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

EMILY BRAY,	:	
	:	**C.A. No: K13C-11-013 RBY**
_____Plaintiff,	:	
	:	
v.	:	
	:	
WAL-MART STORES, INC.,	:	
a Delaware Corporation,	:	
	:	
Defendant.	:	

Submitted: January 28, 2014
Decided: March 24, 2014

Upon Consideration of
Defendant's Motion to Dismiss
DENIED

ORDER

William D. Fletcher, Jr., Esquire, Schmittinger & Rodriguez, P.A., Dover, Delaware for Plaintiff.

Christina M. Gafford, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Wal-Mart Stores East, LP ("Defendant") has moved to dismiss Emily Bray's ("Plaintiff") Complaint pursuant to Superior Court Rule of Civil Procedure Rule 12 (b)(6). This matter involves Plaintiff's premises liability personal injury claim, which arose from alleged injuries sustained while Plaintiff was present on Defendant's premises at the Wal-Mart store in Milford, Delaware on August 4, 2011. Plaintiff filed her suit on November 13, 2013, after the applicable two-year statute of limitations for personal injury actions had expired. Plaintiff has asserted that, because she was not advised, pursuant to 18 *Del. Code* § 3914, of that applicable limitation, her claim is not time-barred. In this Motion to Dismiss, however, Defendant argues that, because Defendant is a commercial retail business, not an insurer, Defendant was not required to give Plaintiff notice of the applicable statute of limitations in compliance with 18 *Del. Code* § 3914. Since the factual issue of Defendant's status as a "self-insured" is not determined at this early stage, Defendant's present Motion is **DENIED**.

FACTS/PROCEDURAL POSTURE

Allegedly, on August 4, 2011, Plaintiff sustained injuries on Defendant's premises at the Wal-Mart store in Milford, Delaware. Plaintiff notified Defendant of her claim by a letter sent on August 19, 2011. Defendant's claims' handler Claims Management, Inc. ("CMI") responded to Plaintiff's letter by two written pieces of correspondence on September, 12, 2011, and one written correspondence on September 20, 2011. All of these written communications were signed by Christine Williamson, designated as GL Case Manager. In each communication,

Christine Williams did not provide any notification about the applicable statute of limitations.

Plaintiff filed her lawsuit on November 13, 2013, two years, three months, and nine days after the alleged injuries occurred. On January 10, 2014, Defendant filed the instant Motion to Dismiss. On January 27, Plaintiff filed a Response to Defendant's Motion to Dismiss. At this time, no discovery has been conducted on the issue of Defendant's status as an insurer.

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-pled' if it puts the opposing party on notice of the claim being brought against it. 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.'"[3]

DISCUSSION

18 *Del. Code* § 3914, a brief, but only superficially simple, statute states

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[1] *Precision Air, Inc v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995).

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

[3] *Boyce Thompson Inst. for Plant Research v. MedImmune, Inc.*, 2009 WL 1482237, at *4 (Del. Super. Ct. May 19, 2009).

that "*an insurer*" presented with a claim pursuant to "*a casualty insurance policy*" has obligations regarding information to the claimant. The failure to satisfy those obligations has been held to preclude the insurer's reliance upon an otherwise applicable statute of limitations. *Lankford v. Richter*, Del. Supr., 570 A.2d 1148 (1990).

That consequence, further, has been applied to "self-insurers," *Stop & Shop Cos. v. Gonzales*, Del. Supr., 619 A.2d 896 (1993), which provided somewhat inclusive definitions of "insurer" and "casualty insurance policy."

Notably, the statute does not simply abrogate all statutes of limitations, or even nullify their effect with regard to any claim made known to anyone potentially liable. It affects only claims presented to an "insurer" and, by extension, a "self-insurer." Hence, if individual A sues individual B who either has no coverage, somehow, for such an act, or never mentions it to his carrier (and neither does individual A), then the statute of limitations, which appears to apply to the activity, still functions barring the claim asserted.

Since, under the materials presently before the Court at this early stage of the matter, we must accept Plaintiff's well-pled allegation, the question presented is whether or not an "insurer" or "self-insurer" situation has been appropriately pled.

Probably because this case is at such an early stage, I do not believe the parties have addressed this issue satisfactorily. It certainly appears, even at this point, that Wal-Mart is not a casualty insurance policy writer vis à vis this situation. That being the evident case, some facts need to be developed relative to

its being a "self-insurer." Pursuant to *Stop & Shop*, that does not simply mean some entity which has reachable assets, but which hasn't acquired insurance coverage. As stated in *Stop & Shop*, the entity to which someone is attempting to force compliance with 18 *Del. Code* § 3914 must be one which has "set aside money to establish a fund sufficient to respond to claims." That requires a dedicated fund to protect against claims.

Whether the potential defendant, as an individual or as a corporation, happens to be adequately "flush" in its own financial situation to absorb claims is not the point at all. As was noted in *Ndieng v. Woodward*, 2012 WL 6915205 (Del. Super.-2012), Woodward, however affluent he may have been, was not "in the business of setting aside money to fund the payment of claims."

It may be that discovery will demonstrate that Wal-Mart did create some sort of fund dedicated to this potential occurrence. If so, then perhaps it will be determined to be a "self-insurer" subject to § 3914. However, § 3914 may not relieve Plaintiff from the operation of the applicable statute of limitations if that is not the case.

Hence, at this point, Defendant's Motion to Dismiss will be **DENIED**. Depending upon the results of agreement by the parties or discovery relative to this question, a Motion for Summary Judgment certainly may be pursued.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary

cc: Counsel
Opinion Distribution
File