IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

BARBARA WATSON, individually and as Guardian Ad Litem of TANJANIA WATSON and TITUS WATSON, TYNESHIA WATSON, as Guardian Ad Litem of TYNAIHJA M. WATSON and TYMEIR M. DAWSON, TYSHARIA DIXON, as Guardian Ad Litem of JACARY WATSON, DANTE DIXON and KARIZMA DIXON,	:	**C.A. No: K14C-06-047 RBY**
Plaintiffs,	:	
v.	:	
LAURA L. TJADEN,	:	
Defendant.	:	

Submitted: April 7, 2015
Decided: April 10, 2015

Upon Consideration of Plaintiff/Counterclaim Defendant Barbara Watson's Motion to Dismiss
DENIED

ORDER

Patrick G. Rock, Esquire, Heckler & Frabizzio, Wilmington, Delaware for Plaintiff/Counterclaim Defendant Barbara Watson.

Nicholas E. Skiles, Esquire, Swartz Campbell, LLC, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Barbara Watson ("Plaintiff," or "Ms. Watson") and seven other passengers (together with Ms. Watson, "Plaintiffs") in a vehicle operated by Plaintiff, were hit from behind by Laura Tjaden ("Defendant"). Defendant is alleged to have been drunk during the time of the accident, and is averred to have plead guilty to a charge arising from operating a vehicle under the influence.

Plaintiffs filed suit against Defendant, asserting that her negligence caused in the rear-end collision. In response to Plaintiffs' suit, Defendant filed an Answer containing a Counterclaim against Plaintiff, Ms. Watson. Defendant argues that Plaintiff was negligent, creating a dangerous condition, as eight individuals should not have been riding in a vehicle intended to seat only five occupants. Plaintiff moves to dismiss Defendant's Counterclaim, arguing that Defendant has failed to state a claim for which relief can be granted. Plaintiff's argument has two bases: 1) the Counterclaim is statutorily barred, as Defendant cannot offer admissible evidence that Plaintiffs were not restrained properly; and 2) comparative negligence is not a defense available to punitive damages. Given Delaware's liberal acceptance of pleadings in the context of a motion to dismiss, particularly at this early stage of litigation, both of these arguments are premature. Therefore, Plaintiff's motion is **DENIED**.

FACTS AND PROCEDURES

On February 25, 2013, Plaintiffs were passengers in a 1998 Jeep Grand Cherokee operated by Plaintiff, Ms. Watson. In total, there were eight occupants of the car. Other than the driver Ms. Watson, all of the passengers were minors. Defendant, driving a 2006 Ford Mustang, allegedly while under the influence of

alcohol, impacted the rear of Plaintiffs' vehicle. Defendant is further alleged to have plead guilty to a charge of Driving Under the Influence–Third Offense. Plaintiffs claim to have sustained both physical and mental injuries following this accident.

On June 30, 2014, Plaintiffs filed their Complaint sounding in negligence against Defendant. By their Complaint, Plaintiffs seek both compensatory and punitive damages. By her Amended Answer filed on January 13, 2015, Defendant counterclaimed against Plaintiff, Ms. Watson, asserting a theory of negligence on the part of Ms. Watson. Plaintiff moves to dismiss this Counterclaim.

STANDARD OF REVIEW

The Court's standard of review on a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6) is well-settled. The Court accepts all well-pled allegations as true.[1] Well-pled means that the complaint puts a party on notice of the claim being brought.[2] If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.[3] The test for sufficiency is a broad one.[4] If any reasonable conception can be formulated to allow Plaintiff's recovery, the motion to dismiss must be denied.[5] Dismissal is warranted only when "under no reasonable interpretation of the facts alleged could the

---

[1] *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. Ct. Mar. 31, 2009).

[2] *Savor, Inc. v. FMR Corp.*, 2001 WL 541484, at *2 (Del. Super. Ct. Apr. 24, 2001).

[3] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[4] *Id.*

[5] *Id.*

complaint state a claim for which relief might be granted."[6]

DISCUSSION

The case before the Court involves several allegedly injured Plaintiffs and one purportedly culpable Defendant. In her Answer, Defendant puts forth a Counterclaim solely against one of the Plaintiffs: Ms. Watson. Pursuant to Superior Court Civil Rule 12(b)(6), Plaintiff moves to dismiss this Counterclaim.

Plaintiffs' suit against Defendant alleges that, due to her negligent operation of a motor vehicle, Plaintiffs, the occupants of another vehicle, sustained both physical and mental injuries from the resulting vehicle impact. Plaintiffs further assert that Defendant was under the influence of alcohol at the time of the accident, alleging Defendant's plea to Driving Under the Influence of Alcohol–Third Offense. Plaintiffs seek both compensatory and punitive damages. Defendant counterclaims against Plaintiff, the driver of the impacted vehicle, asserting a theory of negligence on the driver's part. According to Defendant, Plaintiff was negligent in permitting eight occupants to be in the car, which allegedly was built to seat only five.

In moving to dismiss Defendant's Counterclaim, Plaintiff puts forth two arguments: 1) the failure to wear a seatbelt is not a proper defense to negligence, as per 21 *Del. C.* § 4802(i); and 2) comparative negligence is not a proper defense to punitive damages. Defendant concedes both points, however, she asserts that neither calls for the dismissal of her Counterclaim at this time.

As to Plaintiff's first point, that evidence of the lack of use of an occupant

---

[6] *Thompson v. Medimmune, Inc.*, 2009 WL 1482237, at *4 (Del. Super. Ct. May 19, 2009).

restraining system may not be admitted to show comparative negligence, the Court fails to see the saliency of this prohibition. Indeed, Defendant's Counterclaim does not seek to establish that the occupants of Plaintiff's vehicle were not restrained properly. Instead, Defendant avers that Plaintiff was negligent in "permitt[ing] a dangerous condition to exist in her vehicle...by failing to limit the number of passengers in her vehicle in accordance with the maximum occupancy of the vehicle..."[7] Defendant's argument appears to be simply that Plaintiff had too many people in her car. Nowhere does Defendant refer to the use, or lack thereof, of seatbelts or other restraining devices. Most importantly, Defendant concedes that such an argument would be prohibited statutorily.

Specific to the theory of negligence that Defendant has asserted, one, at this early juncture, can reasonably surmise that Defendant believes that had Plaintiff not had an excess of three passengers in her car, the injuries may have been lessened, or not have occurred at all. At the motion to dismiss stage, Delaware requires only that the theory be reasonably based upon the pleaded facts, and that the opposing party be put on notice of the claim against it.[8] At present, the Counterclaim is conceivably a "reasonable interpretation of the facts alleged," presently precluding dismissal pursuant to Rule 12(b)(6).[9]

Plaintiff's second contention is premature. In addition to seeking compensatory

---

[7] Defendant's Amended Answer, at ¶ 18(a).

[8] *Savor, Inc.*, 2001 WL 541484 at *2.

[9] *Thompson*, 2009 WL 1482237 at *4.

damages, Plaintiffs request punitive damages. In moving to dismiss Defendant's Counterclaim, Plaintiff contends that comparative negligence is not a defense to punitive damages. In support of this position, Plaintiff cites to *Short v. Drewes*, in which the Court held that in a civil case alleging negligent driving, evidence of Defendant's criminal guilty plea for Reckless Driving, Alcohol Related could be put before the jury, in contemplation of punitive damages.[10] Although as a general proposition, the Delaware Supreme Court in *Gushen Penn. Cent. Transp. Co.* held that "contributory negligence...is not a defense available to a defendant whose conduct has been wanton,"[11] there is no indication at this stage of the proceedings that a punitive claim can go forward. *Short* recognized, of course, that "the question of whether Defendant's conduct is sufficient to justify reckless conduct for punitive damages is...for the jury decide."[12] The *Short* Defendant's having pled guilty in a criminal case merely permitted the jury to consider the appropriateness of punitive damages: "[n]or w[as] [the jury] instructed that the Defendant's plea established the necessary reckless element to justify punitive award."[13] Neither the guilty plea in *Short* nor in the case at bar was sufficient to establish a finding that Defendant's

[10] 2006 WL 1743442, at *1 (Del. Super. Ct. Jun. 21, 2006).

[11] 280 A.2d 708, 710 (Del 1971).

[12] 2006 WL 1743442 at *2.

[13] *Id.*

behavior was wanton.[14] Therefore, the defense of comparative negligence is not, *per se*, barred by Plaintiffs' pleading of punitive damages, at least at this stage of the case.

CONCLUSION

For the foregoing reasons, Plaintiff's motion is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
Opinion Distribution

[14] Indeed, the *Short* Court cogently expressed the policy behind this. "The Court is well aware a Defendant may enter a plea to a lesser included offense for a number of various reasons. Thus, a Defendant may explain to the jury his choice to enter a plea, the advice given to him by counsel, and he may even attempt to discount his presumptive mental state based on circumstances surrounding his plea." 2006 WL 1743442 at *2.