁴ *Id.*

²⁵ Compl. ¶¶ 8, 11, & 14. Paragraphs eleven and fourteen of the Complaint repeat paragraph eight almost verbatim, without adding any factual allegations.

²⁶ Compl. ¶ 17.

²⁷ Compl. ¶ 12.

III. DAMAGES

Tavernier alleges that she “tripped and fell over broken and uneven tiles on the waterfront side of International Plaza.”²⁸ She then alleges that the fall resulted in “serious and permanent injuries.”²⁹ The Court finds that when these allegations are combined, Tavernier has established the factual threshold necessary for a presumption of truth under the *Twombly* standard regarding damages.

IV. CAUSATION

Assuming arguendo that Tavernier had, in fact, pled facts to establish that Defendants breached a duty of care that they owed to her (which she did not), she would need to demonstrate that the breach of this duty caused her injury. To establish “causation,” a plaintiff must demonstrate both cause in fact and proximate cause.³⁰ “In order for the negligent act to be regarded as the cause in fact of the injury, it must be shown that the injury would not have occurred but for the act.”³¹

In attempting to establish causation, Tavernier alleges “Plaintiff’s injuries were caused proximately and solely as a result of Defendants’ actions as set forth in the preceding paragraph.”³² After removing Plaintiff’s conclusory language, her complaint would read,

Plaintiff’s injuries [occurred] as a result of... [defendants’] failing to construct, inspect, and maintain the tiled area...failing to warn Plaintiff that the tiled area was unsafe...failing to provide any protection against

²⁸ Compl. ¶ 10.

²⁹ Compl. ¶ 20.

³⁰ *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011).

³¹ *Id.* at 823-824.

³² Compl. ¶ 16.

aforesaid dangerous condition, including but not limited to construction cones and/or tape, and/or boards or other flat material around and/or on top of the area...failing to construct and design the tiled area with markings to bring attention to the broken tiles.

Compl. ¶¶ 15 & 16. Reading these facts in light most favorable to Tavernier, the Court finds that she has pled facts that, had she established that Defendants owed her a duty and breached that duty, would establish causation.³³

CONCLUSION

Although Tavernier's complaint fails to state a plausible claim for negligence, "if a complaint is subject to a Rule 12(b)(6) dismissal a ... court must permit a curative amendment unless such an amendment would be inequitable or futile. Moreover ... [a] court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend."³⁴ In addition, it is the preference of this Court, in accordance with precedent from the Supreme Court of the Virgin Islands, that cases be resolved on their merits.³⁵ Thus, the Court will accordingly allow Tavernier leave to amend her complaint to cure the aforementioned defects.

³³ See *Adams*, 2015 V.I. LEXIS 123, at *13 (finding that plaintiff's complaint satisfied the 12(b)(6) factual threshold because it alleged that plaintiffs injuries were caused by defendant's stacking of pallets such that they fell off a shelf and onto plaintiff's head).

³⁴ See *Benjamin v. Bennerson*, 2012 V.I. LEXIS 7, *7 (V.I. Super. Ct. Feb. 13, 2012).

³⁵ See *Joseph*, 54 V.I. at 650 ("Both this Court and the United States Supreme Court have recognized that there is a strong preference for trial courts to decide doubtful cases on their merits rather than dismiss them for a failure to strictly follow purely procedural rules.").

An Order consistent with this Memorandum Opinion will be entered.

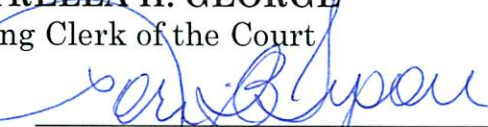
DATED: June 27, 2016



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 

LORI BOYNES TYSON
Court Clerk Supervisor 6/27/16