

FILED

October 29, 2021 01:07 PM

SX-2020-CV-00273

TAMARA CHARLES
CLERK OF THE COURT

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

TERRENCE NELSON,

PLAINTIFF,

v.

**CENTERLINE CAR RENTALS, INC. AND
JONATHAN SCULLY,**

DEFENDANTS.

Civil No. SX-20-CV-273

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

CITE AS: 2021 VI SUPER

109

Appearances:

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Law Office of Trudy Fenster, P.C.
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For Plaintiff

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For Defendant CCR

MEMORANDUM OPINION AND ORDER

WILLOCKS, Presiding Judge

¶ 1 **THIS MATTER** came before the Court on Defendant Centerline Car Rentals' (hereinafter "CCR") motion to dismiss, filed on June 12, 2020. In response, Plaintiff Terrence Nelson (hereinafter "Plaintiff") filed an opposition and Defendant CCR filed a reply thereto.

BACKGROUND

¶ 2 On March 9, 2020, Plaintiff filed a complaint against Defendant CCR and Defendant Jonathan Scully (hereinafter "Scully") in connection with a motor vehicle accident that occurred on or about June 9, 2018 between Plaintiff and Defendant Scully while Defendant Scully was driving a vehicle rented from Defendant CCR. The complaint alleged the following causes of

action: Count I-Negligence, Count II-Gross Negligence, Count III-Respondeat Superior, and Count IV-Punitive Damages.

¶ 3 On May 28, 2021, the Court entered an order whereby the Court converted Defendant CCR's motion to dismiss into a motion for summary judgment pursuant to Rule 12(d) of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 12(d)")¹ and ordered, inter alia, Plaintiff and Defendant CCR to file their respective supplemental briefs and include all the material that is pertinent to the motion for summary judgment within sixty (60) days from the date of entry of said order.² On July 27, 2021, Defendant CCR filed its supplemental brief and on July 28, 2021, Plaintiff filed his supplemental brief.

¹ Rule 12(d) provides:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

V.I. R. Civ. P. 12(d).

² In the May 28, 2021 order, the Court explained:

On June 12, 2020, in lieu of filing an answer, Defendant CCR filed this instant motion to dismiss. In its motion, Defendant CCR argued that Plaintiff's claims against Defendant CCR should be dismissed because "Plaintiff alleges only claims of vicarious liability against [it]" and "Virgin Islands law does not recognize such claims, and even if it did, they would be preempted by the Graves Amendment." (Motion, p. 5) While Defendant CCR did not specifically indicate that it filed its motion to dismiss pursuant to Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 12(b)(6)"), Defendant CCR essentially argued in its motion that Plaintiff claims should be dismissed for failure to state a claim upon which relief can be granted. *See Arno v. Hess Corp.*, 71 V.I. 463, 495 (V.I. Super. Ct. Oct. 17, 2019) ("Though a motion to dismiss is often considered a blunt tool, if Plaintiff's complaint fails to articulate a cognizable claim, use of such a tool is entirely proper.") (citation omitted).¹ Accordingly, based upon the substance of Defendant CCR's instant motion, the Court will construe it as a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). *See Rodriguez v. Bureau of Corr.*, 70 V.I. 924, 928 n.1, 2019 VI 10 (V.I. 2019) (citing *Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011) ("[T]he substance of a motion, and not its caption, shall determine under which rule the motion is construed.")).

In response Plaintiff filed an opposition and attached the following documents in support of his opposition—a copy of the car rental agreement between Defendants, dated June 7, 2018 (Exhibit 1) and an affidavit of Jonathan Scully, dated June 26, 2020 (Exhibit 2). Neither documents attached to Plaintiff's opposition as Exhibit 1 and Exhibit 2 were attached to Plaintiff's complaint. Thus, these documents are considered matters outside the pleadings.

Under Rule 12(d) of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 12(d)"), "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56" and "[a]ll parties must be

¶ 4 On September 8, 2021, the Court entered an order whereby the Court noted that “[i]n hindsight, the Court should have been clearer in the [May 28],³ 2021 order that the parties’ supplemental briefs should comply with Rule 56 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”)⁴—to wit, Defendant CCR should have filed a statement of undisputed facts

given a reasonable opportunity to present all the material that is pertinent to the motion.” As such, pursuant to Rule 12(d), the Court will convert Defendant CCR’s motion into a motion for summary judgment and give the parties “a reasonable opportunity to present all the material that is pertinent to the motion.” V.I. R. CIV. P. 12(d); see also *United Corp. v. Hamed*, 64 V.I. 297, 307 (V.I. 2016).

¹ In discussing a motion to dismiss for failure to state a claim, the *Arno* court further explained:

The basic purpose of a ... motion to dismiss is to test the legal sufficiency of the complaint to state an actionable claim, not to test the truth of the facts alleged in the complaint. This defense is typically used in one of three situations: (1) the allegations in the complaint are so insufficient that the pleader has stated no claim for relief; (2) the pleader has alleged sufficient facts to state a claim for relief but has also alleged facts that disclose a bar to the suit or claim (such as when the complaint establishes a statute-of-limitations defense); and (3) the pleader has made an allegation that is not recognized in the law as a basis for recovery.

Arno, 71 V.I. at 495 (citation omitted).

It is this last basis, that the law does not provide relief, that Defendant CCR asserted here.

³ In the September 8, 2021 order, the Court inadvertently referred to the May 28, 2021 order by the wrong date.

⁴ Rule 56 provides:

Rule 56. Summary Judgment

...

(c) Procedures.

(1) *Support; Statement of Specific Undisputed Facts.* Each summary judgment motion shall include a statement of undisputed facts in a separate section within the motion. Each paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact. This section shall not count towards the 20 page or 6000 words limitation for such motions.

(2) *Opposition; Statement of Disputed Facts.*

(A) *Time for Response.* Any party adverse to a motion filed under this Rule may file a brief in opposition, any affidavits desired and/or other documents relied upon in opposition to the motion, within 30 days of the filing of the motion.

(B) *Response to Undisputed Facts.* A party opposing entry of summary judgment must address in a separate section of the opposition memorandum each of the facts upon which the movant has relied pursuant to subpart (c)(1) of this Rule, using the corresponding serial numbering, either:

(i) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or

(ii) stating that the fact is disputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number.

and Plaintiff should have filed a response to Defendant CCR's statement of undisputed facts" and ordered, inter alia, Defendant CCR to file its statement of undisputed facts pursuant to Rule 56(c)(1) within thirty (30) days from the date of entry of the September 8, 2021 order.

¶ 5 As of the date of this Memorandum Opinion and Order, Defendant CCR has not filed its statement of undisputed facts as required by Rule 56. At this juncture, given that Defendant CCR did not include matters outside the pleadings in its motion and that it was Plaintiff who presented matters outside the pleadings in his opposition,⁵ the Court will exclude any matters outside the pleadings and convert Defendant CCR's motion from a motion for summary judgment back to a motion to dismiss under Rule 12(b)(6). *See Oxley v. Sugar Bay Club & Resort Corp.*, 2018 V.I. LEXIS 81, at *3 (V.I. Super. Ct. May 14, 2018) ("In evaluating a motion to dismiss for failure to state a claim, the Court does not address the merits of the claim but merely tests whether the claim has been adequately stated in the pleading."). The Court will similarly exclude the supplemental

(C) *Optional Identification of Additional Facts.* In addition, a party opposing summary judgment may, if it elects to do so, state additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried. The party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number. This section shall not count towards the 20 page limitation for such opposition memorandum.

(3) *Reply by Party Moving for Summary Judgment.* Any reply by the movant to the opposition by the non-moving party shall be filed within 14 days after the filing of the brief in opposition to summary judgment. If the non-moving party has identified additional facts as being material and disputed, as provided in subpart (c)(2)(C) of this Rule, the moving party shall respond to these additional facts by filing a response using the corresponding serial numbering of each such fact identified by the non-moving party and either

(A) agreeing that the additional fact is disputed for the purpose of ruling on the motion for summary judgment only; or

(B) stating that particular numbered facts are undisputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number.

This section shall not count towards the 20 page or 6000 words limitation for such replies.

⁵ While Defendant CCR referenced the exhibits attached to Plaintiff's opposition, which were matters outside the pleadings, Defendant CCR also argued that "the Court should not consider Exhibit 2...because dismissal under Rule 12(b)(6) is based upon the pleadings alone." (Reply, p. 2.)

briefs Defendant CCR and Plaintiff filed in response to the May 28, 2021 order converting Defendant CCR's motion to dismiss to a motion for summary judgment.

STANDARD OF REVIEW

¶ 6 Rule 12(b)(6) of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 12(b)(6)") allows a party to assert the defense of "failure to state a claim upon which relief can be granted" by motion and move for dismissal. The Rule 12(b)(6) motion tests the sufficiency of the complaint. Rule 8 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 8") requires, *inter alia*, "a short and plain statement of the claim showing that the pleader is entitled to relief -- because this is a notice pleading jurisdiction -- and the pleading shall be set forth in separate numbered paragraphs as provided in Rule 10(b), with separate designation of counts and defenses for each claim identified in the pleading." V.I. R. Civ. P. 8(a)(2). As a notice pleading jurisdiction, "[a] complaint is sufficient 'so long as it adequately alleges facts that put an accused party on notice of claims brought against it.'" *Oxley*, 2018 V.I. LEXIS at *3 (quoting *Mills-Williams*, 67 V.I. 574, 585 (V.I. 2017)); *accord Arno*, 71 V.I. at 501 ("Plead the who, what, where, when, and how -- sufficient information to put a defendant on notice of the conduct and actions the plaintiff complains of." (brackets and citation omitted)). "[A] complaint need not plead facts to support each element of a claim in order to adequately allege facts that put an accused party on notice or to show[] the pleader is entitled to relief under V.I. R. Civ. P. 8(a)(2)[] [b]ut, a complaint should provide factual allegations sufficient to advise the responding party of the transaction or occurrence on which the claim is based and identify the claim, reciting its elements, so as to enable the defendant to respond intelligently and to enable the Court to determine on a motion to dismiss under V.I. R. Civ. P. 12(b)(6) whether the claim is adequately pled." *Oxley*, 2018 V.I.

LEXIS at *10;⁶ see *Mills-Williams*, 67 V.I. at 585 (citing V.I. R. Civ. P. 8 Reporter's Note) ("Virgin Islands Rule of Civil Procedure 8 expressly states that the Virgin Islands "is a notice pleading jurisdiction," V.I. R. Civ. P. 8(a), and the Reporter's Note eliminates any doubt that this language is calculated to "apply[] an approach that *declines* to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief.") (emphasis in original); see also, *Brathwaite v. H.D.V.I. Holding Co.*, 2017 V.I. LEXIS 76, at *3, (V.I. Super. Ct. May 24, 2017) (acknowledging that Virgin Islands Civil Procedure Rule 8(a)(2) eliminates the plausibility standard and instead will permit a complaint so long as it "adequately alleges facts that put an accused party on notice of claims brought against it").

¶ 7 "When ruling on a motion to dismiss for failure to state a claim, the court does not address the merits." *Oliver v. Terminix Int'l Co.*, 73 V.I. 210, 214 (V.I. Super. Ct. April 26, 2020); accord *Arno*, 71 V.I. at 494. Instead, courts "assume all reasonable factual allegations in the complaint as true and draw all fair inferences from such allegations." *Arno*, 71 V.I. at 494 (quoting *In re Kelvin Manbodh Asbestos Litig. Seiers*, 47 V.I. 375, 380 (V.I. Super. Ct. March 3, 2006)). However, "[a]llegations will not be reasonable, nor will inferences in favor of the plaintiff be fair, where they contradict facts either contained in the public record or judicially noticed by the Court." *In re Kelvin Manbodh Asbestos Litig. Series*, 47 V.I. at 380.

⁶ The *Oxley* court noted that "considering the policy of the Supreme Court of the Virgin Islands requiring the Superior Court to conduct a *Banks* analysis to determine the applicable common law when confronted with an issue of common law that has not yet been adopted by the Supreme Court of the Virgin Islands, in order to enable the Superior Court to recognize a potential *Banks* issue and order the parties to brief it, this Court underscores that a complaint should recite the elements of a common law claim so as to make clear the legal theory presented, given that elements among common law claims of the same name may vary." 2018 V.I. LEXIS *10-11. This Court agrees.

DISCUSSION

¶ 8 In its motion, Defendant CCR argued that “[P]laintiff’s claims against [Defendant] CCR must be dismissed” because “[t]he duties owed by a car rental company are established by Chapter 38 of Title 20 [of the Virgin Islands Code], not common law” and “[t]hose duties do not establish vicarious liability on the part of the rental car company [but] [e]ven if they did, federal law expressly preempts any state or territorial law that would otherwise render a car rental company vicariously liable.” (Motion, p. 1.) Defendant CCR also argued that while Plaintiff alleged that Defendant CCR rented the vehicle to Defendant Scully without properly verifying Defendant Scully’s driver’s license information, insurance information, and driving record, Plaintiff did not allege that Defendant Scully lacked a driver’s license, lacked proper insurance, or had a bad driving record, nor did Plaintiff “allege that a lack of a driver’s license, lack of proper insurance, or prior bad driving record had any causative relationship to the accident or [P]laintiff’s injuries.” (Id., at pp. 1-2.) Defendant CCR made the following assertions in support of its argument: (i) “Virgin Islands law does not impose vicarious liability upon the owner of a motor vehicle for the negligence of the driver.”⁷ (Id., at p. 2); (ii) “The laws regulating car rental companies in the Virgin Islands require only that the car rental company ‘examine[]’ the renter’s driver’s license and ‘verif[y]’ that the renter is legally authorized to operate a motor vehicle in the Virgin Islands”⁸ and [there is no allegation that [Defendant] Scully actually lacked a driver’s license or that any alleged

⁷ Defendant CCR referenced: *Hanley v. Jones*, 21 V.I. 190, 192–93 (Terr. Ct. 1984) (“An owner is not liable per se by reason of his interest in an automobile unless it is proven that the owner’s negligence caused the accident and was a direct cause of the injury or damage, or unless it is proved that said negligence was that of the owner’s agent or employee acting within the scope of his employment.”).

⁸ Defendant CCR referenced: Title 20 V.I.C. § 417; *Marian v. Fraser*, 2014 WL 1239492 at *5 n.30 (V.I. Super. Mar. 17, 2014) (“No statute in the Virgin Islands imposes an affirmative duty on a car rental business to inquire into the ‘driving history or experience’ of a lessee.”).

failure to have a driver's license had a causal relationship to the accident or [P]laintiff's alleged injuries."⁹ (Id., at pp. 3-4); (iii) "Virgin Islands law imposes no duty upon the part of a car rental company to inquire about any insurance the renter might carry or make sure that such insurance is 'proper' [a]nd, even if it did, [P]laintiff still does not allege any causal relationship between the lack of "proper" insurance and the accident or [P]laintiff's alleged injures."¹⁰ (Id.); (iv) The Graves Amendment's, Title 49 U.S.C. § 30106, "sole purpose was to preempt state law claims against rental companies that Congress deemed burdensome to interstate commerce."¹¹ (Id. at p. 4); and (v) "The absence in [P]laintiff's complaint of any allegation causally linking [Defendant] CCR's alleged breaches with the accident or [P]laintiff's alleged injuries demonstrates that [P]laintiff is relying upon a vicarious liability theory and seeking to hold [Defendant] CCR liable merely because the individual who rented [Defendant] CCR's car was in an accident" and "[u]nder the Graves Amendment, any effort to hold [Defendant] CCR liable without a showing of negligence (causation, of course, is an element of negligence) or criminal wrongdoing is preempted." (Id., at p. 5).

¶ 9 In his opposition, Plaintiff argued that the Court should deny Defendant CCR's motion to dismiss. (Opp., p. 6.) Plaintiff made the following assertions in support of his argument: (i) "As a direct result of the Defendants' conduct without any fault on the part of the Plaintiff, Plaintiff suffered severe physical and psychological injuries, mental anguish, pain and suffering, loss of enjoyment of life, loss of income and has incurred medical expenses." (Id., at p. 2); (ii) "Plaintiff

⁹ Defendant CCR referenced: *Marian* 2014 WL 1239492 at *5 n.30

¹⁰ Defendant CCR referenced: *Escaleria v. Powell*, 2007 WL 4210982 at *2 (Conn. Super. Ct. Nov. 6, 2007) (granting motion to strike plaintiff's negligence claim against defendant-lessor where [s]tate law did not require lessor to ensure that lessee maintained insurance coverage and where defendant-lessor's failure to ensure that lessee maintained adequate insurance was not, as a matter of law, a proximate cause of plaintiff's injury).

¹¹ Defendant CCR referenced: *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1252 (11th Cir. 2008).

further alleged [in his complaint] that Defendant [CCR] is directly liable for the conduct of Defendant Scully which caused his injuries” because “Defendant [CCR] rented the vehicle to Defendant Scully without properly verifying [Defendant] Scully’s driver’s license information...[Defendant] Scully’s insurance information... [and] [Defendant] Scully’s driving record.” (Id.); (iii) “Defendant Centerline incorrectly relies on two statutory principles to request that Plaintiff’s allegations against Centerline be dismissed”—to wit, “Defendant [CCR’s] conduct in renting a car to Defendant Scully, without ensuring that liability insurance had been procured by Defendant Scully, makes Defendant [CCR] ‘liable and responsible for all personal and property damages, but not exceeding the minimum liability limits required by [Title 20 V.I.C. § 418(c)]” and “Defendant [CCR’s] reliance on the unpublished case of *Marian v. Fraser* is inapplicable to this case [because] [c]ontrary to that *Marian* Defendant, Plaintiff has specifically claimed that Defendant [CCR] failed to verify that Defendant Scully possessed any liability insurance that would provide recourse to drivers in the Virgin Islands, should they become injured by [Defendant] Scully’s driving of a vehicle owned by [Defendant CCR].” (Id., at pp. 2-5); (iv) “Defendant [CCR] also relies on the federal pre-emption principle established through the Graves Amendment, 49 U.S.C. § 30106, which provides specific protections to car rental companies who are sued under a theory of vicarious liability” but “[t]he Graves Amendment is not applicable here, as the Plaintiff is claiming that [Defendant] Centerline is directly liable for failing to ensure Defendant Scully could properly drive on the roads of the Virgin Islands” and “the Graves Amendment specifically removes protection from car rental companies for their own negligence.” (Id., at p. 6); and (v) “Here, it is [Defendant CCR’s] own negligence that caused the Plaintiff to be without the recourse because it did not require and did not ensure that the Defendant [Scully] driver possess liability coverage for he caused accidents in the territory.” (Id.)

¶ 10 In its reply, Defendant CCR again argued that the Court should grant its motion to dismiss. (Reply, p. 4.) Defendant CCR made the following assertions in support of its argument: (i) “Plaintiff’s claim that a rental car company is required to verify a renter’s insurance is based upon a mistaken reading of 20 V.I.C. § 418.” (Id., at p. 1); (ii) “Plaintiff does not allege that [Defendant] CCR failed to procure the insurance mandated by 20 V.I.C. § 918(c).” (Id.); (iii) “[P]laintiff admits that [Defendant] CCR had the required coverage but does not like the fact that [Defendant] CCR’s contract provides that the insurance is excess to all other liability insurance.” (Id., at pp. 1-2); (iv) “[Defendant] CCR had no legal duty to investigate Scully’s insurance or to make sure that his insurance would cover him while renting a vehicle in the Virgin Islands.” (Id., at p. 2); (v) “[Defendant] CCR’s only duty was to procure the mandatory insurance set forth in 20 V.I.C. § 418(c) [and] Plaintiff does not allege that CCR breached that duty.” (Id., at pp. 2-3); (vi) “[There is no duty to check plaintiff’s driving history” and “Plaintiff offers no argument or supporting case law that would show that such a duty exists.” (Id., at p. 3); and (vii) While Defendant CCR “is required by law to verify the driver’s license of its customers[,]... [P]laintiff did not claim that [Defendant] Scully lacked a driver’s license and had made no allegation that [Defendant] CCR’s alleged failure to examine the driver’s license was a causative factor in the accident.” (Id., at pp. 3-4) (footnote omitted.)

1. Count I-Negligence

¶ 11 “The foundational elements of a negligence cause of action are: (1) a legal duty of care to the plaintiff; (2) defendant’s breach of that duty of care; (3) factual and legal causation; and (4) damages.” *Aubain v. Kazi Foods of the V.I., Inc.*, 70 V.I. 943, 948-49 (V.I. 2019). In his complaint, Plaintiff identified his claim under Count I as negligence, and provided, inter alia, factual allegations describing Defendant CCR’s conduct that caused damages to Plaintiff—to wit, Plaintiff

alleged that, Plaintiff sustained damages as a “direct result” of Defendant CCR’s failure to properly verify Defendant Scully’s driver’s license information, insurance information, and driving record. (Compl. ¶¶ 10-12, 17-18, 20-23.)¹² However, Plaintiff failed to allege any facts pertaining to the element of duty, a necessary element of the negligence claim—namely, what duty of care did Defendant CCR owe Plaintiff. Thus, in keeping with the notice pleading standard of Rule 8, the Court finds that the complaint has not sufficiently put Defendant CCR on notice of the claim that is brought against Defendant CCR to defend. Accordingly, pursuant to Rule 12(b)(6), the Court will grant Defendant CCR’s motion to dismiss as to the negligence claim.

¹² The complaint provided, in relevant part:

...

10. Defendant Centerline rented the vehicle to Defendant Scully without properly verifying Scully’s driver’s license information.

11. Defendant Centerline further rented the vehicle to Defendant Scully without properly verifying Scully’s insurance information.

12. Defendant Centerline also rented the vehicle to Defendant Scully without properly verifying Scully’s driving record.

...

17. As a result of Defendants’ conduct Plaintiff suffered severe physical injuries, medical expenses, loss of income, economic suffering, mental anguish, pain and suffering, and loss of enjoyment of life all of which will continue into the foreseeable future.

COUNT I. NEGLIGENCE

18. Plaintiff re-alleges each and every allegation of the preceding paragraphs with the same force and effect as if hereinafter set forth at length.

...

20. Defendant Centerline failed to properly verify Scully’s driver’s license information.

21. Defendant Centerline failed to properly verify Scully’s insurance information.

22. Defendant Centerline failed to properly verify Scully’s driving record.

23. As a direct result of the Defendants’ conduct without any fault on the part of the Plaintiff, Plaintiff has suffered severe physical and psychological injuries, mental anguish, pain and suffering, and loss of enjoyment of life. Plaintiff has also suffered a loss of income and has incurred medical expenses Plaintiff has also suffered loss of capacity to earn income, all of which will continue into the foreseeable future.

(Compl. ¶¶ 10-12, 17-18, 20-23.)

2. Count II-Gross Negligence

¶ 12 In *Brathwaite v. Xavier*, the Virgin Islands Supreme Court concluded that “the soundest rule for the Virgin Islands is that to prevail on a claim for gross negligence in the Virgin Islands, a plaintiff must establish that: (1) the defendant owed plaintiff a legal duty of care; (2) the defendant breached that duty in such a way as to demonstrate a wanton, reckless indifference to the risk of injury to plaintiff; (3) and the defendant’s breach constituted the proximate cause of (4) damages to plaintiff.” 71 V.I. 1089, 1103 (V.I. 2019). In his complaint, Plaintiff identified his claim under Count II as gross negligence, and provided, inter alia, factual allegations describing Defendant CCR’s conduct that caused damages to Plaintiff—to wit, Plaintiff alleged that Plaintiff sustained damages as a “direct result” of Defendant CCR’s “reckless disregard for the safety of the Plaintiff and the public when it knew or should have known that this reckless conduct of not verifying Scully’s driver’s license, record and insurance would create an unreasonable risk of harm to the Plaintiff and the public should Scully be the cause of an accident while driving Centerline’s rental car.” (Compl. ¶¶ 10-12, 17, 25, 27.)¹³ However, again, Plaintiff failed to allege any facts

¹³ The complaint provided, in relevant part:

...

10. Defendant Centerline rented the vehicle to Defendant Scully without properly verifying Scully’s driver’s license information.

11. Defendant Centerline further rented the vehicle to Defendant Scully without properly verifying Scully’s insurance information.

12. Defendant Centerline also rented the vehicle to Defendant Scully without properly verifying Scully’s driving record.

...

17. As a result of Defendants’ conduct Plaintiff suffered severe physical injuries, medical expenses, loss of income, economic suffering, mental anguish, pain and suffering, and loss of enjoyment of life all of which will continue into the foreseeable future.

COUNT II. GROSS NEGLIGENCE

24. The Plaintiff repeats and incorporates each and every allegation contained above as if rewritten herein.

pertaining to the element of duty, a necessary element of the gross negligence claim—namely, what duty of care did Defendant CCR owe Plaintiff. Thus, in keeping with the notice pleading standard of Rule 8, the Court finds that the complaint has not sufficiently put Defendant CCR on notice of the claim that is brought against Defendant CCR to defend. Accordingly, pursuant to Rule 12(b)(6), the Court will grant Defendant CCR’s motion to dismiss as to the gross negligence claim.

3. Count III-Respondeat Superior

¶ 13 In *Defoe v. Phillip*, the Virgin Islands Supreme Court noted that the concept of respondeat superior “operates to make the principal liable for conduct to which liability would not otherwise attach.” 56 V.I. 109, 132 (2012). However, the Virgin Islands Supreme Court has not yet determined the elements necessary to maintain a claim under the common law doctrine of respondeat superior. In the absence of binding Virgin Islands law, it is necessary to conduct a *Banks* analysis to determine the appropriate common law rule to apply to Plaintiff’s claim. *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967, 977-78 (V.I. 2011); see also *Gov’t of the Virgin Islands v. Connor*, 60 V.I. 597, 603 (V.I. 2014). However, at this juncture, a *Banks* analysis is not necessary because while Plaintiff identified his claim under Count III as respondeat superior, the allegations therein are that Defendant CCR is directly liable for its own conduct—namely, its

25. Defendant Centerline acted with reckless disregard for the safety of the Plaintiff and the public when it knew or should have known that this reckless conduct of not verifying Scully’s driver’s license record and insurance would create an unreasonable risk of harm to the Plaintiff and the public should Scully be the cause of an accident while driving Centerline’s rental vehicle.

...

27. As a direct result of the Defendants’ reckless conduct and without any fault on the part of the Plaintiff, Plaintiff has suffered severe physical and psychological injuries, mental anguish, pain and suffering, and loss of enjoyment of life, which are expected to continue into the foreseeable future (Compl. ¶¶ 10-12, 17, 25, 27.)

failure to verify Defendant Scully's driver's license information, insurance information, and driving record—and not as a principal vicariously liable for Defendant Scully's conduct under the doctrine of respondeat superior.¹⁴ In fact, Plaintiff stated in his opposition that “[t]he Graves Amendment is not applicable here, as the Plaintiff is claiming that [Defendant CCR] is directly liable...[and] it is [Defendant CCR's own negligence that caused the Plaintiff to be without the recourse.” (Opp., p. 6.) Thus, in keeping with the notice pleading standard of Rule 8, the Court finds the complaint has not sufficiently put Defendant CCR on notice of the claim that is brought against Defendant CCR to defend. Accordingly, pursuant to Rule 12(b)(6), the Court will grant Defendant CCR's motion to dismiss as to the respondeat superior claim.

4. Count IV-Punitive Damages

¶ 14 Here, Plaintiff alleged punitive damages as an independent cause of action in his complaint. In *Bertrand v. Mystic Granite & Marble, Inc.*, the Virgin Islands Supreme Court affirmed the Superior Court's ruling that “a request for punitive damages is not an independent cause of action.” 63 V.I. 772, 784 n.6 (V.I. 2015); *see also, Der Weer v. Hess Oil V.I. Corp.*, 60 V.I. 91, 95 n.1 (V.I. Super. Ct. 2014) (“Although labeled as a ‘claim’ for punitive damages in the complaint, punitive damages is not a separate cause-of-action, but rather a demand for a certain type of damages.”).

¹⁴ The complaint provided, in relevant part:

...

COUNT III. RESPONDEAT SUPERIOR

28. The Plaintiff repeats and incorporates each and every allegation contained above as if rewritten herein.

29. Defendant Centerline as the owner of the subject vehicle is responsible for Scully's actions because of its conduct in failing to verify Scully's driver's license record and insurance information before unleashing him on the public which led to Plaintiff getting injured without recourse.

30. As a proximate result of Defendants' breach of its duty of verification, Plaintiff has suffered severe physical and psychological injuries, mental anguish, pain and suffering, and loss of enjoyment of life, which are expected to continue into the foreseeable future.

(Compl. ¶¶ 28-30.)

Thus, Plaintiff's claim for punitive damages as an independent cause of action cannot proceed. However, Defendant CCR's motion did not address this at all. As such, the Court will deny Defendant CCR's motion to dismiss as to the punitive damages claim, but sua sponte strike Plaintiff's claim for punitive damages as an independent cause of action from the complaint pursuant to Rule 12(f) of the Virgin Islands Rules of Civil Procedure. See V.I. R. Civ. P. 12(f)(1) ("The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own...").

CONCLUSION

¶ 15 Based on the foregoing, the Court will grant in part and deny in part Defendant CCR's motion to dismiss, strike Plaintiff's claim for punitive damages as an independent cause of action from the complaint, and grant Plaintiff leave to amend. See *In re Change of Name of Reynolds*, 60 V.I. 330, 336 (V.I. 2013) (noting that "a party must be 'afforded notice and an opportunity to amend ... or otherwise respond before a trial court may sua sponte dismiss a complaint that fails to state a cause of action"). Accordingly, it is hereby:

ORDERED that Defendant's motion to dismiss, filed on June 12, 2020, is **GRANTED** as to Plaintiff's negligence claim, gross negligence claim, and respondeat superior claim, and **DENIED** as to the punitive damages claim. It is further:

ORDERED that Plaintiff's claim for punitive damages as an independent cause of action shall be and is hereby **STRICKEN** from the complaint. It is further:

ORDERED that, within thirty (30) days from the date of entry of this Memorandum Opinion and Order, Plaintiff shall file a proposed first amended complaint **IN COMPLIANCE** with the Virgin Islands Rules of Civil Procedure—including, but not limited to, setting forth counts in separate numbered paragraphs with separate designation of the specific names of each count in

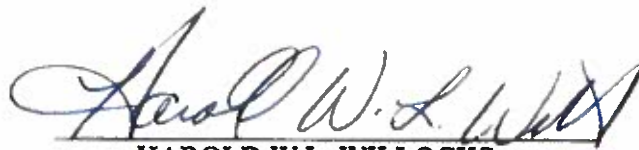
the pleadings as required under Rule 8, and name the defendant or defendants for each count clearly. The proposed first amended complaint shall not include punitive damages as an independent cause of action. It is further:

ORDERED that Plaintiff shall file (i) a redline copy of the new proposed first amended complaint reflecting the changes made to the initial complaint and (ii) a clean copy of the new proposed first amended complaint, **IN COMPLIANCE** with Rule 15-1 of Virgin Islands Rules of Civil Procedure, which requires “[a] party moving to amend a pleading...[to] attach a complete—and properly signed—copy of the proposed amended pleading to the motion papers” and “must reproduce the entire pleading as amended specifically delineating the changes or additions and may not incorporate any prior pleading by reference.” **And** it is further:

ORDERED that Plaintiff is notified that failure to file a proposed first amended complaint within the aforementioned period may result in the dismissal of this case without prejudice.

DONE and so **ORDERED** this 29th day of October 2021.

ATTEST:
Tamara Charles
Clerk of the Court


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

By: 
Court Clerk Supervisor

Dated: 10/29/2021