

NOT FOR PUBLICATION

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

JOSEPH SMITH,

Plaintiff,

SX-15-CV-345

v.

ACTION FOR DAMAGES

VINCENT LIGER,

Defendant.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Vincent Liger's (hereinafter, "Liger") Motion to Dismiss (hereinafter, "Motion") filed on August 17, 2016. Plaintiff Joseph Smith (hereinafter, "Smith") filed an opposition (hereinafter, "Opposition") on August 30, 2016.¹ For the following reasons, the Court will deny Liger's Motion and order Smith to file an amended complaint.

FACTS AND PROCEDURAL HISTORY

This matter arose from a three car collision. Liger allegedly collided into a car in front of him causing a three-car collision.² The car that Liger allegedly hit rear ended Smith's vehicle.³ As a result, Smith was allegedly injured in the collision.⁴ On August 28, 2015, Smith filed a Complaint against Liger alleging gross negligence. Liger filed his Answer on October 13, 2015. Subsequently, Liger filed the instant motion to dismiss for failure to state a claim.

¹ Smith filed a corrected Opposition on August 31, 2016.

² Compl. ¶4.

³ Id.

⁴ Id.

STANDARD

Under the plain language of Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss must be made before the first responsive pleading.⁵ Here, Liger filed the instant motion to dismiss after filing his Answer. Therefore, the Motion must be treated as a motion for judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c).⁶

“A motion for judgment on the pleadings should not be granted unless the moving party has established that there is no material issue of fact to resolve, and that it is entitled to judgment in its favor as a matter of law.”⁷ While “the Court must take all of the factual allegations in the [c]omplaint as true, courts are not bound to accept as true a legal conclusion couched as a factual allegation.”⁸ As with a Rule 12(b)(6) motion, the Court must view the facts alleged in the pleadings and the inferences to be drawn from those facts in the light most favorable to the plaintiff.⁹ Evidence from a source other than the pleadings or the exhibits attached to the pleadings will not be considered.¹⁰

DISCUSSION

Liger argues that the Complaint should be dismissed because Smith allegations are bare legal conclusions. Mot. at 4. Liger also argues that Smith’s allegation of gross negligence is merely an attempt to skirt the statutory cap on non-economic damages imposed by Title 20,

⁵See *Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 565 (VI. 2012) (citing *Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 190 (V.I. 2009)).

⁶ *Id.* at 565; see also FED. R. CIV. P. 12(c) (After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.)

⁷ See *United Corporation v. Hamed*, 2016 V.I. Supreme LEXIS 1, *10 (VI. 2016) (citations omitted).

⁸ *Webster v. CBI Acquisitions, LLC*, 2012 WL 832044, at *1 (V.I. Super. 2012) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

⁹ See *Benjamin*, 56 V.I. at 566 (internal quotation marks and citations omitted).

¹⁰ *Id.* (internal quotation marks and citations omitted).

Section 555 of the Virgin Islands Code (hereinafter, "Section 555"). Smith asserts that the complaint need not to contain detailed factual allegations and that the Complaint allege sufficient facts to support the allegation of gross negligence. Opp'n at 2, 4.

Smith's Complaint alleges the following:

On June 17, 2014, Vincent Liger was driving on St. Croix when he collided with the car in front of him, setting in motion a three-car collision. The car Liger hit was pushed into the car in front of it, and that car rear-ended Joseph Smith's car. Smith injured his back, neck, shoulders and elbow in the accident. Compl. ¶4.

The police gave Liger a ticket for failure to maintain control of his vehicle. Compl. ¶5.

Liger had a duty to use reasonable care while driving his car. Compl. ¶7.

Liger breached his duty of care by failing to keep a safe distance from the car in front of him and by failing to pay attention to the flow of traffic in front of him. Compl. ¶8

Liger's carelessness amounts to gross negligence. Compl. ¶9.

As a direct and proximate result of Liger's gross negligence, Smith suffered painful neck, back, shoulder and elbow injuries. He is disabled and has incurred medical expenses, which continue to accrue. Compl. ¶10.

The Supreme Court of the Virgin Islands (hereinafter, "Supreme Court") has not yet conducted a full analysis on the common law doctrine of gross negligence as applied to automobile collisions. *Banks* and its progenies prescribe that when faced with a matter of common law unsupported by binding precedent, the court must conduct a tripartite test to determine the soundest rule for the Virgin Islands.¹¹ The Court finds that at this juncture, a *Banks* analysis is not necessary because a cursory review of the Complaint reveals that Smith failed to plead sufficient facts to support his gross negligence claim.

¹¹ See *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011). See also *Government of the Virgin Islands v. Connor*, 60 V.I. 597 (V.I. 2014) (To determine the common law, the Court must ascertain: "(1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions; and (3) most importantly, which approach represents the soundest rule for the Virgin Islands.").

In *Francis*, the Supreme Court instructed that “gross negligence is conduct beyond simple negligence showing an extreme departure from the ordinary standard of care.”¹² After conducting an extensive analysis, *Tutein* explained that “gross negligence encompasses ‘reckless’ and ‘wanton’ conduct; that is, the actor must demonstrate a conscious indifference to the consequences of his conduct or act so unreasonable that imminent likelihood of harm or injury to another is reasonably apparent.”¹³

To state a plausible claim for gross negligence, at a minimum, Smith must allege that Liger’s conduct was reckless or wanton. “Virgin Islands law, however, does not require actual or imminent danger as an element of reckless driving, but simply requires that one operate a vehicle ‘in such a manner as to indicate either a willful or wanton disregard for the safety of person or property.’”¹⁴

Here, Smith’s allegations fail to demonstrate that Liger’s conduct was an extreme departure from the ordinary standard of care beyond simple negligence which is necessary to prevail on a gross negligence claim. Smith failed to allege that Liger operated his vehicle recklessly with “a willful or wanton disregard for the safety of person or property.”¹⁵ Smith merely stated that “Liger’s carelessness amounts to gross negligence.”¹⁶ There are no allegations of reckless or wanton conduct. “Carelessness” and “failure to pay attention to traffic” do not rise to the level of extreme departure from the ordinary standard of care or reckless conduct

¹² See *Francis v. People of the Virgin Islands*, 56 V.I. 370, 382 (VI. 2012) (the Court held that automobile accident was not a result of gross negligence).

¹³ See *Tutein v. Parry*, 2006 V.I. LEXIS 27, *13 (V.I. Super. Ct. 2006); see also V.I.CODE ANN. tit.20, §555 June 21, 2016 (gross negligence).

¹⁴ See *Galloway v. People of the Virgin Islands*, 57 V.I. 693, 706 (VI. 2012) (internal quotation marks omitted); 20 V.I.C. §492.

¹⁵ *Id.*

¹⁶ Comp. ¶9

necessary to state a plausible claim for gross negligence.¹⁷ Therefore, Smith has failed to state a plausible claim for gross negligence. In lieu of dismissal, the Court will allow Smith to amend his Complaint.¹⁸

CONCLUSION

Based on the foregoing analysis, the Court will deny Liger's Motion and order Smith to amend his Complaint. Smith has failed to plead sufficient facts to support a plausible claim of gross negligence. The Court will issue an Order consistent with this Memorandum Opinion.

Dated: Oct. 3, 2016

ATTEST:

Estrella George
Acting Clerk of the Court


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

By: 
Deputy Clerk

Dated: 10/4/16

¹⁷ Compl. ¶¶8, 9.

¹⁸ See *Santiago v. V.I. Housing Auth.*, 57 V.I. 256, 275 (VI. 2012); see also SUPER. CT. R. 8 (Superior Court Rule 8 permits the court to allow the parties to amend any process or pleading for any omission or defect therein).