

NOT FOR PUBLICATION

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

RENISHA ALLICK,

Plaintiff,

v.

**ANTHONY DECLEMENTE AND VIRGIN ISLANDS
ENTERPRISES INC., D/B/A AVIS RENT A CAR,**

Defendants.

SX-10-CV-059

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Virgin Islands Enterprises Inc., d/b/a Avis Rent a Car's (hereinafter, "Avis") Motion for Reconsideration of the Court's September 22, 2010 Order¹ denying Defendant Avis' Motion to Dismiss and granting Plaintiff leave to amend the Complaint (hereinafter, the "September 22, 2010 Order"), filed October 5, 2010. Plaintiff did not file a Response.

FACTS

On January 28, 2010, Plaintiff filed a Complaint against Defendants concerning an automobile accident. On or about August 30, 2007, Defendant Anthony Declemente (hereinafter, "Declemente") was operating a vehicle owned by Defendant Avis. Plaintiff alleges that Defendant Declemente negligently operated said vehicle and caused it to collide with Plaintiff, a pedestrian. Plaintiff claims that Defendant Declemente failed to keep a proper look out for pedestrian traffic, failed to maintain proper control of the vehicle, failed to operate the vehicle within the designated speed limit, failed to operate the vehicle in the proper lane, failed to yield the right of way to a pedestrian and failed to exercise the required duty of care.

¹ The Order is dated September 15, 2010 and entered on September 22, 2010.

Additionally, Plaintiff also alleges that Defendant Avis negligently entrusted the vehicle to Defendant Declemente because Defendant Avis knew or should have known that Defendant Declemente would operate the vehicle in a manner that was likely to cause serious injury to life, limb and property on the road and Defendant Avis failed to take the necessary action to ensure that Defendant Declemente would carefully operate the vehicle. Plaintiff claims that, as a direct and proximate result of Defendants' negligence, Plaintiff suffered bodily injuries to head, neck, chest, left elbow, lower back, and various other parts of her body, permanent disfigurement, endured pain of body and mind, loss income and incurred expenses to treat her injuries, all of which will continue in the future.

On May 17, 2010, Defendant Avis filed a Motion to Dismiss For Failure to State a Claim. Subsequently, on September 22, 2010,² the Court denied Defendant Avis' Motion to Dismiss and granted Plaintiff leave to amend the Complaint in regard to the Negligent Entrustment Claim against Defendant Avis. When the September 22, 2010 Order was issued, the Court was not aware that: (1) on September 8, 2010, Plaintiff filed a Motion to Amend Complaint; and (2) on September 20, 2010, Defendant Avis filed a timely Opposition to Plaintiff's Motion to Amend Complaint. On October 5, 2010, Defendant Avis filed this Motion for Reconsideration claiming that the Court failed to consider its timely Opposition to Plaintiff's Motion to Amend Complaint. Only upon reviewing Defendant Avis' Motion for Reconsideration that the Court became aware of both Plaintiff's Motion to Amend Complaint and Defendant Avis' Opposition to Plaintiff's Motion to Amend Complaint.

² The Order is dated September 15, 2010 and entered on September 22, 2010.

DISCUSSION

Local Rule of Civil Procedure 7.3 codifies longstanding Third Circuit precedent; it provides:

A party may file a motion asking the Court to reconsider its order or decision. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the Court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on:

- (1) Intervening change in controlling law;
- (2) Availability of new evidence, or;
- (3) The need to correct clear error or prevent manifest injustice.

LRCi 7.3; *see Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir.1985).

The purpose of a motion for reconsideration is to “correct manifest errors of law or fact or to present newly discovered evidence.” *WorldCom Technologies, Inc., v. Intelnet Int’l, Inc.*, 2001 WL 118957, *2 (E.D.Pa. 2001) (quoting *Harsco Corp.* 779 F.2d at 909). Such motions are not substitutes for appeals, and are not to be used as “a vehicle for registering disagreement with the court’s initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.” *Bostic v. AT&T of the Virgin Islands*, 312 F.Supp.2d 731, 733 (D.V.I. 2004).

Defendants brought this Motion for Reconsideration on the basis of the need to correct clear error and prevent manifest injustice. Defendant Avis argues that when the Court issued the September 22, 2010 Order, the Court did not have the benefit of, and did not consider, its timely Opposition to Plaintiff’s Motion to Amend Complaint.

Although Plaintiff filed her Motion to Amend Complaint on September 8, 2010, the Court actually did not have in its possession Plaintiff's Motion to Amend Complaint when the Court issued the September 22, 2010 Order. Upon reviewing both Plaintiff's Motion to Amend and Defendant Avis' Opposition to Plaintiff's Motion to Amend Complaint, the Court reaches the same conclusion – the Court will deny Defendant's Motion to Dismiss and grant Plaintiff's Motion to Amend Complaint in regard to the Negligent Entrustment Claim against Defendant Avis. Upon reviewing the Amended Complaint that Plaintiff filed with her Motion to Amend Complaint, the Court finds that the Negligent Entrustment Claim against Defendant Avis is sufficiently well-plead in the Amended Complaint.

CONCLUSION

The Court does not find any clear error or manifest injustice with its September 22, 2010 Order. Accordingly, the Court will deny Defendant's Motion for Reconsideration of the Court's September 22, 2010 Order.

DONE and so ORDERED this 20th day of October, 2010.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: *[Signature]*

Deputy Clerk

Dated: 11/8/10

[Signature]
HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This 15th day of NOV. 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT

By: *[Signature]* Court Clerk II