

Smith v. Sanders Corp.
C.A. No.: K14C-06-012 (RBY)
August 18, 2014

SUMMARY

Sanders Corporation (“Defendant”) moves the Court for an order dismissing Cynthia Smith’s (“Plaintiff”) Complaint pursuant to Superior Court Civil Rule 12 (b)(6) for failure to state a claim for which relief can be granted. The instant Motion arises from an incident where Plaintiff was injured in the parking lot of a McDonald’s restaurant operated by Defendant. Plaintiff’s mere discussion of her damages does not implicate any breach of a duty, or plead negligence with any particularity as required by Superior Court Rule 9(b). In light of Plaintiff’s failure to state any facts in support of establishing the elements for negligence, and failure to comply with the Court rules regarding commencement of actions, dismissal of Plaintiff’s Complaint is warranted. Defendant’s Motion to Dismiss is **GRANTED**.

FACTS AND PROCEDURE

According to Plaintiff’s Complaint, on June 10, 2012, Plaintiff allegedly slipped in a McDonald’s parking lot operated by Defendant at approximately 7:00 p.m. Allegedly, the manager of the McDonald’s was informed of Plaintiff’s injuries. Subsequently, the manager took pictures of the injuries. In the Complaint, Plaintiff claims she had to attend physical therapy for a month as a result of the injuries she sustained. Plaintiff also alleges that McDonald’s agreed to pay for her x-rays and therapy. In addition, Plaintiff alleges that McDonald’s agreed to send her medical bills to Defendant. Plaintiff describes her damages to be a soft tissue injury and a broken laptop, as a result of the incident in the parking lot.

Defendant filed the instant Motion to Dismiss on July 3, 2014. Plaintiff did not file a Response to Defendant’s Motion to Dismiss. The deadline for Plaintiff to

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file a Response passed on July 23, 2014.

STANDARD OF REVIEW

“A motion to dismiss under [Superior Court Civil] Rule 12(b)(6) presents the question of ‘whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof’ under the complaint.”¹ “When considering a motion to dismiss, the Court must read the complaint generously, accept all well-[pled] allegations as true, and construe them in a light most favorable to the plaintiff.”² “A complaint is ‘well-plead’ if it puts the opposing party on notice of the claim being brought against it.”³ “Dismissal is warranted only when ‘under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.’”⁴

DISCUSSION

_____Defendant argues that Plaintiff’s Complaint does not allege tortuous conduct by Defendant. The “Complaint” simply states that Plaintiff fell in the parking lot, subsequently informing the manager of the incident. Plaintiff’s “Complaint” then describes alleged injuries, treatment and other damages. The fact

¹ *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995), citing *Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 227 (Del. Super. 1982).

² *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952).

³ *Boyce Thompson Inst v. MedImmune, Inc.*, 2009 WL 1482237 (Del. Super. 2009), citing *Precision Air v. Standard Chlorine of Del.*, 654 A.2d 403, 406 (Del. 1995).

⁴ *Id.*, citing *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del.Super.).

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that an injury occurred does not by itself trigger liability for negligence.⁵ The Complaint does not state the elements for a cause of action for negligence. The Complaint must identify the duty that was breached; state who breached the duty; identify how the duty was breached; and identify the injured party.⁶ In fact, the Complaint does not identify any duty that Defendant allegedly breached.

Plaintiff's mere discussion of her damages does not implicate any breach of a duty, or plead negligence with any particularity as required by Superior Court Rule 9(b). A plaintiff's claim of negligence may not be conclusory, but must be supported by some factual allegations to support the claim.⁷ It does not. Further, Plaintiff has also failed to file documents and information required by Superior Court Civil Rule 3(h), and Superior Civil Form 30, and has not responded to Defendant's Motion. In light of Plaintiff's failure to state any facts in support of establishing the elements for negligence, and failure to comply with the Court rules regarding commencement and management of actions, dismissal of Plaintiff's Complaint is warranted.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED**.

⁵ *Wilkinson v. Derrickson*, 175 A.2d 500 (Del. 1961).

⁶ *Roberts v. Delmarva Power and Light*, 2007 WL 23197962 at *1 (Del. Super. 2007).

⁷ *Doe 30's Mother v. Bradley*, 58 A.3d 429, 462 (Del. Super. 2012).

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IT IS SO ORDERED.

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary
cc: Mr. Rohs, Esq.
Ms. Smith, *Pro se*
Opinion Distribution
File