

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

CARLOS CORCINO,	)	
Plaintiff,	)	CIVIL NO. SX-09-CV-194
	)	
v.	)	ACTION FOR DAMAGES
	)	
KASEY L. NATIONS and JERRY NATIONS,	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION

THIS MATTER comes before the Court on Defendant Jerry Nations' *Renewed Motion for and Memorandum of Law in Support* filed on November 20, 2015. Plaintiff, Carlos Corcino ("Corcino"), did not file a response. For the reasons stated below, the Court will grant the motion for summary judgment.

I. FACTS

On April 5, 2009, Kasey Nations ("Kasey") caused a vehicle she was driving to strike Corcino while he was crossing the street on North Side Road on the island of St. Croix. The vehicle that Kasey was driving was owned by her uncle, Jerry Nations ("Jerry").¹ On April 16, 2009, Corcino commenced this lawsuit by filing a complaint against Kasey alleging gross negligence. Corcino later filed an amended complaint to assert a cause of action against Jerry for negligently entrusting his vehicle to his niece. Jerry filed the instant motion seeking summary judgment on Corcino's claim for negligent entrustment.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56, applicable to proceedings in the Superior Court through Rule 7 of the Superior Court, governs motions for summary judgment in the Virgin

¹ To avoid confusion, the Court will refer to the Defendants by their first names.

Islands. *Burd v. Antilles Yachting Services, Inc.*, 57 V.I. 354, 360 n.2 (V.I. 2012). “Generally, summary judgment should be granted after an adequate period for discovery has passed if the record reflects that: (1) there are no genuine issues, (2) as to any material fact, and (3) the moving party is entitled to judgment as a matter of law.” *Walters v. Walters*, 60 V.I. 768, 794 (V.I. 2014). The moving party must support the motion by “identify[ing] those portions of the record that demonstrate the absence of a genuine issue of material fact.” *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013). If the moving party does so, “the burden shifts to the non-moving party to present ‘affirmative evidence’ from which a jury might reasonably return a verdict in his favor.” *Id.* In considering whether there are any disputed issues of material fact, the Court must draw all reasonable inferences from the evidence on record in the light most favorable to the non-moving party. *Walters*, 60 V.I. at 794. All allegations of the non-moving party supported by proper proofs must be accepted by the Court as true for the purposes of deciding the motion. *Chapman*, 58 V.I. at 436. The Court’s role in deciding a motion for summary judgment is not to determine truth, but rather to determine whether a factual dispute exists that warrants trial on the merits. *Williams v. United Corp.*, 50 V.I. 191, 195 (V.I. 2008). Where such a factual dispute exists, the Court must deny summary judgment. *Sealey-Christian v. Sunny Isle Shopping Center*, 52 V.I. 410, 423 (V.I. 2009).

III. DISCUSSION

In this matter, Corcino alleges a single cause of action of negligent entrustment against Jerry. A cause of action for negligent entrustment is premised on Restatement (Second) of Torts § 390, which provides:

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because

of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

Restatements (Second) of Torts § 390.² Thus, in order to prevail on a claim of negligent entrustment, a plaintiff must establish the following: (1) the defendant supplied a chattel to a third person; (2) likelihood that such third person because of youth, inexperience, or otherwise would use the chattel in a manner involving unreasonable risk of harm to himself and others whom the defendant should expect to be endangered; (3) the defendant knew or had reason to know of such a likelihood; and 4) proximate cause of the harm to plaintiff by conduct of the third person. *See Faulknor v. Gov't of the Virgin Islands*, 60 V.I. 65, 88-89 (V.I. Super. Ct. 2014) (citing *Baron by & el rel. Baron v. Rosario*, 37 V.I. 82, 85, 982 F. Supp. 1037, 1039 (D.V.I. App. Div. 1997)).

Jerry contends that he is entitled to summary judgment because there is no genuine issue of material dispute that he did not supply a chattel to a third person. Jerry argues that Kasey took his vehicle without his permission, he had expressly forbidden her from using the vehicle, he was off-island when the vehicle was taken, and he did not know the vehicle had been taken until the day after the accident. In support of these contentions, Jerry

² Ordinarily, when considering a question not foreclosed by prior precedent, the Superior Court must perform a three-part *Banks* analysis to determine whether a particular restatement provision should be part of the common law of the Virgin Islands. *See Gov't of the Virgin Islands v. Connnor*, 60 V.I. 597, 603 (V.I. 2014). A *Banks* analysis requires the Superior Court to determine: (1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the positions taken by a majority of courts from other jurisdictions; and (3) the approach that represents the soundest rule for the Virgin Islands. *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967, 984-85 (V.I. 2011). The Supreme Court of the Virgin Islands has yet to determine that section 390 of the restatements of torts should be part of Virgin Islands common law. However, in *Faulknor v. Gov't of the Virgin Islands*, 60 V.I. 65, 88-89 (V.I. Super. Ct. 2014), the St. Thomas-St. John Division of the Superior Court conducted a *Banks* analysis and held that section 390 reflects the common law of the Virgin Islands. This Court sees no reason to depart from that ruling, hereby adopts the reasoning opined in that decision, and agrees that section 390 should be adopted as a common law cause of action in the Virgin Islands.

submitted an affidavit from Kasey stating that she had taken the vehicle without his permission and that he did not know about the accident until the next day. Kasey Aff. ¶¶ 3-4 (Mar. 31, 2010). Jerry also submitted his own affidavit that he had expressly forbidden Kasey from driving his vehicle because her driver's license was expired and was off-island at the time of the accident. Jerry Aff. ¶¶ 3-6 (Mar. 23, 2010). This evidence demonstrates an absence of a genuine issue of material fact pertaining to the first element of a negligent entrustment claim. Thus, the burden now shifts to Corcino to present affirmative evidence that there is a genuine issue of material fact that Jerry supplied the vehicle to Kasey. Corcino failed to file a response or otherwise dispute the evidence submitted by Jerry.³ The Court, therefore, finds that there is no genuine issue of material fact that Jerry did not supply the vehicle to Kasey that led to the injuries sustained by Corcino.

III. CONCLUSION

For the reasons stated above, the Court will grant Jerry Nations' motion for summary judgment. Jerry has submitted sufficient evidence to demonstrate that he did not provide Kasey with the vehicle, or any other chattel, that caused harm to Corcino. Thus, Jerry is entitled to judgment as a matter of law on Corcino's claim for negligent entrustment. An appropriate Order follows.

Dated: June 21, 2016

ATTEST:

ESTRELLA H. GEORGE

CLERK OF COURT

COURT CLERK


ROBERT A. MOLLOY
Judge of the Superior Court

³ During a telephonic status conference held on February 1, 2016, Corcino's attorney represented to the Court that she was unable to locate her client and requested that the Court allow her to withdraw as counsel for Corcino. The Court orally granted counsel's motion and stayed the case for forty-five (45) days to allow counsel to locate her client. There is no indication that counsel was able to do so. The Court finds that counsel's inability to locate her client after more than four months since the date of the status conference should not cause any further delay in issuing a ruling in this matter.