

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

JAMES ALLEYNE,	)	
	)	
Plaintiff,	)	CASE NO. ST-05-CV-648
vs.	)	
	)	
RAFAEL OJEDA, MARIA CONCEPCION D/B/A ESTELLA RESTAURANT, LAUNDRY AND DRY CLEANING, AND FOUR WINDS PLAZA CORP.,	)	ACTION FOR DAMAGES
	)	
Defendants.	)	JURY TRIAL DEMANDED
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Four Winds Plaza's Motion for Summary Judgment (filed on May 18, 2015). For the reasons expounded below, the Court will grant the motion.

I. Background

Defendant Four Winds owns a shopping plaza in St. Thomas. Beginning in June 2000, Four Winds entered into a one-year lease with Maria Estela Concepcion on behalf of her business, Estela's Laundromat and Dry Cleaner, for commercial space at Four Winds Plaza. In addition to providing laundry services, Concepcion's business also included a restaurant. Four Winds furnished the premises with laundry machines, kitchen equipment, tables, counters, and, crucially for this case, plastic chairs, which the previous tenant had left behind. Under the lease, Concepcion

became a month-to-month tenant at the end of the initial term. The parties dispute the extent to which Four Winds retained any control over Concepcion's operation of the business.¹

On June 2, 2004, Plaintiff James Alleyne entered Concepcion's business, purchased a meal from the counter, and sat in a green plastic chair at a table. Alleyne alleges that the chair collapsed immediately upon sitting; he further alleges that he struck his head against the wall and struck his neck, back, shoulder, waist, and leg against the floor as a result of his fall. He went to the emergency room by ambulance. On November 30, 2005, he filed this lawsuit. Although Alleyne originally named Concepcion as a defendant, she has since been dismissed and Four Winds is now the sole defendant.²

II. Analysis

Four Winds now moves for summary judgment pursuant to Fed. R. Civ. P. 56 (as incorporated by Super. Ct. R. 7). To succeed, Four Winds must demonstrate "that there is no genuine dispute as to any material fact [such that Four Winds] is entitled to judgment as a matter of law." *Id.* A genuine dispute of material fact exists if, based on the evidence in the record, a reasonable jury could find in favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In analyzing this

¹ The briefings focus extensively on this question. However, because the Court's analysis below does not turn on the details of Four Winds purported control over Concepcion's business, those details are not included here.

² Alleyne's claims against Defendant Rafael Ojeda were dismissed on August 21, 2007. His claims against Concepcion were dismissed on September 14, 2007.

motion, the Court must “view all inferences from the evidence in the light most favorable to . . . [Alleyne] and take [his] allegations as true if properly supported.” *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379 (V.I. 2014) (citing *Perez v. Ritz-Carlton (V.I.), Inc.*, 59 V.I. 522, 527 (V.I. 2013)). However, because Alleyne is the plaintiff in this case, and therefore bears the ultimate burden of proof, it is not necessary that Four Winds “support its motion with [evidence] negating [Alleyne’s] claim.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Rather, since Four Winds has “informed the . . . [C]ourt of the basis for its motion,” *id.*, “the burden shifts to [Alleyne] to present ‘affirmative evidence’ from which a jury might reasonably return a verdict in his favor.” *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (citing *Celotex Corp.*, 477 U.S. at 322-25; *Liberty Lobby*, 477 U.S. at 248). Therefore, Alleyne must offer at least some evidence from which to draw an inference; he “may not rest upon mere allegations.” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008). “[T]he mere possibility that something occurred in a particular way is not enough, as a matter of law, for a jury to find it probably happened that way.” *Saldana v. Kmart Corp.*, 43 V.I. 361, 368 (3d Cir. 2001). Alleyne argues that there are three legal bases for finding Four Winds liable in this case: liability as a possessor of land, i.e. premises liability,³ liability as a supplier of chattels, and breach of warranty. Pl.’s Inf. Mot. (Mar. 25, 2015). The Court considers each in turn.

³ This case has lingered for a long time. It appears from the record that a previous judge denied a motion for summary judgment filed by Four Winds (which challenged the existence of a landlord duty of care). See Order (entered March 30, 2009). However, that judge never expounded her reasons for that decision in writing and Alleyne has not argued to the current judge that the Court ought to defer to that unreasoned decision now. Considering that this

A. Premises Liability

To prove premises liability, Alleyne must show that Four Winds owed him a duty of care, that Four Winds breached that duty, and that that breach caused Alleyne's injuries. *Machado*, 61 V.I. at 380. Four Winds vigorously disputes that it owed any duty to Alleyne because it argues that it is merely the landowner; Concepcion's business possessed the premises and owed Alleyne the duty of care. Alleyne argues that although it is usually the case that landowners are not possessors of land for the purpose of premises liability, Four Winds actually controlled Concepcion's business to such an extent that it too owed Alleyne the usual duty of reasonable and ordinary care.

Despite the parties' extensive focus on this question in their briefs, the Court finds it is unnecessary to determine whether Four Winds owed Alleyne a duty because, even if Four Winds did owe the full duty of reasonable care normally expected by invited patrons of commercial establishments open to the public, the Court agrees with Four Winds that the record contains no evidence that Four Winds actually breached that duty (or caused Alleyne's injury). To prove a breach, Alleyne must show that Four Winds had actual or constructive notice of a dangerous condition with the green plastic chair that broke when Alleyne sat. *Id.* at 392. Constructive notice might be shown from evidence suggesting that the condition persisted for long

enough that reasonable diligence ought to have discovered it, *id.* at 393, or that whatever caused Alleyne's chair to collapse was a recurring condition. *Perez v. Ritz-Carlton (V.I.), Inc.*, 59 V.I. 522 (V.I. 2013). But Alleyne has not identified anything in his brief, nor can the Court find anything upon independent review of the record, that constitutes affirmative evidence of actual notice, constructive notice, or anything else that could prove a breach of duty⁴ (nor can it find anything that would permit an inference that the breach, whatever it might have been, actually caused the accident). All that a jury can reasonably infer from the record is that the chair broke. That is not enough to survive a motion for summary judgment. *Machado*, 61 V.I. at 390. Therefore, the Court will grant Four Winds's motion on Alleyne's premises liability theory.

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⁴ Rather, to the extent that there is any record evidence touching on this question, it supports Four Winds's position. Concepcion in her deposition stated that "the chairs were fine" when asked about their condition and, when asked whether there had been any prior incidents with chairs, she reported only that there had been patron injuries relating to a dryer cover and a fire extinguisher. Dep. of Maria Estela Concepcion, 18, 26.

B. *Supplier of Chattels Liability*

With respect to Alleyne's claim for supplier of chattels liability, Alleyne encourages the Court to adopt Restatement (Second) of Torts §§ 388,⁵ 392,⁶ into the Virgin Islands common law pursuant to the analysis required under *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011) and *Government of the Virgin Islands v. Connor*, 60 V.I. 597 (V.I. 2014). Both parties support adopting these sections for the Virgin Islands, but Four Winds challenges their applicability in this case because it argues, inter alia, that the case of a problematic chattel in a furnished commercial space ought to be considered strictly under a premises liability framework and, for the purposes of Section 392 in particular, that the chairs were not

⁵ Which reads:

Section 388. Chattel Known to be Dangerous for Intended Use

One who supplies directly or through a third person a chattel for another to use is subject to liability to those whom the supplier should expect to use the chattel with the consent of the other or to be endangered by its probable use, for physical harm caused by the use of the chattel in the manner for which and by a person for whose use it is supplied, if the supplier

- (a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is supplied, and
- (b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and
- (c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous.

⁶ Which reads:

Section 392. Chattel Dangerous for Intended Use

One who supplies to another, directly or through a third person, a chattel to be used for the supplier's business purposes is subject to liability to those for whose use the chattel is supplied, or to those whom he should expect to be endangered by its probable use, for physical harm caused by the use of the chattel in the manner for which and by persons for whose use the chattel is supplied

- (a) If the supplier fails to exercise reasonable care to make the chattel safe for the use for which it is supplied, or
- (b) If he fails to exercise reasonable care to discover its dangerous condition or character, and to inform those whom he should expect to use it.

provided in the furtherance of Four Winds's business, but rather in furtherance of Concepcion's.

The Court agrees with both parties that Sections 388 and 392 ought to be incorporated into Virgin Islands common law.⁷ However, the Court declines to decide whether the sections ought to apply in the context of furnished premises, because, even if they did, Alleyne has not shown enough affirmative evidence to allow a reasonable jury to infer that Four Winds violated either section. Under Section 388, Four Winds's knowledge of a danger with the chair is an essential element of Alleyne's claim. As with the lack of record evidence from which to infer actual or constructive notice of a danger in the premises liability analysis above, the Court agrees with Four Winds that there is no record evidence of actual or constructive knowledge for the purposes of a Section 388 analysis. Similarly, under Section 392, Alleyne must show that Four Winds did not exercise reasonable care in making sure the chair was safe at the time Four Winds leased it to Concepcion in June 2000; again, there is just no record evidence from which to infer such a failure. As with premises liability above, the record does not reflect any breach of duty, causation, or knowledge of any sort;

⁷ Virgin Islands case law pre-*Banks* shows a modest but unmistakable preference for applying these sections. *E.g.* *Petitto v. Asplundh*, 2010 U.S. Dist. LEXIS 16360 (D.V.I. Feb. 24, 2010); *Henry v. St. Croix Alumina*, 2007 U.S. Dist. LEXIS 98205 (D.V.I. Aug. 10, 2007); *Couch v. St. Croix Marine*, 667 F.Supp. 223 (D.V.I. 1987); *Manbodh v. Hess Oil V.I. Corp.*, 47 V.I. 215 (V.I. Super. Ct. 2005). Neither the parties nor the Court were able to identify any serious alternatives to Sections 388 and 392 (except the strict liability standard applicable under *Banks* for products liability cases; the Court addresses this in footnote 8). The Court finds that, in light of *Banks*'s instituting a strict liability standard for lessors of chattels with product defects, and in light of the modest reliance interest on pre-*Banks* case law, Sections 388 and 392 are the soundest rule for the Virgin Islands insofar as they provide a residual opportunity for an injured party to recover damages in the many cases that don't fall under *Banks* and the Restatement (Third) of Torts: Products Liability.

Alleyne cannot prove his case to a reasonable jury under any standard short of strict liability (which is not called for under *Machado* or the Restatement sections). Therefore, the Court will also grant summary judgment on Alleyne's supplier liability theory.^{8,9}

C. Breach of Warranty

Finally, Alleyne's Complaint and his Informational Motion (filed on March 25, 2015) list "breach of warranty" as another proposed basis for finding Four Winds liable. Four Winds dedicated a substantial portion of its Motion for Summary Judgment to demonstrating that warranties under Article 2 of Title 11A are applicable to sales only. See V.I. Code Ann. tit. 11A, § 2-102 – 2-106, 2-314 – 2-315, 2-318. Alleyne's Opposition does not even defend against Four Winds's warranty arguments. His only statement on the subject comes in his Informational Motion

⁸ Although Alleyne only asks the Court to apply Sections 388 and 392, the common law holding in *Banks* itself looms large in the background and the Court feels compelled to address whether it is applicable here. In the substantive holding of *Banks*, the Supreme Court incorporated the Restatement (Third) of Torts: Products Liability §§ 1, 20, into Virgin Islands common law (and in the process rejected Restatement (Second) of Torts §§ 402A, 407-408). Sections 1 and 20 impose strict liability on lessors of chattels for product defects; if applicable here, Four Winds could still have been liable even without knowledge of the danger or a breach of duty (unlike the premises liability claim and the Section 388 and Section 392 claims addressed above). However, even if Alleyne had raised *Banks* as a basis of liability, the Court concludes nonetheless that it would not have assisted Alleyne in defeating summary judgment because the record contains no evidence of a defect in the chair. Again, the only reasonable inference a jury could draw from the record is that the chair in fact broke. There is no evidence why it broke and certainly nothing to indicate that it was due to a defect in design, manufacturing, or otherwise.

⁹ With respect to the lack of evidence of Four Winds's negligence, Alleyne has not asked the Court to consider the doctrine of *res ipsa loquitur*, which could defeat summary judgment by allowing a jury to infer negligence under certain conditions. *Coastal Air Transport v. Royer*, 2016 V.I. Supreme LEXIS 19 (V.I. June 3, 2016). However, one of those conditions is the requirement that causes other than Four Winds's negligence be sufficiently eliminated as possibilities. That the chair had been under the control of Concepcion for four years before the incident and likely in use by other patrons effectively forecloses this possibility.

where he quotes the Supreme Court's statement in *Matthew v. Herman*, 56 V.I. 674, 680-81 (V.I. 2012) that "there [is] no discernible distinction between a seller and a lessor of chattels." Whether or not this is true in this context, reasoning by analogy is not appropriate when construing statutory texts with unambiguous meanings. *Cf. People v. Baxter*, 49 V.I. 384, 388 (V.I. 2008) ("It is well settled that when the statutory language is plain and unambiguous, no further interpretation is required."). It is the Legislature's prerogative to expand statutory warranty¹⁰ protections to leases, not the judiciary's. And, in December 2000, the Legislature saw fit to add Article 2A to Title 11A, which created implied warranties for lessors of goods.¹¹ However, Article 2A was not in effect at the time Four Winds lent its chairs to Concepcion's business and is therefore inapplicable to this case.¹² If Alleyne has an additional warranty theory based on a legal authority other than Title 11A,¹³ his opportunity to cite that authority and make arguments before the Court has passed. Therefore, the Court will grant summary judgment on Alleyne's warranty theory.

III. Conclusion

The Court, finding no evidence in the record to support a claim that Four Winds Plaza breached a duty of reasonable care or had knowledge of a danger with the chair

¹⁰ Alleyne's Complaint alleges both express and implied warranties. There is no record evidence that Four Winds ever made an express warranty concerning the chair that broke underneath Alleyne.

¹¹ Act No. 6362, § 3 (V.I. Reg. Sess. 2000) (signed into law on February 1, 2001).

¹² Nor is the Court convinced that Four Winds would qualify as a merchant in chairs as required under Article 2A.

¹³ Alleyne never provided a plain citation of authority on this point; Four Winds's Title 11A arguments reflect its best guess at Alleyne's position.

that broke underneath Alleyne, and further holding that Title 11A, Article 2A, does not apply to this case, decides that Four Winds is entitled to judgment as a matter of law. The Court will enter an Order consistent with this opinion.

DATED: August 16, 2016

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: [Signature]
LORI BOYNES-TYSON
Court Clerk Supervisor 8/17/2016

[Signature]
Kathleen Mackay

Judge of the Superior Court
of the Virgin Islands

A CERTIFIED TRUE COPY

DATE 08-17-16

ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT

BY [Signature]
COURT CLERK II