

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

GERTRUDE SWAN and KERRY E. DRUE,	)	
	)	CASE NO. ST-12-CV-736
Plaintiffs,	)	
	)	
vs.	)	
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
VIRGIN ISLANDS DEPARTMENT OF	)	
PUBLIC WORKS, VITRAN, CLAUDELL A. HUNT,	)	
And JOHN A. WILLETT	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION

Pending before the Court is Defendant Hunt's February 25, 2013, Motion to Dismiss All Claims Against Him.¹ For the following reasons, Defendant's Motion will be denied.

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs filed a Complaint on December 20, 2012, alleging that on January 24, 2011, Defendant Claudell Hunt, within the scope of his employment with the Virgin Islands Department of Public Works, negligently struck Defendant Willett's car with a VITRAN bus, which in turn subsequently struck Plaintiff's Swan's car when it was stopped on Veterans Drive Annex at an intersection with Harwood Highway Road. Willett answered on February 11, 2013. The Government of the Virgin Islands, Virgin Islands Department of Public Works and VITRAN answered on March 1, 2013. To date,

¹ Plaintiffs responded on March 18, 2013.

no answer has been filed by Defendant Hunt, although Assistant Attorney General Ariel Smith-Francoise has appeared on Hunt's behalf² and filed the present Motion to Dismiss.

STANDARD

Under Fed. R. Civ. P. 12(b)(6), made applicable to the Virgin Islands Superior Court through Superior Court Rule 7, a defendant may test the sufficiency of the pleadings by seeking dismissal for the plaintiff's "failure to state a claim upon which relief can be granted." In considering the motion, the Court must liberally construe the pleadings, to the extent permitted by the pleading requirements under Fed. R. Civ. P. 8, and "accept as true all well-pleaded allegations in the complaint" in favor of the plaintiff.³ In other words, "[a] motion to dismiss a complaint should be denied if the factual allegations are 'enough to raise a right to relief above the speculative level'"⁴ and "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."⁵

ANALYSIS

Here, Defendant Hunt argues that because Plaintiffs' Complaint alleges that he was a government employee acting within the scope of his employment at the time of the vehicle collision, he thereby enjoys absolute immunity from suit under the Virgin Islands

² See Report of Parties' Planning Meeting and Proposed Scheduling Order, Mar. 6, 2013, at 1.

³ *Gov't Guarantee Fund v. Hyatt Corp.*, 166 F.R.D. 321, 325-26 (D.V.I. 1996) *aff'd sub nom. Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 95 F.3d 291 (3d Cir. 1996) ("[I]n considering a motion to dismiss under Rule 12(b)(6), the Court must accept as true the well-pleaded allegations in the complaint. . . . [T]he plaintiff 'is required to 'set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist.' . . . Finally, when evaluating a 12(b)(6) motion the court must be mindful of the liberal pleading practice permitted by Rule 8(a)")

⁴ *Williams v. Seabourne Virgin Islands, Inc.*, 2010 WL 7371480, at *1 (V.I.Super. 2010) (citing *Phillips v. County of Allegheny*, 2008 WL 305025, at *6 (3d Cir.2008)).

⁵ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Tort Claims Act (“VITCA”) pursuant to 33 V.I.C. §§ 3408(a), 3416. 5 V.I.C. § 3408 waives the sovereign immunity of the Government of the Virgin Islands where “injury or loss of property . . . is caused by the negligent or wrongful act or omission of an employee of the Government of the United States Virgin Islands while acting within the scope of his office or employment.”⁶ Further, 33 V.I.C. § 3416 provides that a suit against the Government of the Virgin Islands pursuant to its waiver of immunity under 33 V.I.C. § 3408 is “exclusive of other civil action or proceeding.”⁷

However, as Plaintiffs point out, 33 V.I.C. § 3408(b) provides that 33 V.I.C. §3408(a) does not apply where the employee was “gross[ly] negligent.”⁸ Thus, unlike *Varlack v. Mahoney*⁹ where the Plaintiff simply alleged that the Virgin Islands government employee was “negligent” in his actions, here, Plaintiffs argue that the pleadings set forth a plausible claim for relief based on a theory of gross negligence, particularly in Count VI of the Complaint.

The Court finds that, in construing the pleadings in a light most favorable to the Plaintiffs, Count VI of Plaintiffs’ Complaint alleges sufficient “[f]actual allegations . . . to raise a right to relief above the speculative level”¹⁰ on a legal theory of gross negligence. Specifically, Count VI incorporates all allegations set forth in Paragraph 1 through Paragraph 30 of the Complaint, and further alleges that:

Defendant Hunt drove unlawfully as evidenced by the traffic ticket issued to him by the V.I. Police Department which he paid. Defendant

⁶ 33 V.I.C. § 3408(a).

⁷ 33 V.I.C. § 3416.

⁸ 33 V.I.C. § 3408(b).

⁹ 41 V.I. 115 (Terr.Ct. 1999).

¹⁰ *Stotesbury v. Pirate Duck Adventure, LLC*, 2011 WL 3843927 (D.V.I. Aug. 30, 2011) (citing *Bell Atlantic Co. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

Hunt also drove dangerously or recklessly by failing to observe the traffic situation in front of him and failing to timely apply brakes or take evasive action in response. Thus, Defendant Hunt is also individually liable to Plaintiffs for the injuries and damages he caused them to sustain.¹¹

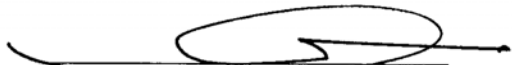
Therefore, while the definition of “gross negligence” pursuant to 33 V.I.C. § 3408(b) is unclear,¹² Plaintiffs set forth sufficient facts to support their allegation that Defendant’s wrongful conduct was “reckless” because Plaintiffs allege that Defendant Hunt failed to properly stop the bus, hitting Defendant Willett’s vehicle with such force that Defendant Willett’s vehicle hit Plaintiff Swan’s vehicle, causing Plaintiffs substantial damages. Further, Plaintiffs also set forth sufficient allegations that Defendant Hunt’s alleged actions may have been “willful” because he stated to Plaintiff Swan that he was “testing out the brakes” of the VITRAN bus, suggesting that Defendant knowingly operated a faulty vehicle on a public road.¹³

For the foregoing reasons, the Court will deny Defendant’s Motion to Dismiss without prejudice. An Order consistent with this Opinion shall follow.

Dated: April 10, 2013

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

by: *Lori Tyson*
Lori Tyson
Court Clerk Supervisor 4 / 11 / 13


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

¹¹ Complaint, Dec. 20, 2012, Paras. 31-32.

¹² See *cf. Tutein v. Parry*, 48 V.I. 101, 103-108 (V.I. Super. 2006) (defining gross negligence under 20 V.I.C. § 555).

¹³ Complaint, Dec. 20, 2012, Para. 11.