

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

EILEEN N. BOWERS and)
TRACEY BOWERS,)
)
Plaintiffs,)
)
v.) C.A. No. N16C-07-142 WCC
)
LAUNCH DELAWARE, LLC d/b/a)
LAUNCH TRAMPOLINE PARK)
)
Defendant.)
)

Submitted: March 14, 2018
Decided: July 25, 2018

Defendant’s Motion for Partial Judgment on the Pleadings – DENIED

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court is Launch Delaware, LLC doing business as Launch Trampoline Park's (the "Defendant") Motion for Partial Judgment on the Pleadings. For the foregoing reasons, the Court will **DENY** the motion.

I. FACTUAL & PROCEDURAL BACKGROUND

On August 13, 2014, Eileen Bowers ("Bowers") a business invitee, visited Launch Trampolines Park's facility (the "Park") located in Newark, Delaware.¹ During Bowers' visit to the Park, she sustained severe injuries to her left foot and left leg.² As a result of Bowers' injuries, Plaintiff Bowers and her husband Tracey Bowers (jointly as "Plaintiffs"), filed this action on July 19, 2016, alleging that Bowers injuries resulted from the Defendant's agents, servants, employees and/or representatives' negligence and carelessness in operating and maintaining their facility (the "Complaint").³ Additionally Plaintiff Tracey Bowers alleges the misconduct of the Defendant, has resulted in a loss of his wife's consortium.⁴ Plaintiffs seek general and special damages plus costs and interest.⁵

On July 14, 2017, Plaintiffs filed a Motion to Amend their Complaint to add a claim for recklessness/gross negligence. Defendant opposed the Plaintiffs' Motion, which Plaintiffs subsequently withdrew. However Plaintiffs filed a new Motion to

¹ Am. Compl. ¶ 1.

² *Id.* ¶ 5.

³ *Id.* ¶¶ 1–2.

⁴ *Id.* ¶ 6.

⁵ *Id.*

Amend on August 4, 2017,⁶ which Defendant did not re-new its opposition to, and the Court subsequently granted. On August 24, 2017, Plaintiffs filed their amended complaint adding a claim for recklessness/gross negligence (the “Amended Complaint”). In response to Plaintiffs’ original Complaint and now the Amended Complaint, Defendant filed an answer and several counterclaims.⁷ Defendant also filed a Motion for Summary Judgment and the instant Motion for Partial Judgment on the Pleadings. The Court heard arguments for Defendant’s Motion for Partial Judgment on the Pleadings on March 14, 2018.

II. STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 12(c), any party may move for judgment on the pleadings after the pleadings are closed but within such time as not to delay trial.⁸ However, “[t]he standard for granting a motion for final judgment on the pleadings is stringent,”⁹ and the motion will be denied unless there are no material issues of fact and the movant is entitled to judgment as a matter of law.¹⁰ Importantly, a court considering a motion for judgment on the pleadings must “view

⁶ Def.’s Mot. Partial J. ¶ 5.

⁷ Plaintiff filed a Motion to Strike Defendant’s Counterclaims and Additional Affirmative Defenses which was denied by this Court. The Court did allow the Defendant leave to amend its counterclaims. Both Motions were decided by the Court on September 27, 2017.

⁸ Super. Ct. Civ. R. 12(c).

⁹ See *Artisans’ Bank v. Seaford IR, LLC*, 2010 WL 2501471, at *1 (Del. Super. Ct. June 21, 2010).

¹⁰ See *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993).

the facts pleaded and the inferences to be drawn from such facts in a light most favorable to the non-moving party.”¹¹ Where a document is integral to the pleadings, the court may consider it in deciding a Rule 12(c) motion without converting it to one for summary judgment.¹²

III. DISCUSSION

Defendant contends judgment on the pleadings is appropriate because (1) Plaintiffs’ recklessness/gross negligence claim is barred by the statute of limitations;¹³ and (2) Plaintiffs’ recklessness/gross negligence claim fails to meet the requirements of Superior Court Civil Rule 9(b), therefore it is “ripe for dismissal.”¹⁴ Plaintiffs respond that their claim asserted in the Amended Complaint was filed timely because Defendant had notice of the related negligence claim and the relief sought, which is enough to preserve the recklessness/gross negligence claim and satisfy Delaware’s notice pleading standard.¹⁵ Additionally, Plaintiffs assert that their recklessness/gross negligence claim is sufficiently pled at this stage in the litigation.¹⁶

¹¹ See *id.* (citing *Warner Commc’ns Inc. v. Chris-Craft Indus., Inc.*, 583 A.2d 962 (Del. Ch.), *aff’d*, 567 A.2d 419 (Del. 1989)).

¹² See, e.g., *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 (Del. 2004).

¹³ Def.’s Mot. Partial J. ¶ 7.

¹⁴ *Id.* ¶¶ 7–9.

¹⁵ Pls.’ Resp. in Opp’n to Def.’s Mot. Partial J. ¶ 10.

¹⁶ *Id.* ¶ 17.

A. STATUTE OF LIMITATIONS

In Delaware, recovery for damages for claim of personal injury must be brought within two years from the date upon which it is claimed that such alleged injuries were sustained.¹⁷ Defendant argues that Plaintiffs' recklessness/gross negligence claim is time barred because the accident occurred on August 13, 2014, and the Plaintiffs did not move to amend their Complaint until August 4, 2017, just shy of one year after the statute of limitations had expired on August 13, 2016.¹⁸

Plaintiffs contend that their recklessness/gross negligence claim was pled well before the statute of limitations expired because the Defendant was put on notice by the previous negligence claim.¹⁹ In fact, Plaintiffs argue that because Delaware has a low threshold for pleadings, they are only required to put the opposing party on notice of the claim being brought against them.²⁰ Plaintiffs contend "[]because the Defendant was put on notice of the negligence claim brought against it and relief sought in the original Complaint dated July 19, 2016, Plaintiffs preserved any claims for recklessness/gross negligence in the Amended Complaint."²¹ Additionally Plaintiffs assert that Defendant should have refiled a motion in opposition and argued the claim was time barred in its opposition to the Plaintiffs' Motion to Amend

¹⁷ 10 Del. C. § 8119.

¹⁸ Def.'s Mot. Partial J. ¶¶ 10–13.

¹⁹ Pls.' Resp. in Opp'n to Def.'s Mot. Partial J. ¶ 10.

²⁰ *Id.* at ¶ 9 (citing *Wood v. Rodeway Inn & Choice Hotels Int'l, Inc.*, 2015 WL 994855, at *2 (Super. Ct. Mar. 4, 2015)).

²¹ *Id.* ¶ 10.

the Complaint, instead of remaining silent prior to the Court's decision in August 2017.²²

The Court disagrees with the Defendant and finds that the statute of limitations for Plaintiffs' recklessness/gross negligence claim has not expired. The Court reaches this conclusion primarily based on Superior Court Civil Rule 15(c), as well as Plaintiffs' notice pleading argument. Rule 15(c) provides that "[a]n amendment of a pleading relates back to the date of the original pleading when...the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading...."²³ Here there is no doubt that Plaintiffs' negligence claim and recklessness/gross negligence claim arise from the same conduct, transaction or occurrence. Defendant's alleged misconduct which injured Bowers occurred at the Park on August 13, 2014, and is the basis for Plaintiffs' claims. Additionally, the Court finds that the Defendant is not prejudiced by this claim. The Plaintiffs filed the original suit alleging negligence on July 19, 2016, and pursuant to the Court's Scheduling Order the Plaintiffs were to produce an expert report by July 12, 2017. On August 4, 2017, the Plaintiffs sought to amend the Complaint to add the current recklessness/gross negligence claim based on new factual information from their expert report. This short delay

²² *Id.* ¶ 11.

²³ Super. Ct. Civ. R. 15(c).

was less than one month from when the Plaintiffs' expert reports were due, and the issue of whether the facts support a claim for gross negligence has been an issue in this litigation for some time. Further the Court believes the Defendant was on notice of a potential recklessness/gross negligence claim based on the original negligence claim and the Plaintiffs' previous motion to amend.

B. PARTICULARITY

Under Delaware law, negligence must be pled with particularity.²⁴ Gross negligence claims require the same level of particularity such that "...the plaintiff must articulate facts that suggest a wide disparity between the process used...and that which would have been rational."²⁵

Gross Negligence is considered to be "a higher level of negligence representing 'an extreme departure from the ordinary standard of care.'"²⁶ It is often referred to as the equivalent of criminal negligence or "...as the failure to perceive a risk of harm of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of conduct a reasonable person would observe."²⁷ Similarly, recklessness "reflects a knowing disregard of a substantial and

²⁴ Super. Ct. Civ. R. 9(b).

²⁵ *J.L. v. Barnes*, 33 A.3d 902, 916 n.77 (Del. Super. Ct. 2011).

²⁶ *Browne v. Robb*, 583 A.2d 949, 953 (Del. 1990) (quoting W. Prosser, Handbook of the Law of Torts 150 (2d ed. 1955)).

²⁷ *Brown v. United Water Delaware Inc.*, 2010 WL 2052373, at *4 (Del. Super. Ct. May 20, 2010).

unjustifiable risk. It amounts to an ‘I don’t care’ attitude.”²⁸ Generally “whether circumstances amount to gross negligence and willful or wanton conduct is a question of fact for the jury.”²⁹

Defendant argues that Plaintiffs’ Amended Complaint fails to meet the heightened standard required to state a claim for recklessness/gross negligence because Plaintiffs simply added the words “gross negligence” and “recklessness” to the original Complaint.³⁰ Defendant asserts that Plaintiffs did not provide any factual allegations that show the Defendant’s “acts were an extreme departure from the standard of care,”³¹ nor have the Plaintiffs presented any evidence to prove Defendant’s state of mind, show any knowledge, or conscious disregard.³² As a result, the Defendant urges the Court to dismiss Plaintiffs’ claim as it did in *Smith v. Silver Lake Elementary School*, because like the plaintiffs in *Smith*, the Plaintiffs here simply re-packaged their negligence claim as a recklessness/gross negligence claim.³³

²⁸ “Recklessness occurs when a person, with no intent to cause harm, performs an act so unreasonable and so dangerous that he or she knows, or should know, that harm will probably result.” *Lynam v. Blue Diamond LLC*, 2016 WL 5793725, at *4 (Del. Super. Ct. Oct. 4, 2016).

²⁹ *Id.*

³⁰ Def.’s Mot. Partial J. ¶¶ 10–13.

³¹ *Id.* ¶ 18.

³² *Id.* ¶¶ 21–22 (citing *Smith v. Silver Lake Elementary School*, 2012 WL 2393722, at *2 (Del. Super. Ct. June 25, 2012)).

³³ *Id.* at ¶ 18 (citing *Smith v. Silver Lake Elementary School*, 2012 WL 2393722, at *2 (Del. Super. Ct. June 25, 2012)).

In response, the Plaintiffs argue they have pled the requisite elements of their negligence and recklessness/gross negligence claims. Specifically, Plaintiffs expressly stated in the Amended Complaint that Defendant was reckless and grossly negligent in operating and maintaining their facility which caused Bowers to sustain injuries. Plaintiffs also allege that the Defendant had a duty of care as Plaintiff Eileen Bowers was a business invitee and the Defendant and its agents, servants, and employees breached that duty which led to Plaintiffs' injuries.³⁴ Most importantly, Plaintiffs "have provided their expert report, which alleges recklessness and/or gross negligence... [and] anticipate more information regarding Defendant's recklessness and gross negligence will come out via the expert's trial deposition."³⁵ Plaintiffs argue for these reasons it is premature to dismiss Plaintiffs' gross negligence claim.³⁶

While the Court has significant doubts about Plaintiffs' recklessness/gross negligence claim, the Court will not dismiss the claim. Plaintiffs' Amended Complaint does include "some" facts and level of specificity to support the allegations. In fact, Plaintiffs allege that the Defendant was grossly negligent in its "instructions and orientation for the participation in trampoline by a qualified professional"³⁷ and failed to provide "...proper footwear such as 'grip-socks.'"³⁸

³⁴ Am. Compl. ¶ 1.

³⁵ Pls.' Resp. in Opp'n to Def.'s Mot. Partial J. ¶ 16.

³⁶ *Id.* ¶ 17.

³⁷ Am. Compl. ¶ 2.

³⁸ *Id.*

Additionally, Plaintiffs have produced an expert report which supports the Plaintiffs decision to amend their Complaint to include gross negligence.³⁹ Plaintiffs' Amended Complaint which minimally asserts a claim for gross negligence is sufficient to prevent dismissal.

IV. CONCLUSION

For the foregoing reasons, the Court must **DENY** Defendant's Motion for Partial Judgment on the Pleadings.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

³⁹ The Court has not reviewed the expert report for purposes of this Motion, however the Court briefly looked for a copy of the report to ensure it was produced but the Court could not find one. The Plaintiffs however at the hearing stated that a copy was given to Defendant and Defendant did not object.