

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

ADRIEN HUGGINS & DONNA HUGGINS,	)	
	)	
Plaintiffs,	)	CASE NO. ST-14-CV-115
	)	
vs.	)	ACTION FOR DAMAGES
	)	
ASHWIN R. CHUNGANI, JATIN CHUNGANI	)	JURY TRIAL DEMANDED
AND JOHN AND/OR JANE DOE I-X	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Jatin Chungani's Motion to Dismiss,¹ filed through his counsel W. Mark Wilczynski, Esq. Plaintiffs Adrien Huggins and Donna Huggins have not filed a response.

I. Background

Plaintiffs allege that in the early morning hours of March 4, 2012, Ashwin Chungani intentionally struck Adrien Huggins, an on-duty Virgin Islands Police Officer, with his vehicle while Chungani was attempting to flee police. Defendant Jatin Chungani is the registered owner of the vehicle being operated by Defendant Ashwin Chungani.

II. Motion to Dismiss

Jatin Chungani moves to dismiss the two counts of the complaint directed at him pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. One count is for negligent entrustment (Count Five) and the other alleges a loss of consortium claim (Count Four). Chungani argues that both claims are legally insufficient.

¹ Filed on April 25, 2014.

To test a claim's sufficiency, the Court uses a "three-pronged analysis." *Joseph v. Bureau of Corrections*, 54 V.I. 644, 649-50 (VI. 2011). First, the Court ascertains the elements the plaintiff must plead to state a claim. *Id.* at 649. Second, it identifies conclusory allegations, which are "not entitled to the assumption of truth." *Id.* at 649-50. Those "conclusions can take the form of either legal conclusions couched as factual allegations or naked factual assertions devoid of further factual enhancement." *Id.* at 650. Third, the Court assumes well-pleaded factual allegations as true. *Id.* at 650. If, based on the remaining facts, assumed to be true, the Court can reasonably infer that the defendant is liable, the claim is "plausible." *Id.* "Plausibility," our Supreme Court has explained, "is a 'context-based' determination . . . guided by the Court's 'judicial experience and common sense.'" *Id.* (citing *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009)). To state a plausible claim, a plaintiff must do "more than simply allege facts consistent with a defendant's liability." *Id.*

Plaintiffs allege that Jatin Chungani negligently entrusted his vehicle to Ashwin R. Chungani. A vehicle owner is not liable for negligent entrustment unless the plaintiff proves "that the owner's negligence caused the accident and was a direct cause of the injury or damage." *Hanley v. Jones*, 21 V.I. 190, 192 (Terr. Ct. 1984) (citing *Smith v. Hertz Rent-A-Car*, 262 F. Supp. 431, 434 (D.V.I. 1966)). Additionally, a vehicle owner may be liable for negligent entrustment if he negligently entrusts "a vehicle to an incompetent or unfit person." *Hanley*, 21 V.I. at 193 (citing Restatement (Second) of Torts § 390 (1977)).

In *Baron v. Rosario*, 982 F. Supp. 1037, 1039 (D.V.I. App. Div. 1997), the Appellate Division described the elements of negligent entrustment as follows:

- (1) entrustment of a chattel to a party;
- (2) likelihood that such party because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the entruster should expect to be endangered;
- (3) knowledge or reason to know by the entruster of such a likelihood;
- (4) proximate cause of the harm to plaintiff by the conduct of the trustee.

(citing Restatement (Second) Of Torts § 390 (1977)).² This is essentially the same definition the court used in *Hanley v. Jones* broken down into elements. Both definitions express the principle that a person who negligently entrusts his vehicle to another may be held liable for harm caused to a third person resulting from the vehicle owner's negligent act.

² The Superior Court may not mechanistically and uncritically rely on the American Law Institute's Restatements of Law as a source of Virgin Islands common law. *Gov't of the Virgin Islands v. Connor*, No. 2013-0095, 2014 WL 702639, at *3 (V.I. Feb. 24, 2014); *Banks v. Internat'l Rental and Leasing Corp.*, 55 V.I. 967, 979 (V.I. 2011). When considering an issue of common law not foreclosed by binding precedent, the Superior Court must perform a three-part "*Banks* analysis." *Id.* As *Connor* recognizes, however, the Superior Court is bound by opinions of the District Court's Appellate Division addressing issues of local law. *Id.* at *4 n.1; see also *Faulknor v. Virgin Islands*, No. ST-13-CV-137, 2014 WL 787217, at *11 (V.I. Super. Ct. Feb. 19, 2014) (citing *Baron v. Rosario* in analyzing negligent entrustment claim and opining that *Banks* analysis might not be necessary because the Appellate Division's decisions are binding on the Superior Court). *Connor* invites the Superior Court to depart, "in an appropriate case," from the holding of any binding opinions which mechanistically rely on the Restatements as a source of Virgin Islands law. This Court sees no reason for such a departure here. Numerous courts have cited Section 390 of the Restatement (Second) of Torts, including Virgin Islands courts. See *Faulknor*, 2014 WL 787217, at *11 (conducting a *Banks* analysis and concluding that § 390 represents the common law in the Virgin Islands); *Warrington v. Camacho*, No. 2006-235, 2007 WL 3124674, at *1 (D.V.I. Oct. 22, 2007); *Estephane v. Hobson*, 18 V.I. 396, (D.V.I. 1981). Given the widespread citation of § 390 in this and other jurisdictions, and the Virgin Islands case law relying upon § 390, the Court perceives no reason to depart from *Baron v. Rosario*'s application of the Restatement.

Reviewing the complaint with the above principle in mind, the allegations fail to sufficiently state a claim for negligent entrustment. The complaint alleges that Jatin Chungani was the registered owner of the vehicle involved, a 2007 Toyota Carolla bearing Virgin Islands license plate number TDL 412, but there are no allegations as to how Defendant Ashwin Chungani obtained the vehicle. There can be no negligent entrustment claim unless Plaintiffs can show that Jatin Chungani entrusted his vehicle to Ashwin Chungani. Moreover, and more importantly, the allegations restate the elements of a negligent entrustment claim without supporting facts. Such allegations are not entitled to the assumption of truth. *See, e.g., Joseph v. Bureau of Corrections*, 54 V.I. at 650 (legal conclusions and “naked factual assertions devoid of further factual enhancement” are not entitled to the assumption of truth). Accordingly, the negligent entrustment claim will be dismissed.

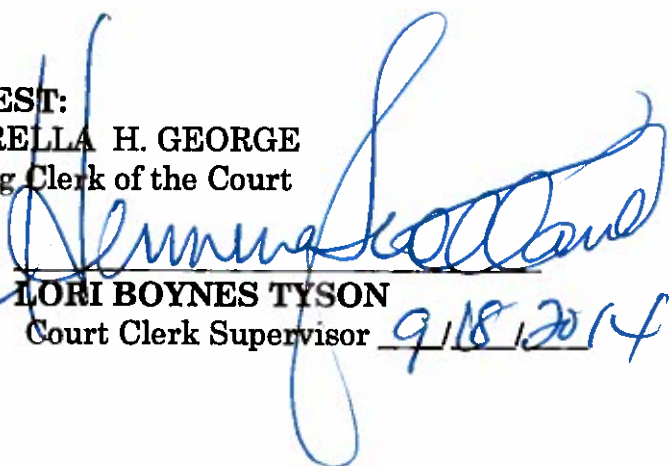
Finally, the loss of consortium claim against Jatin Chugani must also be dismissed. Loss of consortium “is a derivative claim, dependent upon the existence of tortious conduct on the part of the defendant.” *Torchin v. Blue Shore Grill, LLC*, No. 2011-115, 2012 WL 3764059, at *7 (D.V.I. Aug. 30, 2012). Plaintiffs assert two causes of action against Jatin Chungani: a negligent entrustment claim and a loss of consortium claim. Because the negligent entrustment claim will be dismissed, there is no support for loss of consortium claim against Jatin Chungani. *Torchin*, 2012 WL 3764059 at *7 (“where there is no tort liability, a plaintiff’s loss of consortium claim must fail”).

The Court will enter an Order consistent with this Opinion.

DATED: September 18, 2014


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 9/18/2014