

DIVISION OF ST. THOMAS AND ST. JOHN

Defendants.

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) **CASE NO. ST-10-CV-542**

⁴ Aqua Beachwear is a retail store on the Yacht Haven Grande premises.

fall and become injured. On September 20, 2010, Plaintiff filed a personal injury action against Defendant Yacht Haven USVI, LLC, amended the pleadings on October 1, 2010, to add Island Capital Group, LLC, Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, and amended the pleadings a second time to add ABC Company, an unknown entity, on November 4, 2010.

STANDARD

Rule 56 of the Federal Rules of Civil Procedure, made applicable to the Virgin Islands Superior Court through Rule 7 of the Rules of the Superior Court, provides that summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In considering a motion for summary judgment, a court must “draw ... all reasonable inferences from the underlying facts in the light most favorable to the non-moving party.”⁵ An issue is “genuine” if a reasonable jury could possibly hold in the non-movant’s favor with regard to that issue.⁶

ANALYSIS

In order to state a claim for negligence, a plaintiff must allege: (1) a duty; (2) a breach of that duty; (3) causation; and (4) damages.⁷ The “mere fact that an accident occurred does not give rise to an inference that the injured person was the victim of

⁵ *Battaglia v. McKendry*, 233 F.3d 720, 722 (3d Cir. 2000).

⁶ *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

⁷ Restatement (Second) of Torts § 281.

negligence.”⁸ A possessor of land is not “imposed with the burden of rendering its premises injury-proof.”⁹

In a premises liability action, a land possessor’s duty to an entrant on his or her land depends on whether the entrant is a trespasser, licensee, or invitee. A trespasser is “a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor’s consent or otherwise.”¹⁰ Generally,¹¹ a land possessor “is not liable to trespassers for physical harm caused by his failure to exercise reasonable care (a) to put the land in a condition reasonably safe for their reception, or (b) to carry on his activities so as not to endanger them.”¹² A licensee is “a person who is privileged to enter or remain on land only by virtue of the possessor’s consent.”¹³ When a licensee is injured by a condition on the land, the land possessor is subject to liability if:

- (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
- (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
- (c) the licensees do not know or have reason to know of the condition and the risk involved.¹⁴

An invitee is “either a public invitee or a business visitor,” and a business visitor is defined as “a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.”¹⁵ Employees

⁸ *Tameru v. W-Franklin, L.P.*, 350 Fed. Appx. 737, 739 (3d Cir. 2009).

⁹ *Hodges v. St. Clair County*, 636 N.E.2d 67, 70 (Ill. App. Ct. 1994).

¹⁰ Restatement (Second) of Torts § 329.

¹¹ The exceptions to the rule involve highly dangerous activity. See Restatement (Second) of Torts §§ 334-339.

¹² Restatement (Second) of Torts § 333.

¹³ Restatement (Second) of Torts § 330.

¹⁴ Restatement (Second) of Torts § 342.

¹⁵ Restatement (Second) of Torts § 332.

are considered business visitors.¹⁶ When an invitee or business visitor is injured by a condition on the land, the land possessor is subject to liability if the possessor:

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) fails to exercise reasonable care to protect them against the danger.¹⁷

A land possessor's duty to an entrant may change if the entrant exceeds the scope of his invitation or license. For instance, a business visitor "has the status of an invitee only while he is on the part of the land to which his invitation extends—or in other words, the part of the land upon which the possessor gives him reason to believe that his presence is desired for the purpose for which he has come."¹⁸ The "purpose for which the land is held open, or the particular business purpose for which the invitation is extended, is of great importance" when determining scope of the visitor's invitation.¹⁹ Generally, an invitation "includes the use of such parts of the premises as the visitor reasonably believes are held open to him as a means of access to or egress from the place where his purpose is to be carried out."²⁰ If the land possessor has "intentionally or negligently misled [the visitor] into the reasonable belief that [the area the visitor is using] is an appropriate means of reaching the area of his invitation, the visitor is entitled to the protection of an invitee when he makes use of it."²¹ A visitor who wanders "outside of

¹⁶ *Id.*, at comment j. See also *Figueroa v. Hess Oil Virgin Islands Corp.*, 198 F.Supp.2d 632, 645 (D.V.I. 2002).

¹⁷ Restatement (Second) of Torts § 343.

¹⁸ Restatement (Second) of Torts § 332.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

the area of his invitation ... becomes a trespasser or a licensee, depending upon whether he goes there without the consent of the possessor, or with such consent.”²²

On the outset, the Court notes that Plaintiff has provided no evidence of a duty of care owed to Plaintiff by Defendants Island Capital Group, LLC,²³ Island Global Yachting, Ltd., and Island Global Yachting Services, LLC. In her opposition to Defendants’ motion, Plaintiff indicated that she was offered a stipulation to dismiss all Defendants except Defendant Yacht Haven USVI, LLC, from the litigation. Plaintiff indicated that she could not agree to dismiss Defendants Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, because of a letter from “YHG Tenants” to the “IGY Management” requesting improvements to the Yacht Haven Grande premises.²⁴ The Court notes that there is no evidence that “IGY Management” refers to Defendants Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, and even if the Court were to draw such an inference, the Court would not be justified to also infer that Defendants Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, managed the premises simply because the letter was written.²⁵ There is simply no evidence in the record suggesting that Defendants Island Global Yachting, Ltd., and

²² *Id.*

²³ Defendant Island Capital Group, LLC, a Delaware limited liability company, owns Island Global Yachting Directives, LLC, a Delaware limited liability company, which is the general partner several Cayman Islands limited partnerships that combined owned the majority of shares of Defendant Island Global Yachting, Ltd., a Cayman Islands company. Island Global Yachting, Ltd., owns Island Global Yachting Facilities, Ltd., a Cayman Islands company, which is the majority shareholder of YHG Lender, LLC, a Delaware limited liability company, which owns YH Equity, LLC, a Delaware limited liability company, which is the majority shareholder of Defendant Yacht Haven USVI, LLC. See Statement 3 of Defendant’s Statement of undisputed material facts. Plaintiff does not dispute Statement 3.

²⁴ See Exhibit 6 of Plaintiff’s response to Defendant’s statement of undisputed material facts in support of motion for summary judgment.

²⁵ There is no evidence in the record that Defendants Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, even received or responded to the letter. The letter also doesn’t list an address or any other contact information for “IGY Management.”

Island Global Yachting Services, LLC, had any role in managing the Yacht Haven Grande premises.²⁶

Construing the facts in the light most favorable to Plaintiff, there is no genuine issue of material fact concerning the liability of Defendants Island Capital Group, LLC, Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, in this case. Accordingly, Defendants Island Capital Group, LLC, Island Global Yachting, Ltd., and Island Global Yachting Services, LLC, are entitled to judgment as a matter of law.

Defendant Yacht Haven USVI, LLC (“Defendant”) is the owner and operator of the Yacht Haven Grande premises.²⁷ As an employee of one of the stores that rents from Defendant, Plaintiff enjoys the status of business visitor on the premises. Notwithstanding, Plaintiff exceeded the scope of her invitation on the premises when she chose to use a decorative median, designed to house trees, shrubbery, and a sprinkler system, as a footpath. There is no evidence that Defendant intentionally or negligently misled Plaintiff into the reasonable belief that her traverse through a decorative median was an appropriate means of using the property to access her vehicle in the parking lot. Similarly, Plaintiff had no reason to believe that Defendant desired Plaintiff’s presence in the decorative median in furtherance of her purpose for being on the property. Simply put, Plaintiff had no reason to believe Defendant invited her to use the decorative median as a

²⁶ Plaintiff asserts that “RSOF 13, 26, 27, and 34; CSOF 1, 2, 6, 7, 17, and 24” explain the Exhibit 6 letter submitted by the tenants regarding lighting on the premises, in addition to other concerns. The Court construes RSOF to mean Plaintiff’s response to Defendant’s statement of fact and CSOF to mean Plaintiff’s counter statement of fact. Although the cited portions of the RSOF and CSOF are related to issues of lighting, the majority of the statements do not even relate to Exhibit 6 letter in any manner, let alone explain the content of the letter or clarify the identity of “IGY Management.”

²⁷ See Statement 2 of Defendant’s Statement of undisputed material facts. Plaintiff does not dispute Statement 2.

walkway.²⁸ As a result, at the time and place of her injury, Defendant did not owe Plaintiff a duty of care as a business visitor or invitee.²⁹

In evaluating whether Defendant consented to Plaintiff's use of the decorative median as a walkway and owed Plaintiff a duty of care as a licensee, the Court finds some of the examples in the previously cited sections of the Restatement instructive. One example is of a railway company that has prepared a path across railway tracks. "If there is no other crossing available within a considerable distance, and there are no warning signs to the contrary, the public may reasonably assume that the path is meant for public use."³⁰ However, "if there is a street crossing close by, and the railroad pathway is closed by a gate, such an assumption might not be justified."³¹ Consideration must also be taken of the customs in the community. If there is a "custom in a particular town for owners of vacant land to permit persons to cut across it, one doing so is a licensee unless by posted notice or otherwise the particular owner objects to the practice."³²

Here, there is no evidence in the record of a custom in the Virgin Islands that property owners generally permit people to cut across decorative medians. In addition, Defendant did not create a path through the decorative median, the shortcut Plaintiff took was not the only way she could access her vehicle in the parking lot, and Plaintiff did not need to travel a considerable distance to access her vehicle if she walked around the

²⁸ The Restatement's example of a visitor mistakenly entering the wrong door when faced with two doors is not analogous to this situation. The decorative median was clearly not a designated footpath and it would be unreasonable to conclude that Plaintiff could have mistaken the decorative median as a footpath.

²⁹ A land possessor is not bound to keep areas of the premises "safe for uses to which they were not meant to be put." *Cohen v. Davies*, 25 N.E.2d 223, 224 (Mass. 1940). In *Davies*, the court found that the fact that the plaintiff had crossed a lawn several times to the defendant's knowledge, as it was the most convenient way for him to reach the street, did not amount to an invitation to use the lawn.

³⁰ Restatement (Second) of Torts § 330.

³¹ *Id.*

³² *Id.*

decorative median instead of through it. On the other hand, there were no warning signs that Plaintiff should not walk through the decorative median, and a member of Defendant's security personnel testified that he witnessed other individuals cut through the median.³³

Assuming, *arguendo*, that based on the facts presented, Defendant owed Plaintiff a duty of care as a licensee, there is no evidence presented that (1) Defendant should have realized that a sprinkler system in a decorative median involved an unreasonable risk of harm to Plaintiff; (2) that Defendant failed to exercise reasonable care to make the decorative median and the sprinkler system safe or to warn of the condition and the risk involved; and (3) that Plaintiff did not know or have reason to know of the condition and the risk involved.

The "mere fact that [Plaintiff] tripped is not sufficient to establish that the sprinkler head [presented] an unreasonable risk" to Plaintiff.³⁴ There is nothing inherently dangerous about a sprinkler system in a decorative median, and there was no evidence of a previous incident on the premises caused by a sprinkler head that would have put Defendant on notice of any dangerous condition. In addition, the record reflects that the sprinkler heads were visible during the day. Nicole Lewis, who was also employed at Aqua Beachwear at the time of the incident, testified that the sprinklers were "clear to [her during the day] ... when [she] started working" at Aqua Beachwear and were "high from the floor."³⁵ Plaintiff also testified that it was "possible" that she saw the sprinklers

³³ Austin Potter's Deposition, at page 15.

³⁴ *Packwood v. Touchstone Communities, Inc.*, 2007 WL 2891077, at *4 (Tex. Ct. App. 2007).

³⁵ Nicole Lewis' Deposition, at page 32.

prior to the day of the incident³⁶ and that it was “possible” that she previously took the same route through the median.³⁷

Notwithstanding, Plaintiff contends that, at the time she fell, there was not enough light illuminating her shortcut through the decorative median for her to notice the sprinkler head. Assuming that Plaintiff’s shortcut was poorly illuminated, Plaintiff had reason to know of the condition and risk involved when traversing the decorative median in the dark, which she knew housed trees, ornamental plants, and other vegetation³⁸ that could cause her to trip and fall. As a licensee, Plaintiff was not entitled to expect that Defendant would warn her of conditions perceptible by her senses “or the existence of which [could] be inferred from facts within [her] knowledge.”³⁹ The physical condition of the land coupled with the level of illumination at the time indicated that there might be hidden dangers present and put Plaintiff on notice to the effect that she entered the decorative median at her own risk.⁴⁰ As a court of sister jurisdiction aptly stated: “anyone who walks into a planter containing a Washington palm, greenery and/or flowers and dirt is held to know that this is a hazard to walking. The precise nature of the hazard need not be observable.”⁴¹ Moreover, Plaintiff was “not entitled to expect that special preparations [were] made for [her] safety” to facilitate her walk through a decorative median.⁴²

³⁶ Plaintiff’s Deposition, at page 43.

³⁷ *Id.*, at page 48. Plaintiff also testified that she took her “usual route” to her car and went through the decorative median on the day of the incident. *Id.*, at page 35.

³⁸ Plaintiff testified that there were “shrubs or plants, trees” in the decorative median. Plaintiff’s Deposition, at page 43.

³⁹ Restatement (Second) of Torts § 342, comment f.

⁴⁰ See *Id.*, at comment j. “A notice to the effect that licensees enter at their own risk may be enough if the physical condition of the land indicates that there may be hidden dangers.”

⁴¹ *Taylor v. Universal City Prop. Mgmt.*, 779 So.2d 621, 622 (Fla. Dist. Ct. App. 2001). See also *City of Melbourne v. Dunn*, 841 So.2d 504 (Fla. Dist. Ct. App. 2003); *Dampier v. Morgan Tire & Auto, LLC*, 82 So.3d 204, 207 (Fla. Dist. Ct. App. 2012) (“no duty to warn [plaintiff] of the danger of walking in the

Finally, Defendant did not owe Plaintiff a duty of care if Plaintiff is viewed as a trespasser upon the median.⁴³ Defendant was entitled to assume that Plaintiff would realize the consequences of walking through a decorative median just as if Plaintiff were a licensee.⁴⁴

Drawing all reasonable inferences from the underlying facts in the light most favorable to Plaintiff, there is no genuine issue of material fact that would preclude the Court from entering judgment in favor of Defendant Yacht Haven USVI, LLC as a matter of law.⁴⁵ Accordingly, Defendants' motion for summary judgment will be granted.

planting bed, because the planting bed and stump did not constitute a dangerous condition when used as a planting bed and not for walking"); *Prager v. Marks Bros.*, 483 So.2d 881 (Fla. Dist. Ct. App. 1986) ("unfinished flowerbox did not represent, in any sense, a dangerous condition for which a warning, as urged, was necessary"); *Gagnon v. City of Saratoga Springs*, 858 N.Y.S.2d 797, 800 (N.Y. App. Div. 2008) ("[t]he slight height differential between the grass and the curb, in an area which was not intended to be traversed, is not the type of dangerous or hazardous situation that defendant had a duty to illuminate"); *K.G. v. Winter Springs Cmty. Evangelical Congregational Church*, 509 So.2d 384 (Fla. Dist. Ct. App. 1987) (landscaping features not generally found to constitute a dangerous condition as a matter of law).

⁴² Restatement (Second) of Torts § 342, at comment f. See also *City of Melbourne*, 841 So.2d at 505 ("the city had no duty to make the planter safe for walking, a function for which it was not designed").

⁴³ The placement of a sprinkler system in a planter cannot be reasonably considered a "dangerous activity," a "highly dangerous activity," a "dangerous force" or a "highly dangerous condition." See Restatement (Second) of Torts §§ 334-339.

⁴⁴ Restatement (Second) of Torts § 336, at comment d(2).

⁴⁵ Plaintiff has also named ABC Company as a Defendant in the Second Amended Complaint, which is described as "an unknown company, corporation, partnership, limited partnership, limited liability company or sole proprietorship that was an owner, landlord, sublandlord, operator and/or manager of the real property where Plaintiff ... was injured." Second Amended Complaint, at page 2. At this late stage in the proceedings, Plaintiff has not identified ABC Company, nor has she presented evidence that some entity other than Yacht Haven USVI, LLC, owns, leases, or operates the premises or is otherwise responsible for managing and maintaining the property. In the absence of evidence in the record, the case will be dismissed against ABC Company.

Machado v Yacht Haven USVI, LLC, et al.

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Memorandum Opinion, November 16, 2012

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An Order consistent with this Opinion shall follow.

Dated: November 15, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori Tyson

Court Clerk Supervisor

11/15/12



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

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ELISSA MACHADO,

Plaintiff,

vs.

CASE NO. ST-10-CV-542

**YACHT HAVEN USVI, LLC d/b/a YACHT HAVEN
GRANDE, ISLAND CAPITAL GROUP, LLC,
ISLAND GLOBAL YACHTING LTD, CO., ISLAND
GLOBAL YACHTING SERVICES, LLC, and
ABC COMPANY,**

Defendants.

ORDER

The Court having issued a Memorandum Opinion on this date, it is
ORDERED that Defendants' motion for summary judgment is GRANTED; and it
is
ORDERED that this case is DISMISSED WITH PREJUDICE; and it is
ORDERED that a copy of this Order and the accompanying Memorandum
Opinion shall be directed to counsel of record.

Dated: November 15, 2012

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


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

11/15/12