

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

CARLETTE SUMPTER,

Plaintiff,

v.

FOOD LION, LLC,

Defendant.

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C.A. No. N22C-06-035 FWW

Submitted: July 20, 2022

Decided: August 1, 2022

*Upon Defendant Food Lion, LLC's Motion to Dismiss,*  
**DENIED.**

**ORDER**

Carlette Sumpter, 1204 Terra Hill, Apt. 2B, Wilmington, DE 19809, Plaintiff, *pro se*.

William A. Crawford, Esquire, and Oleh V. Bilynsky, Esquire, FRANKLIN & PROKOPIK, 500 Creek View Road, Suite 502, Newark, Delaware 19711, Attorneys for Defendant Food Lion, LLC.

**WHARTON, J.**

This 1st day of August 2022, upon consideration of Defendant Food Lion, LLC's ("Food Lion") Motion to Dismiss,<sup>1</sup> the response of Plaintiff Carlette Sumpter ("Sumpter"),<sup>2</sup> and the record in this case, it appears to the Court:

1. Sumpter brings this action alleging she was injured on June 7, 2020 when she slipped on a piece of loose fruit on the floor of a Food Lion store.<sup>3</sup>

2. Food Lion moves to dismiss on statute of limitation grounds, arguing that the Complaint was filed on June 9, 2022, outside of the two-year statute of limitations for personal injury claims under 10 *Del. C.* § 8119.<sup>4</sup>

3. Sumpter responds contending that she actually hand-filed the Complaint with the Prothonotary on June 6th.

4. A motion to dismiss for failure to state a claim pursuant to Superior Court Rule 12(b)(6) will not be granted if the "plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."<sup>5</sup> The Court's review is limited to the well-pled allegations in the complaint.<sup>6</sup> In ruling on a 12(b)(6) motion, the Court "must draw all reasonable

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<sup>1</sup> D.I. 8.

<sup>2</sup> D.I. 11.

<sup>3</sup> Compl., D.I. 1.

<sup>4</sup> D.I. 8.

<sup>5</sup> *Browne v. Robb*, 583 A.2d 949, 950 (Del. 1990).

<sup>6</sup> *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

factual inferences in favor of the party opposing the motion.”<sup>7</sup> Dismissal is warranted “only if it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.”<sup>8</sup>

5. It seems the confusion here lies with the date state stamp on the Complaint. It states that the Complaint was e-filed on June 9th.<sup>9</sup> However, a Case History Search on File & ServeXpress reveals that the Complaint actually was filed on June 6th, within the statute of limitations. It appears that there was a delay between when Sumpter hand-filed the Complaint with the Prothonotary and when that office was posted it on File&ServeXpress.

**THEREFORE**, because the Complaint was filed within the statute of limitations, Food Lion, LLC’s Motion to Dismiss is **DENIED**.

**IT IS SO ORDERED.**

/s/ Ferris W. Wharton  
Ferris W. Wharton, J.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> D.I. 1.