

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOISES MELENDEZ, JR.,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-05-CV-388
	)	
v.	)	
	)	ACTION FOR DAMAGES
ASPHALT and CONCRETE INDUSTRIES,	)	
INC.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment, and Plaintiff's Opposition thereto. For the reasons that follow, Defendant's Motion will be denied.

This case stems from an incident that allegedly occurred in October of 2004, when Plaintiff was severely burned in an asphalt plant accident. Allegedly, Plaintiff's supervisor ordered him to pour diesel fuel into a drum containing hot asphalt. The diesel ignited, engulfing Melendez in flames, from which he suffered second and third degree burns to his face, neck, and arms.

Defendant filed its Motion for Summary Judgment on March 27, 2009, stating that summary judgment is appropriate since the incident occurred in an asphalt plant that was neither owned nor operated by Defendant, but rather by Virgin Islands Paving Inc. Plaintiff responded on May 7, 2009, alleging several facts that show that Defendant owned and operated the subject plant. The Court heard oral argument on summary judgment on June 12, 2012.

Legal Standard

"Because summary judgment is a drastic remedy, it should be granted only when 'the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no

genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I.2008). (quoting Fed.R.Civ.P. 56(c)) (citations omitted). “When reviewing the record, this Court must view the inferences to be drawn from the underlying facts in the light most favorable to the nonmoving party, and we must take the non-moving party's conflicting allegations as true if ‘supported by proper proofs.’” *Id.* (quoting *Seales v. Devine*, S.Ct. Civ. No.2007–040, 2008 WL 901528, at *1 (V.I. Mar. 3, 2008) (unpublished)). “[T]o survive summary judgment, the nonmoving party's evidence must amount to more than a scintilla, but may amount to less than a preponderance.” *Id.* (internal quotations omitted). Importantly, the nonmoving party may not rest on its pleadings but “‘must set forth specific facts showing that there is a genuine issue for trial.’” *Bright v. United Corp.*, 50 V.I. 215, 222 (V.I.2008) In order to defeat summary judgment, the Plaintiff must provide “significant, probative evidence demonstrating the existence of a triable issue of fact.” *Charles v. Hess Oil Virgin Islands Corp.*, 24 F. Supp. 2d, 484, 486 (D. V.I. 1997).

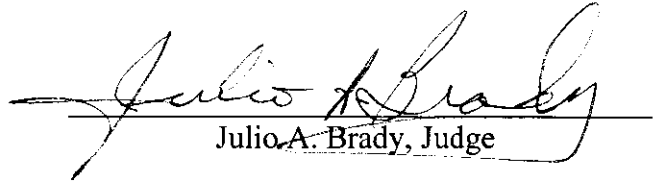
Analysis

In his Motion in Opposition, Plaintiff provided the Court with significant records showing that Defendant was in fact in control of the plant while Plaintiff was working there, including plant records. While Defendant claims that the Plant Record Sheets were mistakenly recorded in Defendant’s name, this alone appears to be a genuine issue of material fact that requires a jury to resolve. Further, Plaintiff alleges that Defendant attempted to conceal the sheets, which Defendant denies. This, if proved at trial, would give a jury an additional basis for inferring that Defendant controlled the plant, and owed Plaintiff a duty of care. Due to these issues, summary judgment is not appropriate, and therefore will not be granted.

Conclusion

After reviewing the entire record, this Court is satisfied that, when taken in the light most favorable to the Plaintiff, there are genuine issues of material fact for a jury to determine. A separate Order will accompany this Memorandum Opinion.

Dated: June 22, 2012.


Julio A. Brady, Judge

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

By: 
Court Clerk Supervisor
6/22/12