

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: AT CHRISTIANSTED

WENDALL THOMAS,	)	
	)	
Plaintiff	)	CIVIL NO. 143/1977
	)	
vs.	)	ACTION FOR DAMAGES
	)	
GOVERNMENT OF THE VIRGIN	)	
ISLANDS,	)	
	)	
Defendant	)	
	)	

MEMORANDUM OPINION AND JUDGMENT

DEREK M. HODGE, ESQUIRE
Hodge & Sheen
46-47 Company Street
Christiansted, St. Croix
- For Plaintiff

THOMAS M. UTTERBACK, ESQUIRE
Asst. Attorney General
Dept. of Law - Box 280
St. Thomas, V.I.
- For Defendant

RAYMOND L. FINCH, Judge

This is an action for damages brought by the plaintiff, Wendall Thomas against the Government of the Virgin Islands. In making road repairs the government dug a ditch on the side of the roadway at Grove Place Road. The dirt taken from the ditch was placed at the side of the ditch in a mound which extended into the roadway. On March 12, 1976 at 4:30 p.m., the government workers terminated work at the site on Grove Place Road and warning devices were placed around the site. On March 13, 1976 at about 1:00 a.m. after having a few drinks, plaintiff Thomas was driving north on Grove Place Road when he was partially blinded by the lights of an oncoming car and ran his car upon the mound of dirt,

causing damage to his car. The plaintiff alleges that the defendant government was negligent in leaving the mound of dirt upon the highway and not providing any illuminating warning devices to warn on-coming traffic of the excavation site. The plaintiff further alleges that the doctrine of res ipsa loquitur is applicable to the present set of circumstances because, according to the plaintiff, at the time of the accident the excavation site was under defendant's exclusive management and control, and if defendant had maintained a check on the area any absence of warning devices would have been detected.

The Latin phrase res ipsa loquitur means literally "the thing speaks for itself". The recognized definition of the doctrine was first propounded in 1865^{1/}:

"There must be reasonable evidence of negligence; but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose from want of care".

The conditions for res ipsa loquitur that are most often stated in a first year law student's tort class are: (1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff; and in some jurisdictions (4) the evidence as to

^{1/}

Scott v. London & St. Katherine Docks Co., 3 H & C 596, 159 Eng. Rep. 665 (1865) (opinion by Chief Justice Erle).

direct a verdict for the defendant.^{3/} From a reading of the discussion herein on res ipsa loquitur as applied to the circumstances of this case, and a close analysis of the other facts presented, it is apparent that the plaintiff has not carried his burden of proof against the defendant.

It cannot be denied that without the mound of dirt there would have been no litigation in this case. But the plaintiff has not satisfied this Court that the alleged negligent action of the defendant in not placing warning devices at the excavation site was the proximate cause of the accident. Indeed, the evidence shows that the warning devices may have been in place at the excavation site. The plaintiff alleges as negligence the failure of the defendant in not inspecting the site after the end of the work day and into the night to make certain that the warning devices were properly functioning and that the site did not pose a hazard to traffic on the road. This argument of plaintiff's is one that this court need not extensively discuss for purposes of deciding this case. There is testimony that the site was in fact visited by one of defendant's employees after work was terminated. Also the record seems to indicate that at 1:00 a.m. the mound of dirt was visible enough in the road to alert passersby of its existence. The record also indicates that the proximate cause of the accident may have been the temporarily blinded condition of the plaintiff caused from the headlights of an oncoming car just before the impact and/or the plaintiff's imbibing that evening before

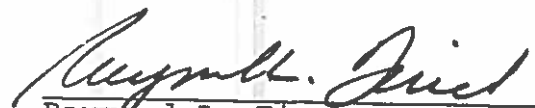
^{3/}

Id. at 241; see also Eckley v. Seese, 382 Pa. 425, 115 A.2d 227 (1955); Florig v. Sears Roebuck & Co., 388 Pa. 419, 130 A.2d 445 (1957).

his drive. The plaintiff has not shown that the failure of the defendant to inspect the excavation site is more likely the cause of the accident than the above-mentioned factors.

For the reasons hereinabove discussed, the complaint must be dismissed and the plaintiff shall take nothing.

DATED: April 11, 1978


Raymond L. Finch
Judge