

NOT FOR PUBLICATION

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

DENISE DANIEL,

Plaintiff, SX-08-CV-595

vs.

ACTION FOR DAMAGES

TURNER ST. CROIX MAINTENANCE, INC.

Defendant.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Turner St. Croix Maintenance, Inc.'s (hereinafter "Defendant" or "Turner") Motion for Summary Judgment (hereinafter "Motion") filed on June 9, 2011. Plaintiff Denise Daniel (hereinafter, "Plaintiff" or "Daniel") filed an opposition (hereinafter "Opposition") on July 1, 2011. Turner filed a reply (hereinafter "Reply") on July 28, 2011 and a Request for Ruling on June 9, 2016. For the following reasons, the Court will deny Turner's Motion.

BACKGROUND

Daniel was employed at HOVENSA as a C Operator in the East Power Utilities Unit. CSOF ¶1. On August 8, 2008, Turner installed a temporary cargo hose for a hard type drain line that was being repaired at HOVENSA's request.¹ The installation of the temporary cargo hose was completed the same day it was installed,² and Turner's job ended.³ "After the installation

¹ CSOF ¶¶3, 6; SOF ¶6; Def's Ex. 3.; Denise Daniel Affidavit ¶9.

² Turner's Statement of Material Facts states that "the work was completed within a few days." SOF ¶3. However, Saul Hernandez's Declarations states that "the installation of the temporary cargo hose was completed on or about the date it was started, which was August 8, 2008." Def's Ex. 3. This discrepancy is not material to the determination of whether or not summary judgment should be granted.

³ Def's Ex. 3.

was complete, Turner no longer worked in the area.”⁴ “ On August 29, 2008, a permit was issued to replace the check valve on P-3332-B. While in the process of conducting the work, the HOVENSA Maintenance workers removed the barricade tape and did not notify operations of the removal of the tape.”⁵ Subsequently, “a sudden surge in the cargo hose caused the unsecured hose to lift out of the trench spraying hot condensate.”⁶ While making her rounds in the unit, Daniel was sprayed with the hot condensate and suffered second-degree thermal burns to her lower leg.⁷ On December 5, 2008, Daniel filed a negligence claim against Turner. Turner moves for summary judgment against Daniel.

STANDARD OF REVIEW

“Summary judgment is a drastic remedy [and] 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.”⁸ Turner, the moving party will prevail on a motion for summary judgment where the record shows that there is no genuine issue of material fact and that Turner is entitled to judgment as a matter of law.⁹ As to materiality, “only those facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”¹⁰

“[T]o survive summary judgment, Daniel, 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

⁴ Def.’s Ex. 3.

⁵ Def.’s Ex. 2; Safety Incident Overview dated August 29, 2008.

⁶ CSOF ¶3; SOF ¶5; Safety Incident Overview dated August 29, 2008.

⁷ CSOF ¶3; SOF at 1; Def.’s Ex. 2. Denise Daniel Affidavit ¶9.

⁸ See *Alexander v. Alexander*, No. 2016-0012, 2016 V.I. Supreme LEXIS 35, at *9 (V.I. Sep. 22, 2016) (quoting *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379-80 (2014)).

⁹ See *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008).

¹⁰ *Id.* at 195 (citations omitted).

preponderance.”¹¹ Daniel, the nonmoving party then has the burden of “set[ting] out specific facts showing a genuine issue for trial.”¹² But Daniel “may not rest upon mere allegations [and] must present actual evidence showing a genuine issue for trial.”¹³ The Court must view all inferences from the evidence in the light most favorable to Daniel and take her conflicting allegations as true if properly supported.¹⁴

DISCUSSION

Turner argues that summary judgment should be granted against Daniel because “discovery has closed and there is no proof of record that [Turner] was negligent” and the negligent acts were by HOVENSA personnel.” Motion at 3. Daniel opposes summary judgment because “the evidence reveals a genuine dispute of material fact as to whether Turner negligently failed to secure the temporary cargo hose when it installed it, which caused the hose to rise out of the pit and soak Plaintiff with burning steam.” Opp’n at 9. The question presented is whether summary judgment should be granted against Daniel. The crux of the issue is whether there is a genuine issue of material fact as to whether Turner’s negligence caused Daniel’s injury.

In *Machado*, the Supreme Court of the Virgin Islands (hereinafter “Supreme Court”) held that “the foundational elements of negligence—(1) a legal duty of care to the plaintiff, (2) a breach of that duty of care by the defendant (3) constituting the factual and legal cause of (4) damages to the plaintiff— are so widely accepted and fundamental to the practice of law in the Virgin Islands and every other United States jurisdiction that maintaining these elements is

¹¹ *Id.*

¹² *Id.*

¹³ See *Machado*, 61 V.I. at 379.

¹⁴ See *Williams*, 50 V.I. at 195 ; see also *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527; *Joseph v. Hess Oil V. I. Corp.*, 54 V. I. 657, 668 (V.I. 2011).

unquestionably the soundest rule for the Virgin Islands.”¹⁵ Daniel has the burden of proving each and every element of the claim of negligence by a preponderance of the evidence.¹⁶

In the matter *sub judice*, the heart of the analysis goes to the element of causation—whether Turner's negligence or HOVENSA's negligence caused Daniel's injury. Therefore, the court need not conduct a *magnum opus* analyzing the other elements. The analysis will be limited to whether there is a genuine issue of material fact as to who caused Daniel's injury.

To establish “causation,” Daniel must demonstrate both cause in fact and proximate cause. ¹⁷“In order for the negligent act to be regarded as the cause in fact of the injury, it must be shown that the injury would not have occurred but for the act.”¹⁸

In the case at bar, Daniel asserts that her “burn and related injuries and damages were caused by Defendant's negligence to include but not to be limited to Turner St. Croix Maintenance Inc. improperly running a 'temporary line' in July 2008 to a sump drain without properly securing the line and properly warning of its dangerous condition among the acts of negligence.” Compl. ¶ 5. However, the record reflects that Daniels injuries could have been caused by the negligence of HOVENSA's maintenance staff. After Turner completed the installation of the temporary hose, HOVENSA's maintenance crew “installed a pump in the area of the temporary hose termination.” SOF ¶4. “The work installing the pump was done by HOVENSA personnel.” SOF ¶5. “The temporary posts, red barricade tape, and weights securing the temporary hose were temporarily removed to provide access for forklift.” *Id.* As a result,

¹⁵ 61 V.I. at 380.

¹⁶ See *Dagle v. Church of God of Prophecy for the V.I., Inc.*, 2011 V.I. LEXIS 18, *6 (V.I. Super. Ct. Mar. 21, 2011)

¹⁷ See *Brady v. Cintron*, 55 V.I. 802, 823 (2011). See also *Adams v. N. W. Co., Inc.*, 63 V.I. 427, 442 (Super. Ct. 2015).

¹⁸ *Id.* at 823-24.

“when there was a surge through the temporary line, its termination in the trough was not sufficiently secured to prevent movement.” *Id.*

Upon review of the motions, exhibits, and affidavits, the Court finds that there is a genuine dispute as to whether Daniel’s injuries were caused by Turner’s negligent installation of the temporary hose or whether Daniel’s injuries were caused by the negligence of HOVENSA’s maintenance personnel when they removed the temporary hose and barricade without informing operations. The Supreme Court “has consistently favored — wherever possible — the adjudication of negligence cases by a jury ... instead of by a single judge at summary judgment.”¹⁹ This Court finds no reason to disturb this precedent. Daniel has satisfied her burden of showing that there is a genuine issue as to whether her injuries were caused by the negligence of Turner or HOVENSA.

CONCLUSION

Based on the foregoing analysis, Turner’s motion for summary judgment will be denied. There is a genuine issue as to whether Turner or HOVENSA’s negligence caused Daniel’s injury. Ergo, Turner is not entitled to judgment as a matter of law. The Court will issue an Order consistent with this Memorandum Opinion.

DATED this 17 day of March, 2017.

ATTEST:

Estrella George

g Clerk of the Court

By:

Machado
Deputy Clerk

Dated: 3/21/17

Harold W. L. Willocks
HAROLD W. L. WILLOCKS

Administrative Judge of the Superior Court

¹⁹ See *Machado*, 61 V.I. at 399.