

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

EDWARD GIFFORD, JR.,

Plaintiff,

v.

**VIRGIN ISLANDS TELEPHONE CORPORATION D/B/A
INNOVATIVE TELEPHONE, AND VIRGIN ISLANDS
WATER AND POWER AUTHORITY,**

Defendants.

SX-16-CV-619

**ACTION FOR PERSONAL
INJURIES AND DAMAGES**

JURY TRIAL DEMANDED

Appearances:

PAMELA LYNN COLON, ESQ.

Christiansted, St. Croix

For Plaintiff

RYAN C. MEADE, ESQ.

KYLE WALDNER, ESQ.

Miami, FL

For Defendant VITELCO

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Virgin Islands Telephone Corporation d/b/a Innovative Telephone's (hereinafter "VITELCO") Motion to Dismiss (hereinafter "Motion") filed on November 30, 2016. Defendant Virgin Islands Water and Power Authority (hereinafter "WAPA") did not join VITELCO's Motion. Plaintiff Edward Gifford (hereinafter "Gifford") filed a response on December 19, 2016. VITELCO filed a reply on February 2, 2017. For the reasons stated below, VITELCO's Motion will be denied.

BACKGROUND

On or about March 12, 2016, Gifford was allegedly operating a 1999 white Chevrolet Suburban traveling north on East End Road in the vicinity of #33 Cotton Valley, St. Croix, U.S. Virgin Islands en route to Ziggy's Island Market. Compl. ¶¶5, 7. While traveling to his destination, utility pole #202-7466 with WAPA electrical wires and Innovative telephone wires allegedly fell on top of the rear right side of his vehicle. Compl. ¶7. As a result of the accident, Gifford allegedly sustained damages to his car and allegedly suffered multiple bodily injuries. Compl. ¶10. On October 13, 2016, Gifford filed a One Count Complaint against WAPA and VITELCO alleging Negligence.

STANDARD OF REVIEW

Motion to Dismiss for Failure to State a Claim

Virgin Islands Rule of Civil Procedure 12(b)(6) governs motions to dismiss for failure to state a claim upon which relief can be granted. *See Mills-Williams v. Mapp*, 2017 V.I. Supreme LEXIS 35, at *11 (V.I. July 14, 2017) (Effective March 31, 2017, the Supreme Court of the Virgin Islands adopted the Virgin Islands Rules of Civil Procedure, which supersede all previous civil procedure rules applicable to the Superior Court, including the Federal Rules of Civil Procedure that had been applicable through former Superior Court Rule 7). *See* V.I. R. Civ. P. 12(b)(6). Virgin Islands Rule of Civil Procedure Rule 8(a) governs the general rules of pleading. *See* V.I. R. Civ. P. 8(a)(2). Rule 8(a)(2) prescribes, in pertinent part, that "a pleading that states a claim for relief must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *See id.*

The Virgin Islands is a notice pleading jurisdiction and the plausibility standard articulated in *Twombly* and its progenies no longer applies in this jurisdiction. *See Joseph v.*

Bureau of Corr., 54 V.I. 644, 650 (V.I. 2011) (the Virgin Islands is a “notice pleading” jurisdiction); *see also Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 544 n.10 (2015). *See Mapp*, 2017 V.I. Supreme LEXIS 35, at *12 (holding that going forward, it is clear that the adoption of Rule 8 of the Virgin Islands Rules of Civil Procedure supersedes our prior precedents which imposed the *Twombly* plausibility standard). Under Virgin Islands Civil Procedure Rule 8(a)(2), a complaint is sufficient “so long as it ‘adequately alleges facts that put an accused party on notice of claims brought against it.’” *Id.* (explaining that since the adoption of Rule 8 of the Virgin Islands Rules of Civil Procedure supersedes our prior precedents which imposed the *Twombly* plausibility standard by virtue of the now-amended Superior Court Rule 7, and restores the notice pleading regime that had previously been in effect). The language in Rule 8(a)(2) “is calculated to ‘apply [] an approach that *declines to enter dismissals of cases based on failure to allege specific facts* which, if established, plausibly entitle the pleader to relief.’” *Id.* (quoting V.I. R. Civ. P. 8 Reporter's Note (emphasis added); *see also Brathwaite v. H.D.V.I. Holding Co.*, Super. Ct. Civ. No. 764/2016 (STT), ___ V.I. ___, ___, 2017 V.I. LEXIS 76, *3, [WL], at *2 (V.I. Super. Ct. May 24, 2017) (acknowledging that Virgin Islands Civil Procedure Rule 8(a)(2) eliminates the plausibility standard and instead will permit a complaint so long as it “adequately alleges facts that put an accused party on notice of claims brought against it”).

DISCUSSION

VITELCO argues that based on the heightened *Twombly* pleading standard, the Complaint must be dismissed for the following three reasons: (1) Gifford fails to allege the basis of the duty owed by VITELCO; (2) Gifford fails to separately plead the various claims against the distinctly situated Defendants; and (3) Gifford fails to allege constructive notice on the part of VITELCO which is required to plausibly allege a breach of duty. (Mot. at 1-2). Gifford

counterargues that the Defendants are joint tortfeasors and his Complaint is sufficient to satisfy the notice pleading standard. (Opp'n at 4-9).

VITELCO's Motion was filed on November 30, 2016— a little under a year before the Supreme Court of the Virgin Islands (hereinafter "Supreme Court") adopted the Virgin Islands Rules of Civil Procedure that became effective on March 31, 2017. "[T]he Virgin Islands Rules of Civil Procedure, [] supersede all previous civil procedure rules applicable to the Superior Court, including the Federal Rules of Civil Procedure that had been applicable through former Superior Court Rule 7." *See Mapp*, No. 2016-0054, 2017 V.I. Supreme LEXIS 35, at *11.

VITELCO moves for dismissal for failure to state a claim by applying the plausibility standard articulated in *Twombly*. In prior precedents, the Supreme Court applied the *Twombly* plausibility standard. *See Mapp, supra* (citing *e.g., Fleming v. Cruz*, 62 V.I. 702, 710 (V.I. 2015); *Brady v. Cintron*, 55 V.I. 802, 823 (V.I. 2011); *Robles v. HOVENSA, L.L.C.*, 49 V.I. 491, 500 (V.I. 2008)). However, as previously mentioned, Virgin Islands Rule of Civil Procedure 8(a) explicitly provides that the Virgin Islands "is a notice pleading jurisdiction." *See V.I. R. Civ. P. 8(a)(2)*. "The Virgin Islands Rules of Civil Procedure permit their application to pending cases in the Superior Court if doing so would not be infeasible or work an injustice." *See Mapp, supra at* *12. V.I. R. Civ. P. 1-1(c).

Under the notice pleading approach, Virgin Islands Courts decline "to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief." *See Brathwaite v. H.D.V.I. Holding Co.*, 2017 V.I. LEXIS 76, *3. Effectively, the courts take a more liberal approach when reviewing the sufficiency of a pleading. *Id.* (the Court determined that it should take an even more liberal approach than that prescribed by Virgin Islands precedent applying FED. R. CIV. P. 8(a)(2) when considering if a complaint adequately

alleges facts that put an accused party on notice of claims brought against it). The Supreme Court has “a strong preference for trial courts to decide doubtful cases on their merits rather than dismiss them for a failure to strictly follow purely procedural rules.” *See Joseph*, 54 V.I. at 650. All things considered, application of the more liberal notice pleading standard articulated in Rule 8(a) to the instant matter “would not be infeasible or work an injustice.” V.I. R. CIV. P. 1-1(c).

Applying the notice pleading standard, the Court must determine whether VITELCO has sufficient notice of the negligence claim. Gifford alleges the following in his Complaint:

On or about March 12, 2016, Plaintiff, EDWARD GIFFORD, JR. was operating a 1999 White Chevrolet Suburban [sic] and was traveling north on East End Road in the vicinity of #33 Cotton Valley in St. Croix, U.S. Virgin Islands. Compl. ¶5

At the same time and place the light pole (#2-02-7466) was rotten at the base due to years of exposure and the weight of the WAPA electrical and Innovative Telephone wires and transformer that were attached to the pole. Compl. ¶6.

At the same time and place Plaintiff was traveling in his vehicle to Ziggy’s Island Market when the utility pole (#202-7466), fell on the top rear right side of Plaintiff’s vehicle. Compl. ¶7.

Although, [sic] Plaintiff tried to swerve his vehicle away from the live feed wires that were sparking as they were coming down with the utility pole, he was still unable to avoid the utility pole and wires from falling on his vehicle. Compl. ¶8.

Plaintiff’s vehicle sustained damage to the right rear roof, rear right window and scratches to the left side from front to rear. Compl. ¶9.

As a result of the impact between the utility pole that was controlled, maintained, repaired, inspected, operated and managed by Defendants and Plaintiff’s vehicle, Plaintiff suffered multiple injuries. Compl. ¶10.

Defendants, WAPA and INNOVATIVE, and each of them, did not properly warn the public in general, and Plaintiff in particular, of the dangerous condition of its wires, transformer and rotten utility pole. Compl. ¶11.

At that time and place, Defendants, WAPA and INNOVATIVE, by and through their agents, servants and employees, were then and there negligent in the following manner. Compl. ¶ 12.

- a. created a dangerous condition, allowing their utility pole to rot away at its base due to years of exposure to the different climate changes;

- b. failed to properly inspected [sic], maintained [sic], repair and replaced [sic] their utility pole as often as necessary to keep it from rotting;
- c. failed to keep utility poles as far as possible from the roadside;
- d. failed to warn Plaintiff, EDWARD GIFFORD, JR., of the dangerous condition they had created, namely a rotten utility pole;
- e. allowed excessive weight from their electrical and telephone and cable wires, and transformer to be maintained on their rotten utility pole, causing it to fall.

As a direct and proximate result of the negligent conduct of Defendants, and each of them, Plaintiff, EDWARD GIFFORD, JR., sustained injuries to his neck, headaches, tension, and injuries to his body in general, medical expenses, mental anguish, pain and suffering, and loss of enjoyment of life all of which will continue into the future. Compl. ¶14.

As a direct and proximate result of the negligent conduct of Defendants, and each of them, Plaintiff, EDWARD GIFFORD, JR., sustained property damage to his 1999 White Chevrolet Suburban [sic] pick up truck. Compl. ¶15.

As a direct and proximate result [of] the above Defendants' foregoing negligent and careless conduct, Plaintiff, EDWARD GIFFORD, JR., has in the past, and will in the future sustain the aforementioned compensatory, incidental, property damage, and physical injuries for which he is entitled to judgment against Defendants, and each of them. Compl. ¶16.

"Under notice pleading, there is a very low threshold to determine whether a complaint states a claim." *See Jackson v. Marion County*, 66 F.3d 151, 153-54 (7th Cir. 1995). "All the party must provide is 'a short and plain statement showing that [they are] entitled to relief.'" *Accord Cook v. Winfrey*, 141 F.3d 322, 327 (7th Cir. 1998); V.I. R. CIV. P. 8(a). "Such a statement must simply 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512, 122 S. Ct. 992, 998 (2002) (citing *Conley v. Gibson*, 355 U.S. 41, 47, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)). *Cf. Fua Mai Jiang v. Allstate Ins. Co.*, 199 F.R.D. 267, 272 (N.D. Ill. 2001). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Id.* (citations omitted). A bare allegation of negligence satisfies notice pleading standard. *See, e.g., Fua Mai*

Jian., 199 F.R.D. at 272 (stating that a bare allegation of discrimination satisfies notice pleading standards).

Applying the notice pleading standard, Gifford does not have to plead a prima facie case for negligence. The allegation that VITELCO was negligent is sufficient to put VITELCO on notice of Gifford's negligence claim. *See Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 544 n.10 (2015). Also, VITELCO has sufficient notice that it allegedly shares a common liability with WAPA. Therefore, Gifford's negligence claim against VITELCO was properly plead.

CONCLUSION

Based on the foregoing analysis, VITELCO's Motion to Dismiss shall be denied. Gifford's negligence claim against VITELCO was properly plead. VITELCO has sufficient notice of Gifford's negligence claim and that it allegedly shares liability with WAPA. VITELCO's Motion for a More Definite Statement and Motion to Stay Discovery will also be denied. The Court will enter an Order consistent with this Memorandum Opinion.

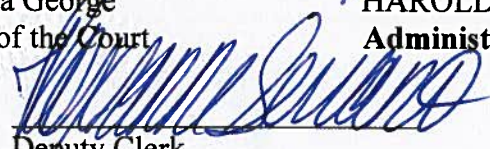
DATED this 21st day of May, 2018.

ATTEST:

Estrella George
Clerk of the Court


HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

By:


Deputy Clerk

Dated:

5/22/18