

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

RYAN ALLEYNE, ENID V. ALLEYNE,  
MICHAEL BICETTE,  
MARCO BLACKMAN, ANISTIA JOHN,  
GEORGE JOHN, SUSIE SANES and  
ALICIA SANES, on behalf of themselves  
and all others similarly situated,

*Plaintiffs,*

v.

DIAGEO USVI, INC. and  
CRUZAN VIRIL, LTD.,

*Defendants.*

Case No.: SX 2013-CV-143

CLASS ACTION

JURY TRIAL DEMANDED

**MOTION TO FILE SUPPLEMENTAL MEMORANDUM**

In *Government of the Virgin Islands v. Connor*, 2014 WL 702639 (V.I.), the Supreme Court recently held as follows:

Rather, this Court has instructed that, instead of mechanistically following the Restatements, courts should consider "three non-dispositive factors" to determine Virgin Islands common law: "(1) Whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions; and (3) most importantly, which approach represents the soundest rule for the Virgin Islands."

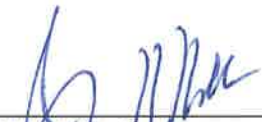
Since that opinion was issued on February 24, 2014, counsel for Defendant Diageo USVI, Inc. ("Diageo USVI") has received an order from Presiding Judge Dunston in a case where there are dispositive motions pending directing the parties to file supplemental briefs doing the "Banks" analysis. See **Exhibit 1** attached.

As there is a dispositive Rule 12 motion to dismiss pending which did not include such an analysis, Defendants request permission allowing the parties to supplement the

record by submitting such an analysis for the Court to consider in addressing the common law issues in the pending motions. A proposed Order is attached.

**Dated:** March 17, 2014

  
**Chad C. Messier, Esq.** (Bar No. 497)  
**Stefan B. Herpel, Esq.** (Bar No. 1019)  
*Counsel for Defendant,*  
*Cruzan VIRIL, Ltd.*  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, USVI 00804-0756  
Telephone: (340) 774-4422  
E-mail: cmessier@dtflaw.com

  
**Joel H. Holt, Esq.** (Bar No. 6)  
Law Offices of Joel H. Holt  
*Counsel for Defendant, Diageo USVI*  
2132 Company Street  
Christiansted, VI 00820  
Telephone: (340) 773-8709  
Email: holtvi@aol.com

**Carl J. Hartmann III, Esq.** (Bar No. 48)  
*Counsel for Defendant, Diageo USVI*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Telephone: (340) 719-8941  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

### CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of March, 2014, I filed the foregoing with the Clerk of the Court, and delivered as indicated to the following:

#### EMAIL AND HAND DELIVER

**VINCENT COLIANNI** Colianni & Colianni  
1138 King Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
[vince@colianni.com](mailto:vince@colianni.com),  
[vinny@colianni.com](mailto:vinny@colianni.com)

#### EMAIL AND U.S. MAIL

**WILLIAM F. McMURRY**  
McMurry & Associates  
1201 Story Avenue, Suite 301  
Louisville, Kentucky 40206  
[bill@courtroomlaw.com](mailto:bill@courtroomlaw.com)

**DOUGLAS H. MORRIS**

**LEA A. PLAYER**

Morris & Player, PLLC

1211 Herr Lane, Suite 205

Louisville, KY 40222

dhm@morrisplayer.com

lap@morrisplayer.com

rbs@morrisplayer.com

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'D. H. Morris'.

Filed on 3/10/2014, Clerk

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

**TAYNACLEONE CREQUE HODGE,**

Plaintiff,

VS.

**VIRGIN ISLANDS TELEPHONE  
CORP., BONNEVILLE GROUP  
VIRGIN ISLANDS CORP., and  
NOLASCO COMMUNICATIONS,  
INC.,**

Defendant.

Case Number ST-2012-CV-0000298

**NOTICE**

**OF**

**ENTRY OF ORDER**

VIA FAX

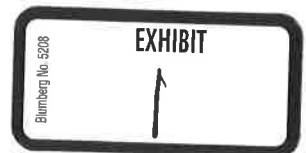
Joel H. Holt, Esquire - 773-8677  
Wilfredo Gelgel, Esquire - 773-8524

Douglas Capdeville, Esquire - 773-7996  
Daryl C. Barnes, Esquire - 773-5427

Please take notice that on **10th day of March, 2014** a(n) **ORDER** dated **March 3, 2014** was entered by this Court in the above-titled matter.

Dated: 3/10/2014

ESTRELLA H. GEORGE  
Acting Clerk of the Court



By: Tenisha C. Lowry  
Title: Tenisha C. Lowry - Court Clerk II

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

TAYNACLEONE CREQUE HODGE, )  
 )  
 ) **CASE NO. ST-12-CV-298**  
 )  
 ) **Plaintiff,**  
 )  
 )  
 ) **v.**  
 )  
 )  
 ) **VIRGIN ISLANDS TELEPHONE CORP.,**  
 ) **BONNEVILLE GROUP VIRGIN ISLANDS CORP.,**  
 ) **and NOLASCO COMMUNICATIONS, INC.,**  
 )  
 )  
 ) **Defendant.**  
 )

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ORDER

Pending before the Court are Defendant Virgin Islands Telephone Corp.'s October 24, 2013, Motion for Summary Judgment<sup>1</sup> and Plaintiff Taynacleone Creque Hodge's November 4, 2013, Cross-Motion for Summary Judgment.<sup>2</sup> While it appears the facts are largely not in dispute, Defendant Virgin Islands Telephone Corp. and Plaintiff disagree on whether Defendant Virgin Islands Telephone Corp.'s is vicariously liable under the facts for the alleged negligence of the Nolasco workers under several sections of the Restatement (Second) of Torts<sup>3</sup> and the Restatement (Third) of Torts.<sup>4</sup> In *Banks v.*

<sup>1</sup> Plaintiff's Cross-Motion also included a reply to Defendant Virgin Islands Telephone Corp.'s Motion for Summary Judgment. As the Hon. Judge Christian noted in *Jo Anne Stickler v. Mandahl Bay Holding, Inc.*, Case No. ST-10-CV-331, slip. op. n. 2 (V.I. Super. August 28, 2013), "[t]he incorporation of a cross-motion within a memorandum in response to opposition to an existing motion is not authorized by the federal or local rules of procedure." As a result, the attorneys are advised to closely follow all applicable rules of procedure such as LRCi-7.3 in future motions filed before this Court.

<sup>2</sup> Defendant Virgin Islands Telephone Corp. responded to Plaintiff's Reply and Cross-Motion on November 21, 2013, to which Plaintiff responded on December 2, 2013.

<sup>3</sup> Plaintiff references the Restatement (Second) of Torts §§ 284, 409, 416, 417, 427, and 428.

<sup>4</sup> Plaintiff also references Restatement (Third) of Torts §§ 59, and 64.

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*Int'l Rental & Leasing Corp.*<sup>5</sup> the Supreme Court of the Virgin Islands held that, while the Restatements may be persuasive authority in determining the common law, they “no longer constitute binding legal authority in this jurisdiction” because 1 V.I.C. § 4 has been impliedly repealed.<sup>6</sup> Considering the recent Supreme Court of the Virgin Islands decision in *Gov't of the V.I. v. Connor*<sup>7</sup> requiring the Superior Court to conduct a “*Banks* analysis”<sup>8</sup> to determine the applicable common law in the absence of local law to the contrary or Supreme Court of the Virgin Islands precedent on the particular matter,<sup>9</sup> it is

ORDERED that by March 21, 2014, Plaintiff and Defendant Virgin Islands Telephone Corp. shall each submit a supplemental brief on their respective Summary Judgment Motions, limiting their discussion *solely* to their arguments regarding which common law principles govern or should govern this case utilizing a *Banks* analysis; and it is

ORDERED that by March 28, 2014, Plaintiff and Defendant Virgin Islands Telephone Corp. may respond to each other's respective supplemental briefs; and it is

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<sup>5</sup> 55 V.I. 967 (V.I. 2011).

<sup>6</sup> *Gov't of the V.I. v. Connor*, S. Ct. Civ. No. 2013-0095, slip. op at 6 (V.I. Feb. 24, 2014)(holding that the Superior Court may be summarily reversed if it does not perform a *Banks* analysis in the first instance).

<sup>7</sup> *Id.* (holding that the Superior Court may be summarily reversed if it does not perform a *Banks* analysis in the first instance).

<sup>8</sup> See *Simon v. Joseph*, S. Ct. Civ. No. 2012-0011, slip. op (V.I. Sept. 11, 2013)(interpreting *Banks*).

<sup>9</sup> While Plaintiff does not argue that Defendant Virgin Islands Telephone Corp. is liable pursuant to Restatement (Second) of Torts §§ 409 and 414, the Court notes that the Supreme Court adopted the widely accepted general rule outlining independent contractor liability of the Restatement (Second) of Torts §409 in *Joseph v. Hess Oil Virgin Islands Corp.*, 54 V.I. 657 (V.I. 2011). In *dicta*, the *Joseph* Court also recognized that several exceptions to this general rule exist and are outlined in Restatement (Second) of Torts §§410-429. However, the *Joseph* Court only explicitly adopts one exception, Restatement (Second) of Torts §414, and thereby the parties must conduct a *Banks* analysis on every Restatement section upon which they rely. Further, *Joseph* predates the *Banks* decision by several months, and therefore the Supreme Court of the Virgin Islands did not utilize a *Banks* analysis in its adoption of §§ 409 and 414. See *Connor*, S. Ct. Civ. No. 2013-0095, n. 1 (suggesting that the Superior Court does not have to blindly follow pre-*Banks* cases, even if they are considered binding authority, if the decision was “predicated solely on 1 V.I.C. § 4,” and may instead adopt the sounder rule).

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ORDERED that, considering Defendant Bonneville filed a Motion for a Continuance, Plaintiff's counsel has indicated he is traveling in early April, and no specific trial date has been set other than "March 2014," the trial date for this matter is continued until June 2014; and it is

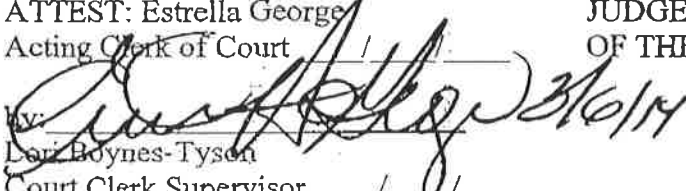
ORDERED that the parties shall assume that this estimated trial date shall not be extended for a second time; and it is

ORDERED that, considering the parties were to have mediation completed prior to December 15, 2013, and Plaintiff has indicated that mediation was conducted without success, but the "parties agreed to continue settlement discussion and perhaps continue mediation," the parties shall advise the Court in writing by April 3, 2014, (1) whether additional mediation was conducted, (2) if so, the outcome of the mediation and what issues, if any, remain for determination by the Court, and, (3) if not, why additional mediation was not conducted; and it is


ORDERED that copies of this Order shall be directed to counsel of record.

Dated: March 3, 2014

ATTEST: Estrella George  
Acting Clerk of Court

By:   
Estrella George  
Court Clerk Supervisor

  
HON. MICHAEL C. DUNSTON  
JUDGE OF THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY  
DATE: 3/10/2014  
BY:   
ESTRELLA GEORGE  
ACTING CLERK OF THE COURT  
