
MEMORANDUM OPINION

¹ Paul M. Platte, Esq., and David A. Bornn, Esq., are counsel for the Plaintiff. Michael Fitzsimmons, Esq., is counsel for Defendant Abaco Machines USA, Inc. Carl A. Beckstedt III, Esq., is counsel for Defendant Mystic Granite and Marble, Inc.

FACTS

On April 17, 2008, Jacques-Pierre Bertrand ("Jacques-Pierre") was crushed by a marble slab that he was attempting to unload from a shipping container. At the time of the accident, he was working for his employer, Island Tile and Marble, LLC. Jacques Pierre died from his injuries on April 29, 2008. Beryl Bertrand ("the Plaintiff"), as Administratrix of Jacques Pierre's estate, brought this wrongful death and survival action. The Plaintiff alleges that the marble slab crushed Jacques-Pierre because the design of the lifting clamp manufactured by Abaco was flawed, and that the clamp failed. The Plaintiff also alleges that Mystic negligently loaded the marble slabs into the shipping trailer, and this loading caused the slabs to fall and crush Jacques-Pierre.

Mystic participated in loading the marble slabs into the shipping trailer by using a crane to move the slabs as directed by Michael Cordiner. Island Tile bundled the slabs, positioned them, and secured them. The slabs, secured in their shipping container, then traveled from Florida to St. Thomas. The evidence does not show that the operation of the crane played any role in the accident. There is no evidence that the slabs shifted position or otherwise became dislodged in any way. Finally, once in St. Thomas, the strapping for the slabs was removed and the slabs remained unsecured while Jacques-Pierre, his brother, and Michael Cordiner worked on unloading the slabs.

Immediately before the accident, Jacques-Pierre Bertrand and his brother, Jean Bertrand, had been working for three hours unloading slabs from the shipping trailer by separating the slabs so that the clamp could be connected and a crane could lift the slab out of the trailer. Two slabs remained when Jean Bertrand left the trailer to get a drink of water, and Jacques-Pierre remained in the trailer alone. For reasons unknown, Jacques-Pierre attempted to separate the next slab on his own. In applying the force to separate the slab, Jacques-Pierre lost control of the slab, which started to fall on him. Jacques-Pierre attempted to stop the slabs from falling, but could not.

The clamp is an Abaco Lifter 50 Professional Series ALG-50. It is undisputed that the clamp was attached to the forklift being operated by Defendant Michael Cordiner on the day that Jacques-Pierre was injured. The clamp is specifically made to lift marble slabs. In deposition, Island Tile testified that the average marble slab is 10 feet wide, five feet high, and weighs roughly 800 pounds. The clamps have a 13-inch string to make it easier for a user to engage the clamp. By Abaco's admission, this string is prone to breaking or disconnecting from the clamp. Should that occur, the clamp can still be activated by hand. Abaco's Operation Manual states that the user must position the clamp in the center of the slab. To secure the clamp properly, the user must stand in the slab's "fall shadow"—the area surrounding the slab where the slab would land if it fell over. The Operation Manual also states that a slab should always remain in an inclined position so that, if it were to fall, it would fall away from the clamp user. The Manual also states that one should stand clear of a slab whenever the slab is moved.

STANDARD

Summary judgment will be granted if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.”² The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.³ A fact is material only if its existence or non-existence will affect the outcome of a lawsuit under applicable law, and an issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party.⁴ The role of the court is not to weigh the evidence for its truth or credibility, but merely to ascertain whether a triable issue of fact remains in dispute.⁵ The non-moving party receives “the benefit of all reasonable doubts and inferences drawn from the underlying facts.”⁶

“When reviewing the record, [the] Court must view the inferences to be drawn from the underlying facts in the light most favorable to the non-moving party, and [the Court] must take the non-moving party’s conflicting allegations as true if ‘supported by proper proofs.’”⁷ “[T]o survive summary judgment, the nonmoving party’s evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.”⁸ The non-moving party may not rest upon mere allegations but must present actual evidence showing a genuine issue for trial.⁹ Such evidence may be direct or circumstantial, but “the mere possibility that something occurred in a particular way is not enough, as a matter of law, for a jury to find it probably happened that way.”¹⁰ Importantly, the Court may not weigh the evidence and determine the truth, but instead decide only whether there is a genuine issue for trial such that a reasonable jury could return a verdict for the non-moving party.¹¹

DISCUSSION

In this case, there are no genuine issues of material fact, and therefore summary judgment is appropriate. After considering the law and the evidence on the record, the Court finds that Abaco is entitled to judgment in its favor on all Counts of the First Amended Complaint, and the Court finds that Mystic is also entitled to judgment in its favor on the First Amended Complaint.

² Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); see also *Skopbank v. Allen-Williams Corp.*, 39 V.I. 220, 227 (D.V.I. 1998).

³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

⁴ *Id.*

⁵ *Suid v. Phoenix Fire & Marine Ins. Co., Ltd.*, 26 V.I. 223, 225 (D.V.I. 1991).

⁶ *Aristide v. United Dominion Constructors, Inc.*, 30 V.I. 224, 226 (D.V.I. 1994) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

⁷ *Joseph v. Hess Oil V.I. Corp.*, 54 V.I. 657, 664 (2011) (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (2008)).

⁸ *Id.* (internal quotation marks omitted).

⁹ *Anderson*, 477 U.S. at 248.

¹⁰ *Saldana v. Kmart Corp.*, 260 F.3d 228, 232-34 (3d Cir. 2001).

¹¹ See *Anderson*, 477 U.S. at 255.

A. Mystic is entitled to summary judgment on Count I because there is insufficient evidence for a finder of fact to conclude that Mystic's actions caused Jacques-Pierre's injuries, and because Jacques-Pierre's own actions were a superseding cause of his injuries.

The Plaintiff brings a single claim, negligence, against Mystic. In the Virgin Islands, the common law, as expressed in the Restatements, is the binding law of the Territory, where not inconsistent with local law.¹² To succeed on a cause of action for negligence, the Plaintiff must prove that there was a duty, that duty was breached, the breach was the cause of the injury, and there were damages due to the injury.¹³ The mere fact that an accident occurred, without additional evidence, is not enough to prove negligence.¹⁴

The Complaint alleges that Mystic engaged in multiple acts of negligence, including improperly loading the marble slabs, failing to secure the slabs, and negligently supervising its employees, among others. The Plaintiff alleges that there is an issue of material fact as to the amount of Mystic's involvement with securing the slabs for shipment. Although the Plaintiff claims that Mystic's disputed involvement is an issue of material fact, the issue is not genuine because summary judgment would be appropriate even assuming Mystic did have some greater involvement.

i. The undisputed evidence fails to give rise to a reasonable inference supporting the contention that Mystic's actions were the proximate cause of Jacques-Pierre's injuries.

Mystic's alleged negligence in loading the slabs is a proximate, or legal, "cause of harm to another if . . . [its] conduct is a substantial factor in bringing about the harm."¹⁵ The phrase "substantial" in the Restatement demonstrates that there is no litmus test for causation; rather, proximate causation "hinges on principles of responsibility, not physics."¹⁶

In this case, the Court finds that no reasonable jury could return a verdict in favor of the Plaintiff and against Mystic. The undisputed facts show that Mystic's only involvement with the events leading to Jacques-Pierre's accident was operating the crane that placed the slabs in the shipping container in Florida. Mystic operated the crane at the direction of Michael Cordiner. The Plaintiff argues that there are disputed issues of material fact, including the extent of Mystic's role in preparing the slabs for shipment, who loaded, framed and secured the slabs, whether the slabs were loaded at an angle, and what caused the slabs to fall over.

However, any questions about negligent framing of the slabs are irrelevant because the accident occurred after all the framing had been removed. Similarly, any question of negligently

¹² V.I. Code Ann. tit. 1, § 4 (1995).

¹³ See Restatement (Second) of Torts § 281 (1965).

¹⁴ *Dorni v. Mammi*, 350 Fed. App'x 649, 651 (3d Cir. 2009).

¹⁵ Restatement (Second) of Torts § 431(a).

¹⁶ *Van Buskirk*, 760 F.2d at 492; Restatement (Second) of Torts § 431, cmt. a.

loading the slabs is also moot because there is no evidence that the slabs shifted or moved while being shipped, and once the framing was removed the slabs remained in the shipping container for three hours as they were unloaded. The slabs only became unbalanced when Jacques-Pierre took it upon himself to separate a slab on his own.

The Plaintiff's theory of liability is simply too attenuated and lacking support from the record. Summary judgment is a drastic remedy, but the Court cannot determine any causation based on the proper proofs on the record. With the element of causation lacking, the Plaintiff cannot succeed on its claim and summary judgment in favor of Mystic is appropriate.

ii. Unloading the slabs was a superseding cause of Jacques-Pierre's accident, and therefore even if Mystic was negligent it is not liable for Jacques-Pierre's injuries.

Mystic argues that Jacques-Pierre's actions in unloading the slabs were a superseding cause of his injuries. The Restatement defines a superseding cause as "an act of a third person or other force by which its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about."¹⁷ However, an "intervening cause which is foreseeable or a normal incident of the risk created by a tortfeasor's action does not relieve the tortfeasor of liability."¹⁸

The Restatement further provides factors that a Court may consider when determining whether something constitutes a superseding cause. These include (1) whether the cause's harm is different in kind than the harm that would have resulted from the original negligence, (2) the fact that the cause's operation or consequences appear to be extraordinary rather than normal in view of the existing circumstances, (3) the fact that the intervening force is operating independently of any situation created by the actor's negligence, (4) the fact that the operation of the intervening force is due to a third person's act or to his failure to act, (5) whether the intervening force is due to an act of a third person which is wrongful toward the other, and (6) the degree of culpability for the wrongful act of a third person that set the intervening force in motion.¹⁹

Mystic argues, and the Court agrees, that Jacques-Pierre's actions were a superseding cause in this situation. Mystic argues that, as it only operated the crane, the type of harm that can be expected from crane operation in Florida is not a single slab falling weeks later, in St. Thomas, after all the packaging, strapping, and bracing had been removed. Further, even if the Court assumes Mystic was involved with the packaging, bracing, and framing of the slabs, the accident only occurred after the framing had been removed and the slabs were in the process of being unloaded for several hours. There is no evidence that the slabs shifted or were damaged during shipping, which is the type of harm that one might expect from negligent loading and securing. The first factor favors Mystic.

¹⁷ Restatement (Second) of Torts § 440.

¹⁸ *Thabault v. Chait*, 541 F.3d 512, 525 (3d Cir. 2008).

¹⁹ See Restatement (Second) of Torts § 442.

The second factor also favors Mystic. The Plaintiff argues that a slab falling on someone is a normal and foreseeable consequence in view of the alleged negligent loading and securing of the slabs. When considering that the slabs were secured and braced in Florida without incident, they were shipped without incident, the bracing was removed in St. Thomas without incident, and no slab had ever fallen before, the Court finds that the slab falling after Jacques-Pierre attempted to separate it by himself was not a normal incident of the risk created by hypothetical negligence on the part of Mystic.

The third and fourth factors also weigh in favor of a finding of a superseding cause, as Jacques-Pierre's action in attempting to separate the slab by himself operated independently of any potential negligence that occurred when Mystic operated the crane to load the slabs in Florida. Furthermore, Jacques-Pierre's act was the intervening force that led to the accident, as contemplated by the Restatement.

The fifth factor weighs against finding a superseding cause, as Jacques-Pierre's actions as a superseding force were not wrongful in any manner. The final factor does not weigh for or against a finding that Jacques-Pierre's actions were a superseding cause because the act itself was not wrongful. On balance, a majority of the factors weigh in favor of a finding that Jacques-Pierre's attempt to separate the slabs by himself was a superseding force that caused the accident, which forestalls any liability for any possible negligence on the part of Mystic.

The Court finds that, based on the undisputed facts on the record, Mystic was not negligent as the Plaintiff has failed to prove the causation element. In addition, even if Mystic were negligent, Jacques-Pierre's actions in separating the slab without assistance constitute a superseding cause. The Court will, therefore, enter summary judgment in favor of Mystic.

B. Abaco is entitled to summary judgment on Counts I and II because there is insufficient evidence for a finder of fact to conclude that the clamp caused Jacques-Pierre's injuries.

i. Count I: Negligence

In Count 1, the Plaintiff brings a claim for negligence against Abaco. To succeed on a cause of action for negligence, the Plaintiff must prove that there was a duty, that duty was breached, the breach was the cause of the injury, and there were damages due to the injury.²⁰

Viewing the evidence in the light most reasonable to the Plaintiff, the Plaintiff is unable to prove the causation element of negligence. The Plaintiff claims that the clamp failed and caused the injuries resulting in Jacques-Pierre's death. The Plaintiff also claims that the negligent design and manufacture of the clamp caused Jacques-Pierre's death. The Plaintiff further argues that the string (or, more accurately, the string's tendency to disconnect), which is designed to make it easier for the user to engage the clamp at a distance, was defectively and negligently designed and caused the accident. Finally, the Plaintiff argues that the clamp was

²⁰ See *id.* § 281.

defective due to inadequate warnings as to the danger of standing in the fall shadow of a marble slab.

The undisputed evidence shows that the clamp was in continuous use both before and after the accident. Michael Cordiner testified that there were no problems with the clamp before or after the accident, and that the clamp always functioned properly. Island Tile testified that it had no problems with the clamp at any time. There is no evidence that the clamp failed in any manner.

Even if the clamp were in some way faulty, there is no evidence that the clamp was in use at the time of the accident. The undisputed evidence is that the clamp was not in use at the time of the accident. There is conflicting evidence as to the location of the clamp at the time of the accident, with testimony from Martin De la Rosa stating that the forklift with the clamp attached was 15-20 feet away and Island Tile testifying the clamp was attached to the forklift one foot above the slabs. However, even assuming the clamp was one foot above the slab, it is undisputed that the clamp was not engaged and not in contact with the slab at the time of the accident.

The Plaintiff speculates that Jacques-Pierre Bertrand was attempting to engage the stringless clamp when the accident occurred. However, there is simply no evidence supporting this assertion. There is also no evidence that Jacques-Pierre Bertrand would not have attempted to separate the marble slab if the clamp had the string attached. Finally, there is no evidence that Jacques-Pierre would have been outside of the fall shadow had the string been attached. Any claim of negligent design, then, cannot succeed as the Plaintiff has provided no evidence that an alternate design would have prevented the injury.

ii. Count II: Strict Liability

Until recently, strict products liability in the Virgin Islands was controlled entirely by the Second Restatement of Torts.²¹ However, in a recent Virgin Islands Supreme Court decision, the Supreme Court held that Virgin Islands courts should apply sections 1 and 20 of the Third Restatement to allow a strict liability claim against a lessor.²² It is unclear whether courts are meant to apply section 1 in the limited context of allowing claims against lessors, or whether the Supreme Court intended the entirety of the section to replace anything contrary contained in the Second Restatement. Fortunately, both Restatements require an element of causation for strict products liability, and as the Court will explain below, the Plaintiff cannot prove this element. Accordingly, summary judgment in favor of Abaco is appropriate regardless of the applicable Restatement.

Under the Second Restatement, a plaintiff must establish that (1) there was an unreasonably dangerous design defect present at the time the product left the possession and

²¹ See *Banks v. Int'l Rental & Leasing Corp.*, 680 F.3d 296 (3d Cir. 2012).

²² See *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2012) (ruling that Virgin Islands courts should apply sections 1 and 20 of the Third Restatement and allow lessors to be held strictly liable for injuries resulting from a defective product).

control of the manufacturer and (2) that the defect caused the injuries.²³ Under the Third Restatement, an individual or entity “engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect.”²⁴ A product may be defective “because of inadequate instructions or warnings . . . render[ing] the product not reasonably safe.”²⁵ The inquiry to be made is whether there were “foreseeable risks of harm posed by the product [that] could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution.”²⁶

For the purpose of summary judgment, the Court must determine if a genuine issue of fact exists regarding whether (1) Abaco’s clamp was manufactured in a defective condition (2) such that it was unreasonably dangerous to the user and whether it (3) was the actual and proximate cause of injury (4) without having been substantially changed from the condition in which it was sold.²⁷ If there is no genuine issue of material fact on one of these elements, and that element favors Abaco, then judgment as a matter of law is appropriate for Abaco because the Plaintiff will be unable to succeed on its claim for relief. Under both the Third Restatement and the Second Restatement, the Plaintiff’s claim fails because she cannot prove the third element, that the clamp was the actual and proximate cause of Jacques-Pierre’s injuries.

Abaco argues that the clamp was not the cause of the accident, as required by the Restatement, because deposition testimony shows that the clamp was not engaged or in use at the time of the accident. Just as the Court has explained above, when viewing the facts in the light most reasonable to the Plaintiff the Court must accept that the clamp was merely in physical proximity to the accident but had no part in the accident itself. As it is undisputed that the clamp was not in use, any physical failure of the clamp cannot be the basis for the causation prong of negligence.

Alternatively, the Plaintiff asserts that the negligent design of the clamp was the proximate cause of the accident. “Strict liability premised upon a failure to warn requires the plaintiff to show that proper warnings would have prompted safe behavior.”²⁸ The Plaintiff argues that the design of the clamp requires a user to stand in the fall shadow of a marble slab and the design was defective because Abaco failed to warn the user about the dangers of standing in the fall shadow of a marble slab.

Abaco’s failure to warn is a proximate, or legal, “cause of harm to another if . . . [its] conduct is a substantial factor in bringing about the harm.”²⁹ The Court must determine whether

²³ *Anders v. Puerto Rican Cars, Inc.*, 409 F. App’x 539, 542 (3d Cir. 2011).

²⁴ Restatement (Third) of Torts: Products Liability § 1 (2003).

²⁵ *Id.* § 2. The Plaintiff cites Restatement (Second) of Torts § 402A for the basis of his strict liability failure to warn cause of action, but the Third Restatement states that § 402A, “created to deal with liability for manufacturing defects, [can] not appropriately be applied to cases of design defects or defects based on inadequate instructions or warnings.” *Id.* § 1, cmt. a.

²⁶ *Id.* § 2.

²⁷ *Chelcher v. Spider Staging Corp.*, 892 F. Supp. 710, 714 (D.V.I. 1995).

²⁸ *Id.* at 714-15.

²⁹ Restatement (Second) of Torts § 431(a).

the alleged defect, the lack of an adequate warning as to the danger of standing in a marble slab's fall shadow, was the proximate or legal cause of Jacques-Pierre's injury. Even if the Court had found a triable issue on whether the failure to warn was the factual cause of the injury, the Plaintiff's claim would still fail as the failure to warn was not the proximate cause of Jacques-Pierre's injury.

Here, it is difficult to imagine how Jacques-Pierre's injuries would have been prevented if the defect had been remedied by providing the proper warning that the Plaintiff contemplates. For a jury to find that the clamp caused the accident, the jury would first have to find that additional warnings in the clamp's instructions would have caused Jacques-Pierre to act differently. "In order to submit the question of cause-in-fact to the jury in a failure to warn strict liability case, the Court must first determine that there is sufficient evidence to support a reasonable inference that an adequate warning would have prevented injury."³⁰

In light of the evidence on the record, the Plaintiff's claim that additional warning in the instructions would have caused Jacques-Pierre to act differently is highly speculative. The Abaco Operation Manual for the clamp in question states that all personnel must stand clear of the clamp's load while it is being lifted or moved. It also specifically instructs the user to keep the slab in an inclined position and not to move the slab past the center of balance. Again, it is difficult to imagine how additional or more detailed warnings would have possibly prevented Jacques-Pierre from attempting to separate the marble slab on his own, so that his injuries would have been prevented. The Court finds that, given the undisputed evidence on the record, the failure to warn was not the cause-in-fact of Jacques-Pierre's injuries.

Proximate cause is an element of both strict liability and negligence, and therefore a finding by this Court that there was no proximate cause will serve to bar both claims. Because the Plaintiff cannot prove the causation element, summary judgment is appropriate on Counts I and II.

C. Abaco is entitled to judgment as a matter of law on the Plaintiff's claims for breach of express and implied warranty.

Typically, "a person must be in privity to a contract to sue for damages for breach of such contract[.]" . . . under certain conditions a person may sue as a third party beneficiary to a contract."³¹ Virgin Islands law specifically extends express and implied warranties to third-party beneficiaries. Title 11A, section 2-318 of the Virgin Islands Code provides that a "seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty."³² As an employee of Island Tile, Jacques-Pierre could be reasonably expected to use the clamp. Therefore, a breach of warranty of merchantability claim is permissible.

³⁰ *Chelcher*, 892 F. Supp. at 715.

³¹ *Sanchez v. Innovative Tel. Corp.*, No. 2005-45, 2007 WL 4800351, at *2 (D.V.I. Nov. 30, 2007) (citation omitted).

³² V.I. Code Ann. tit. 11A, § 2-318 (2003); *Matos v. Nextran, Inc.*, 52 V.I. 676 (D.V.I. 2009).

In its Opposition to the Motion for Summary Judgment, the Plaintiff claims that the cause of action for breach of warranties of merchantability and implied warranty of fitness for a particular purpose are subject to the same analysis as the claim of strict liability.

Again, Abaco argues that there is no evidence of a causal connection between the clamp and the accident, an implicit element of the three breach claims. The Court agrees. As explained above, the undisputed evidence shows that the clamp was not involved in the accident.

i. Count III: Breach of Implied Warranty of Merchantability

To succeed on a claim for breach of the implied warranty of merchantability, a plaintiff must prove that “(1) goods were sold by a merchant; (2) the goods were not merchantable at the time of sale; (3) the plaintiff suffered an injury; (4) the plaintiff’s injury resulted from the goods’ non-merchantability; and (5) the seller had notice of the injury.”³³

The fourth element, that the injury resulted from the goods’ non-merchantability, is tantamount to the causation element that the Court discussed above. Assuming the Plaintiff could prove that the clamp was not merchantable at the time of sale, the Plaintiff still could not succeed on this claim because the Plaintiff cannot prove that the injury that Jacques-Pierre suffered was a result of the clamp’s non-merchantability. Because the Plaintiff has failed to prove the fourth element, the Court does not need to express an opinion on the other elements of the claim. Judgment will be entered in favor of Abaco.

ii. Count IV: Breach of the Warranty of Fitness for a Particular Purpose

To succeed on a claim for breach of the implied warranty of fitness for a particular purpose, a plaintiff must allege that “(1) the seller had reason to know the particular purpose for which the buyer required the goods, (2) the seller had reason to know the buyer was relying on the seller’s skill or judgment to furnish appropriate goods, and (3) the buyer in fact relied upon the seller’s skill or judgment.”³⁴ For such a warranty to exist, the goods must be for a purpose other than their ordinary use.³⁵

In this case, the undisputed evidence shows that the purpose of the clamp was the ordinary use of the clamp. The Plaintiff alleges no particular purpose, and it is clear that the purpose of the clamp was to lift the marble slabs. The Court does not need to reach the other elements of this claim because the Plaintiff has failed to prove a necessary element of this claim. Summary judgment will be granted in favor of Abaco.

³³ *Matos v. Nextran, Inc.*, 52 V.I. 676 (D.V.I. 2009).

³⁴ *Beard Plumbing & Heating v. Thompson Plastics*, 152 F.3d 313, 317 (4th Cir. 1998) (stating Virginia law) (citation omitted); *In re McDonald’s French Fries Litig.*, 503 F. Supp. 2d 953, 957 (N.D. Ill. 2007) (similar); see also V.I. Code Ann. tit. 11A, § 2–315 (defining the implied warranty of fitness for a particular purpose).

³⁵ See V.I. Code Ann. tit. 11A, § 2–315 (“A ‘particular purpose’ differs from the ordinary purpose for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature of his business.”); *Matos v. Nextran, Inc.*, 52 V.I. 676 (D.V.I. 2009).

iii. Count V: Breach of Express Warranty

Virgin Islands law does not appear to differentiate between an express warranty of merchantability and an express warranty of fitness for a particular purpose.³⁶ To state a claim for breach of an express warranty generally, a plaintiff must allege the following: “(1) plaintiff and defendant entered into a contract; (2) containing an express warranty by the defendant with respect to a material fact; (3) which warranty was part of the basis of the bargain; and (4) the express warranty was breached by defendant.”³⁷

For a breach of express warranty, the Plaintiff must allege and show an express affirmation of fact, made by the Defendant, that formed a basis for the bargain. Such an allegation is an essential element of a breach of an express warranty claim.³⁸ In this case, the Plaintiff does not offer evidence that any factual assertion about the nature of the Abaco clamp was made by the Defendant. Nor does the Plaintiff offer evidence that any material fact formed the basis of the bargain to purchase the clamp.

Although the Plaintiff asserts that the warranty claims are subject to the same analysis as the strict liability claim, this is not strictly the case. If it were the case, all the warranty claims would fail for a lack of causation just as the strict liability claims did. However, analyzing these claims under the proper framework, the undisputed facts either show that Abaco is entitled to summary judgment, or that the Plaintiff has provided no evidence in support or some or all of the elements of these claims. Accordingly, the Court will enter summary judgment in favor of Abaco.

D. Prayer for Punitive Damages against Abaco and Mystic

The Court first notes that a request for punitive damages is not an independent cause of action.³⁹ To recover punitive damages, a plaintiff must prove that the defendant acted outrageously and with either an evil motive or a reckless indifference to the rights of others.⁴⁰ The Plaintiff alleges that in negligently designing the clamp, Abaco acted outrageously and with reckless indifference to the rights of others. The Court disagrees. The law on punitive damages is well-established. Punitive damages are not meant to compensate an aggrieved plaintiff but to punish a defendant’s outrageous behavior and deter others from engaging in similar behavior.⁴¹

³⁶ See V.I. Code Ann. tit. 11A, § 2–313.

³⁷ *Beachside Assocs., LLC v. Okemo, LLC*, 50 V.I. 1042, 1046 (D.V.I. 2008) (citations omitted); see also V.I. Code Ann. tit. 11A, § 2–313 (defining express warranties).

³⁸ See *Sebago, Inc. v. Beazer East, Inc.*, 18 F. Supp. 2d 70, 102 (D. Mass. 1998) (“[T]he plaintiff must demonstrate that the express warranty constituted a basis of the bargain between the seller and the buyer.” (citations omitted)), cited with approval in *Cummings v. HPG Int’l, Inc.*, 244 F.3d 16, 24 (1st Cir. 2001); *O’Connor v. Kawasaki Motors Corp.*, 699 F. Supp. 1538, 1543 (S.D. Fla. 1988) (“[T]he affirmation made by the seller must have become the basis of the bargain.”); see also *Matos v. Nextran, Inc.*, 52 V.I. 676 (D.V.I. 2009).

³⁹ *Molloy v. Independence Blue Cross*, 56 V.I. 155, 175 n.5 (2012).

⁴⁰ *Francis v. Bridgestone Corp.*, Civ. 2010/30, 2011 WL 2650599 (D.V.I. July 6, 2011).

⁴¹ See Restatement (Second) Torts § 908 (1979).

As Abaco points out, there is simply no evidence of outrageous behavior or reckless indifference of any kind. The Plaintiff argues that the reckless indifference comes from the design of the clamp that created an imminent likelihood of harm to the clamp user. Even if Abaco knew that the clamp was likely to injure its user, the Court still believes this does not constitute the requisite outrageous behavior.

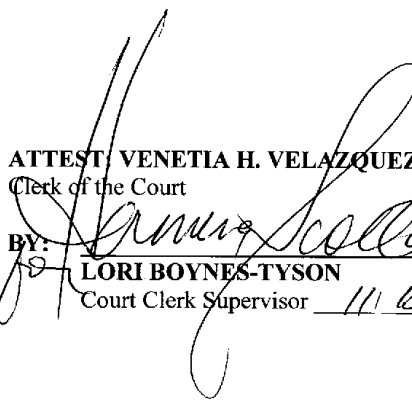
As the Plaintiff has produced no evidence to support a prayer for punitive damages, the Court will grant judgment as a matter of law on the issue of punitive damages.

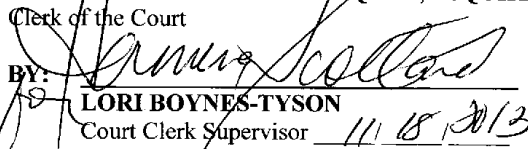
CONCLUSION

The Court finds that there are no genuine issues of material fact regarding the claims against Defendant Abaco and Defendant Mystic, and therefore summary judgment is appropriate. On the Counts against Abaco requiring an element of causation, the Court finds that the undisputed evidence does not support that the Abaco clamp was the actual or the proximate cause of Jacques-Pierre's injuries. The Court also finds that the undisputed evidence does not support the express and implied warranty claims. Finally, on Mystic's Motion for Summary Judgment on the negligence claim, the Court finds that the undisputed facts fail to show that Mystic's negligence was a proximate cause of Jacques-Pierre's injury. Both Abaco and Mystic's Motions for Summary Judgment shall be granted.

DATED: November 15, 2013
Nunc pro tunc October 30, 2013


JAMES S. CARROLL III
Senior Sitting Judge of the Superior Court
of the Virgin Islands


ATTEST VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY: 
LORI BOYNES-TYSON
Court Clerk Supervisor 11/18/2013