

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

SOUND SOLUTIONS, LLC, AND EUGENE IRISH,	)	
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	CASE NO. ST-12-CV-88
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,¹	)	
POLICE DEPARTMENT AND THE VIRGIN	)	
ISLANDS WATER AND POWER AUTHORITY,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

For the following reasons, the Court vacates its May 28, 2015, Order denying Defendant Virgin Islands Water and Power Authority's ("WAPA") Second Motion for Summary Judgment, grants Defendant's Second Motion for Summary Judgment, and dismisses this case with prejudice.

FACTUAL AND PROCEDURAL HISTORY

The facts and procedural history of this case has been described in previous memorandum opinions associated with this case. For purposes of this Opinion, the Court notes that on February 18, 2015, WAPA filed a Second Motion for Summary Judgment asserting, among other things, that Plaintiffs' case was frivolous since Franklin Benjamin had entered a voluntary guilty plea on September 18, 2014.² The Court denied WAPA's

¹ On June 13, 2013, the Court dismissed Plaintiffs' action against the VIPD because Plaintiffs failed to comply with the provisions of the Virgin Islands Tort Claims Act, thereby depriving this Court of jurisdiction over the VIPD.

² Franklin Benjamin pled guilty to one count of possession of stolen property in violation of 14 V.I.C. § 2101(a) in connection with the generators that form the basis for some of Plaintiffs' claims.

motion, but noted that WAPA's brief raised the issue whether Plaintiffs had standing to pursue this case. As a result, the Court ordered the parties to supplement the record and brief the issue of Plaintiffs' standing.

STANDARD

In order to establish standing,³ a plaintiff "must demonstrate (i) an actual or threatened injury that was (ii) caused by the defendant's actions and is (iii) capable of judicial redress."⁴ When evaluating these factors, a court must "accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party."⁵

Because Plaintiffs have submitted evidence in their brief on the issue of their standing that is outside of pleadings,⁶ the summary judgment standard is the appropriate standard of the review, and Plaintiffs may not rely solely on the content of their pleadings.⁷

³ The Virgin Islands Supreme Court has noted that "the doctrine of standing, in the federal courts, has two sources, a 'prudential' or claims processing aspect reflecting the need of all courts to control the presentation of claims in the litigation to assure full and fair exploration of the issues raised, and a constitutional component based on the Article III case and controversy requirement, which restricts the scope of federal court jurisdiction." *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 563-565, 2012 V.I. Supreme LEXIS 35, *8-11 (VI. 2012) (citing *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11-12 (2004)). However, in the Virgin Islands, standing is not jurisdictional and only "functions in the courts of the Virgin Islands as a claims processing rule that is subject to waiver should the party asserting the issue fail to raise it in a timely manner." *Benjamin*, 56 V.I. at 563-565 (citing *Vazquez v. Vazquez*, 54 V.I. 485, 489-90 (V.I. 2010)). The Court construed arguments in Defendant's Second Motion for Summary Judgment to raise the issue of standing, which was done in a timely manner.

⁴ *Arlington Funding Services, Inc. v. Geigel*, 51 V.I. 118, 125, 2009 V.I. Supreme LEXIS 9, *6-7, 2009 WL 357944 (VI. 2009) (overruled on other grounds) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982)).

⁵ *Warth v. Seldin*, 422 U.S. 490, 501(1975).

⁶ See Irish Affidavit, dated June 15, 2015, that is attached to Plaintiffs' brief.

⁷ In addition, the summary judgment standard is the appropriate standard of review because the Court ordered the parties to supplement the record on the issue of standing in order to fully address the arguments presented in Defendant's Second Motion for Summary Judgment.

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.”⁸ An issue is “genuine” if a reasonable jury could possibly hold in the non-movant’s favor with regard to that issue.⁹

ANALYSIS

In the Complaint, Plaintiffs asserted that “Plaintiff Irish parked two flatbed trailers containing sound equipment in the open lot at the Giant Gas Station located at Mandela Circle. The sound equipment belonged to Plaintiffs and are [sic] used in Plaintiffs’ business.”¹⁰ Plaintiffs also alleged that “two generators were removed from the flatbed [trailers] by [the] Virgin Islands police” and that despite Plaintiffs’ demand, “defendants have failed and refused to return Plaintiffs’ equipment.”¹¹

Despite asserting an ownership interest in the generators in the Complaint, Plaintiffs later stated that they are not owners of any generators.¹² Plaintiff Irish indicated in a recent affidavit that Franklin Benjamin owned a “generator-rental business” and

⁸ *Battaglia v. McKendry*, 233 F.3d 720, 722 (3d Cir. 2000).

⁹ *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

¹⁰ Complaint, at page 2.

¹¹ *Id.*, at page 3.

¹² Plaintiff’s brief on the issue of standing dated June 15, 2015, at page 1.

“made available the generators at issue in this case.”¹³ Irish also stated that “when Benjamin does not have generators available that are fit for use by Sound Solutions, [Irish] rent[s] generators at [his] own expense and loan[s] them to Sound Solutions for use in its business operations.”¹⁴ Plaintiffs also argue that WAPA and the VIPD “intermeddled with two flatbed trailers containing personal property.”¹⁵

A “trespass to a chattel may be committed by intentionally (a) dispossessing another of the chattel, or (b) using or intermeddling with a chattel in the possession of another.”¹⁶ However, “if the actor is privileged under any rule stated in §§ 259-266A to intermeddle with the chattel irrespective of the possessor’s consent, he is not subject to liability ... for any harm caused to the chattel by the proper exercise of his privilege.”¹⁷ Restatement (Second) of Torts § 265¹⁸ establishes that “[o]ne is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if he is acting in discharge of a duty or authority created by law to preserve the public safety, health, peace, or other public interest, and his act is reasonably necessary to the performance of his duty or exercise of his authority.” Comment D to § 265 indicates that this rule is “applicable to an intermeddling with a chattel in the possession of another by a public officer or a

¹³ Irish’s Affidavit, dated June 15, 2015, at page 1.

¹⁴ *Id.*

¹⁵ Opposition to Defendant’s Second Motion for Summary Judgment, at page 1.

¹⁶ Restatement (Second) of Torts § 217. The Court previously conducted a *Banks* analysis of Restatement (Second) of Torts §§ 217 and 218 in an Opinion dated September 19, 2014.

¹⁷ Restatement (Second) of Torts § 218.

¹⁸ Applying the analysis required by *Banks v. Int’l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011), the Court finds that Restatement (Second) of Torts § 265 has not been adopted by courts in this jurisdiction. However, a review of the case citations listed in the Restatement (Second) of Torts § 265 suggests that a majority of jurisdictions have adopted a rule similar to the Restatement (Second) of Torts § 265. Finally, considering the apparent widespread application of this rule in a majority of jurisdictions and the absence of an identifiable minority rule, the Court finds that the Restatement (Second) of Torts § 265 represents the soundest rule for the Virgin Islands and is in accord with local public policy.

private citizen making a lawful arrest, whether with or without warrant.” Similarly, Comment E to § 265 establishes that the rule is “applicable to one making a privileged recapture ... or to one acting in reasonable effort to prevent the commission of a crime.”

In its Statement of Uncontroverted Facts (“SUF”),¹⁹ Defendant averred that “VIPD Detective Monique Hodge and VIPD officer Corporal Neil Bailey positively identified the [g]enerators [located on Plaintiffs’ flatbed trailers] as stolen property and immediately seized both [generators] as evidence of a crime.”²⁰ Defendant also stated that two employees of WAPA “were dispatched in a bucket truck to the [location of the flatbed trailers] where they met Detective Hodge and Corporal Bailey who gave [them] instructions to remove the [g]enerators from the flatbed trailers and place [the] same upon the two trucks. [The two WAPA employees] did as instructed by the VIPD.”²¹ Given that Plaintiffs did not submit a counter statement of undisputed facts or provide evidence disputing Defendant’s asserted facts, Plaintiffs have conceded that Defendant’s assertions are undisputed.

Accordingly, the undisputed evidence establishes that (1) the VIPD had probable cause²² to seize the generators because the VIPD identified them as stolen property²³ and

¹⁹ The SUF were submitted in support of Defendant’s Second Motion for Summary Judgment.

²⁰ Defendant’s SUF, at Paragraph 6.

²¹ *Id.*, at Paragraphs 8 and 9.

²² See *People of the Virgin Islands v. Matthew*, 2011 V.I. LEXIS 55, *20, 55 V.I. 380, 393 (V.I. Super. Ct. 2011) (“Probable cause exists when at the moment an arrest is made officers have “facts and circumstances within their knowledge and of which they [have] reasonably trustworthy information” that would sufficiently “warrant a prudent man in believing that the [suspect] had committed or was committing an offense” (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964))).

²³ The affidavit of Detective Hodge submitted by Plaintiffs in support of their Opposition to Defendant’s Second Motion for Summary Judgment states that Detective Hodge “was assigned to investigate a Grand Larceny that had occurred on ... March 24, 2011, at the Domino Oil Gas Station.” (Hodge’s May 17, 2011, Affidavit, at page 1). Hodge interviewed Ms. Leonice Smith, the office assistant manager at Domino Oil, who stated that the generator went missing on March 24, 2011. (*Id.*). Hodge stated that on “May 5, 2011, a generator fitting the description that was reported stolen

(2) WAPA was justified when it removed the generators from the flatbed trailers because its employees were acting at the direction, and as agents, of the VIPD.²⁴ In addition, because the undisputed evidence establishes that both WAPA and the VIPD were privileged to intermeddle with, and recapture, the generators, Plaintiffs have failed to demonstrate that there is at least a genuine issue of material fact concerning WAPA's liability for the tort of trespass to chattel. As a result, Defendant is entitled to summary judgment as a matter of law concerning Plaintiffs' claim of trespass to chattel concerning the generators.

Similarly, Plaintiffs lack standing to pursue this action. Plaintiffs did not suffer actual injury caused by WAPA's actions that is capable of judicial redress. WAPA is insulated from liability because it is undisputed that WAPA was justified in removing the generators from the flatbed trailers to prevent the continued commission of a crime, grand larceny in this case. While Plaintiffs may have incurred extra costs in their business because the generators were unavailable to them following the VIPD's confiscation, the VIPD had probable cause to seize the generators, and the generators were later proven to be stolen. As a result, WAPA did not cause Plaintiffs to incur an actual injury. If anything,

by Ms. Smith, was observed on a flatbed trailer ... in an open lot in the area of Wendy's Restaurant. The model number of the generator, P35E1S, was compared to the document produced by Ms. Smith and it was a match." (*Id.*). Plaintiffs also submitted another affidavit by Detective Hodge indicating that she was "assigned to investigate a Grand Larceny that occurred on ... June 23, 2010, at the Internal Revenue Bureau (IRB)." (Hodge's second Affidavit, at page 1. Plaintiffs only submitted the first page of the affidavit so the date this affidavit was signed is unknown). Ms. Coreen Mathew of the IRB indicated that the "generator that FEMA donated to them was missing." (*Id.*). Detective Hodge traveled to the open lot near Wendy's Restaurant with Joseph Hodge, an employee of VITEMA, who indicated that one of the generators on the flatbed trailers had "plexi glass on the front of the generator [which was] identical to several of the other generators VITEMA had received from FEMA." (*Id.*)

²⁴ In support of their Opposition to Defendant's Second Motion for Summary Judgment, Plaintiffs submitted the affidavit of Corporal Neil Bailey, who stated that a "WAPA truck assisted the VIPD in removing the generators from the flatbeds." (Bailey Affidavit, at page 1).

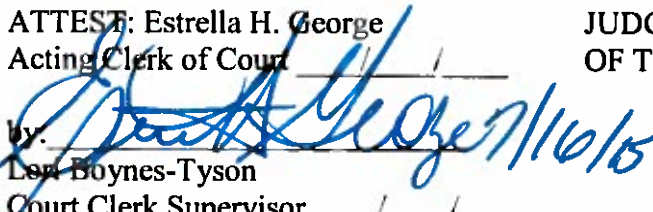
Plaintiffs were receiving a windfall prior to the seizure because Plaintiffs were benefiting from using stolen generators provided by Franklin Benjamin.

In addition, it has become evident that Plaintiffs' claim of trespass to chattel concerning the generators was entirely frivolous from the beginning of this suit. A frivolous claim is one that "is not only against the overwhelming weight of legal authority but also entirely without any basis in law or fact or without any logic supporting a change of law."²⁵ At no point did Plaintiffs plead allegations or present arguments or evidence indicating that, when Defendants VIPD and WAPA intermeddled with the generators, they were not discharging "a duty or authority created by law to preserve the public safety, health, peace, or other public interest."²⁶ Instead, Plaintiffs are seeking damages from WAPA and the VIPD solely because Plaintiffs have been incurring extra costs because they are no longer able to use stolen property to operate their business. Plaintiffs' position is patently absurd, frivolous, and is potentially subject to sanctions.

An Order consistent with this Opinion shall follow.

Dated: July 14, 2015

ATTEST: Estrella H. George
Acting Clerk of Court

by:  7/16/15
Len Boynes-Tyson
Court Clerk Supervisor


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

²⁵ *Castillo v. People*, S.Ct. Crim. No. 2008-0072, 2010 V.I. Supreme LEXIS 39, at *6, [WL], at *2 (V.I. Jan. 27, 2010).

²⁶ Restatement (Second) of Torts § 265.