

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DAYSABETH JULIAN BASILIO,
IKER ADAN HERRERA-RUIZ, and
MARIA-CELI AYLLON RUIZ,

Plaintiffs,

v.

C.A. No. N23C-05-111 SKR

T-MOBILE USA, INC., T-MOBILE
NORTHEAST, LLC, METROPCS,
INC., and METROPCS
PENNSYLVANIA, LLC,

Defendants,

and

JOSEPH INVESTMENT
PROPERTIES, LLC,

Defendant and Third-
Party Plaintiff,

v.

CELL TALK, LLC,

Third-Party Defendant.

MEMORANDUM OPINION AND ORDER

*Upon Consideration of Defendants T-Mobile USA, Inc., T-Mobile Northeast, LLC,
MetroPCS, Inc., and MetroPCS Pennsylvania, LLC's Motion to Dismiss:*

DENIED.

Upon Consideration of Third-Party Defendant Cell Talk, LLC's Motion to Dismiss:

GRANTED.

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RENNIE, J.

INTRODUCTION

This memorandum opinion considers Defendants T-Mobile USA, Inc. (“T-Mobile”), T-Mobile Northeast, LLC (“T-Mobile Northeast”), MetroPCS, Inc. (“MetroPCS”), and MetroPCS Pennsylvania, LLC’s (“MetroPCS Pennsylvania”) (together, “T-Mobile Defendants”) motion to dismiss the complaint and Third-Party Defendant Cell Talk, LLC’s (“Cell Talk”) motion to dismiss the third-party complaint. The underlying civil action stems from the death of Leslie Liceth Ruiz Basilio (“Leslie”), an employee of a “Metro by T-Mobile”¹ store who was killed in the course of an armed robbery on the premises. Leslie’s sister, who is the administratrix of her estate, and Leslie’s surviving children have brought negligence, wrongful death, and survival claims against companies affiliated with the store.

FACTUAL BACKGROUND

On May 16, 2016, Joseph Investment Properties, LLC (“JIP”), and Cell Talk entered into a lease agreement (the “Lease Agreement”) by which JIP leased part of the first floor and the basement of its building in Elsmere, Delaware, to Cell Talk.² Subsequently, pursuant to a dealer agreement with T-Mobile Defendants (the “Dealer Agreement”), Cell Talk opened a T-Mobile store (the “Store”) at this

¹ “Metro by T-Mobile” is the brand name currently used by T-Mobile.

² Third-Party Def. Cell Talk, LLC’s Mot. to Dismiss Third-Party Compl. Ex. A [hereinafter “Lease Agreement”].

location. The Store sells prepaid cell phones and wireless phone service plans in exchange for cash.³

Between January 19, 2018, and April 6, 2021, law enforcement was called to the Store on nine occasions. On December 31, 2018, December 17, 2019, and March 28, 2020, Cell Talk employee Leslie was robbed at the Store. On May 15, 2021, an armed robbery occurred at the Store, during which Leslie was shot and killed.

Plaintiffs Daysabeth Julian Basilio (“Daysabeth”), Iker Adan Herrera-Ruiz (“Iker”), and Maria-Celi Ayllon-Ruiz (“Maria-Celi”) are individuals who reside in Delaware. Daysabeth is Leslie’s sister and the administratrix of her estate. Iker and Maria-Celi are Leslie’s surviving minor children.⁴

Defendant T-Mobile USA, Inc. (“T-Mobile”), a Delaware corporation based in Washington, is a wireless communications carrier that contracts with independent dealers to sell T-Mobile’s products and services. Defendant T-Mobile Northeast, LLC (“T-Mobile Northeast”), a Delaware limited liability company based in Washington, is a wholly-owned subsidiary of T-Mobile. Defendants MetroPCS, Inc. (“MetroPCS”), a Pennsylvania corporation based in Pennsylvania, and MetroPCS Pennsylvania, LLC (“MetroPCS Pennsylvania”), a Delaware limited liability company based in Texas, are business affiliates of T-Mobile.⁵

³ Am. Compl.

⁴ *Id.*

⁵ *Id.*

Defendant and Third-Party Plaintiff JIP, a Delaware limited liability company based in Delaware, owned the land and building at which the Store is located during the events of this case. Third-Party Defendant Cell Talk, a Delaware limited liability company based in Delaware, operates a retail business at the Store and was Leslie's employer at the time of her death.⁶

After being hired, each employee of the Store is issued an account for a "MetroGo" application and required to complete online training modules in "MetroGo." These modules originate from T-Mobile Defendants and provide instructions for operational security at T-Mobile store locations, including which actions employees should take in the case of a robbery at the store. Plaintiffs allege that T-Mobile Defendants regularly conducted audits of the Store, which included representatives of T-Mobile Defendants visiting the store and speaking to Store employees.⁷

PROCEDURAL HISTORY

On May 11, 2023, Plaintiffs filed the complaint in this case, raising claims of negligence, wrongful death, and survival.⁸ On August 11, 2023, JIP filed an answer with affirmative defenses and crossclaims against all co-defendants for contribution

⁶ *Id.* Cell Talk was dismissed as a defendant from Plaintiffs' action.

⁷ Am. Compl. Ex. C.

⁸ Compl.

and indemnification.⁹ On September 25, 2023, the Court dismissed Plaintiffs' claims against Cell Talk pursuant to a stipulation by the parties.¹⁰

On September 29, 2023, T-Mobile Defendants filed a motion to dismiss the complaint.¹¹ On October 9, 2023, JIP filed a third-party complaint against Cell Talk for indemnification and breach of contract.¹² On October 19, 2023, Plaintiffs filed a brief in opposition to T-Mobile Defendants' motion to dismiss.¹³

On November 6, 2023, with leave of the Court, Plaintiffs filed an amended complaint.¹⁴ On November 30, 2023, T-Mobile Defendants filed a motion to dismiss the amended complaint (the "T-Mobile Motion").¹⁵ On the same day, Cell Talk filed a motion to dismiss JIP's third-party complaint (the "Cell Talk Motion").¹⁶

On December 20, 2023, Plaintiffs filed a brief in opposition to the T-Mobile Motion.¹⁷ On January 12, 2024, JIP filed a brief in opposition to the Cell Talk Motion.¹⁸

⁹ Answer Def. Joseph Investment Properties, LLC to Pls.' Compl. with Affirmative Defenses and Crosscls.

¹⁰ See Partial Stipulation Dismissal.

¹¹ T-Mobile's Mot. to Dismiss.

¹² Third-Party Compl. Def. Joseph Investment Properties, LLC Against Cell Talk, LLC [hereinafter "Third-Party Compl."].

¹³ Pls.' Resp. Def. T-Mobile's Mot. to Dismiss.

¹⁴ Am. Compl.

¹⁵ T-Mobile's Mot. to Dismiss Am. Compl. [hereinafter "T-Mobile Mot."].

¹⁶ Third-Party Def. Cell Talk, LLC's Mot. to Dismiss Third-Party Compl. [hereinafter "Cell Talk Mot."].

¹⁷ Pls.' Resp. Def. T-Mobile's Mot. to Dismiss Am. Compl. [hereinafter "Pls.' Resp."].

¹⁸ Def./Third Party Pl. Joseph Investment Properties, LLC's Resp. Opp'n Third Party Def. Cell Talk's Mot. to Dismiss. [hereinafter "JIP's Resp."].

On January 25, 2024, The Court heard argument on the T-Mobile Motion. On February 6, 2024, the Court heard argument on the Cell Talk Motion.

STANDARD OF REVIEW

On a motion to dismiss for failure to state a claim upon which relief may be granted, made pursuant to Superior Court Civil Rule 12(b)(6), all well-pleaded allegations in the complaint are accepted as true.¹⁹ Even vague allegations are considered well-pleaded if they give the opposing party notice of the claim. The Court draws all reasonable inferences in favor of the non-moving party. However, the Court will not “accept conclusory allegations unsupported by specific facts” or “draw unreasonable inferences in favor of the non-moving party.”²⁰ Dismissal of a claim is not appropriate unless the “plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.”²¹ Negligence must be pleaded with particularity, rather than mere “general statements or conclusions.”²²

¹⁹ *Sees v. Mackenzie*, 2023 WL 5202675, at *2 (Del. Super. Aug. 14, 2023).

²⁰ *Id.*

²¹ *Id.* (quoting *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871-72 (Del. 2020)).

²² *Hsu v. Wooters*, 2023 WL 6460278, at *2 (Del. Super. Oct. 3, 2023).

LEGAL ANALYSIS

A. The T-Mobile Motion

1. Duty of Care

T-Mobile Defendants argue that they had no duty of care to prevent the third-party armed robber from killing Leslie because T-Mobile Defendants never owned or possessed the Store or undertook to provide security services there. They assert that their only connection to the events that underlie this action is the Dealer Agreement with Cell Talk. T-Mobile Defendants argue that the Dealer Agreement, on its own, is insufficient to justify holding them liable for negligence related to Leslie's death.²³ Plaintiffs maintain that T-Mobile Defendants exercised control over the Store's operations, including by implementing security measures, which created a duty of care owed to Leslie.²⁴

To determine whether an entity assumed a duty of care, Delaware courts apply an approach derived from the Restatement (Second) of Torts:²⁵

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care

²³ T-Mobile Mot. Defendants also argue that Plaintiffs' wrongful death and survival claims require a valid underlying claim. They argue that if the Court dismisses Plaintiffs' negligence claim, Plaintiffs' wrongful death and survival claims cannot proceed. Plaintiffs agree with this premise. "A wrongful death claim is a derivative claim, which is wholly dependent on the decedent's ability to bring a civil action." *Lovett v. Cheney*, 2007 WL 687228, at *3 (Del. Super. Mar. 2, 2007).

²⁴ Pls.' Resp.

²⁵ *Rogers v. Christiana Sch. Dist.*, 73 A.3d 1, 8 (Del. 2013).

increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.²⁶

A case that aptly illustrates this approach is *Jardel Co. v. Hughes*. There, the Delaware Supreme Court considered the extent to which the landlord of a business premises should be held liable for negligent injury to business invitees when that landlord voluntarily undertook to provide security services.²⁷ The Supreme Court stated that “[t]he crucial inquiry is the extent of the danger which a landlord must reasonably foresee”²⁸ and concluded that “while a property owner is no more an insurer or guarantor of public safety than are police agencies, there is a residual obligation of reasonable care to protect business invitees from the acts of third persons.”²⁹ Business invitees include employees on the premises.³⁰ The trier of fact ultimately determines whether the landlord satisfied the standard of care.³¹ In *Jardel*, the Supreme Court affirmed the Superior Court's imposition of civil liability on the parent company of the landlord because it had “exercised direct operational control in several management areas, including security decisions.”³²

²⁶ Restatement (Second) of Torts § 323 (1965).

²⁷ 523 A.2d 518, 524 (Del. 1987).

²⁸ *Id.*

²⁹ *Id.* at 525.

³⁰ *Patton v. Simone*, 1992 WL 183051, at *4 (Del. Super. July 16, 1992) (citing *Koutoufaris v. Dick*, 602 A.2d 390, 402 (Del. 1992)) (“The court in *Koutoufaris*, thus, has impliedly, if not expressly, recognized that an employer has a duty to an employee as a business invitee and that such duty arises ‘irrespective’ of the employer-employee relationship.”).

³¹ *Jardel*, 523 A.2d at 525 (“Whether the conduct of a particular property owner meets the standard of reasonable care is, of course, a matter for jury determination.”).

³² *Id.* at 526.

In this case, T-Mobile Defendants have not established that Plaintiffs failed to plead with particularity that T-Mobile Defendants assumed a duty of care to protect Leslie at the Store. Applying the Restatement approach for determining the duty of care, and accepting Plaintiffs' well-pleaded allegations as true, Plaintiffs have sufficiently pled that T-Mobile Defendants voluntarily undertook to render security services for the Store by instituting mandatory security trainings for Store employees online through the MetroGo application. Plaintiffs' claim that T-Mobile Defendants failed to fulfill this assumed duty of care, and increased the risk of harm to Leslie at the Store, is well pleaded and conceivable.

Hence, dismissal of Plaintiffs' action would be premature at this stage in the litigation. The Court need not determine whether T-Mobile Defendants actually breached such a duty of care. The issue of negligence is properly reserved for the trier of fact in this case.

2. Proximate Causation

T-Mobile Defendants also argue that, even if they owed a duty of care to Leslie, the alleged breach of that duty was not a proximate cause of her death. T-Mobile Defendants assert that there are no allegations that they failed to implement any security measure that would have prevented Leslie's death. They argue that the armed robber's conduct was, instead, the proximate cause of this harm.³³ Plaintiffs

³³ T-Mobile Mot.

respond that T-Mobile Defendants' alleged failure of their duty of care to Leslie was a proximate cause of her death. Plaintiffs argue that the causal chain between Leslie's death and T-Mobile Defendants' involvement with the security of the Store was not broken.³⁴

Delaware courts apply the traditional "but for" standard for proximate causation. Notably, there can be more than one proximate cause of a single injury.³⁵ But an intervening cause "involving abnormal, unforeseeable, or extraordinary negligence" breaks the chain of proximate causation.³⁶

Here, accepting Plaintiffs' well-pleaded allegations as true, T-Mobile Defendants have failed to demonstrate that there is an absence of proximate causation as a matter of law. While an armed robbery is an abnormal, unforeseeable, and extraordinary event in many, if not most, circumstances, the frequency with which criminal conduct occurred at the Store in the years that preceded the armed robbery in this case made the events that occurred on the date of Leslie's death foreseeable to T-Mobile Defendants. In the years before Leslie was killed, she had been robbed at the Store on three occasions over two years, and law enforcement had been called to the Store on nine occasions over three years. Criminal activity and its associated risks had become normal, foreseeable, and ordinary at this

³⁴ Pls.' Resp.

³⁵ *Jones v. Crawford*, 1 A.3d 299, 302-03 (Del. 2010).

³⁶ *Id.*

particular location for purposes of proximate causation. It is foreseeable that a business which has been the target of this volume of criminal activity would again be targeted by a robber, that such a robbery could lead to a risk of injury to an employee, and that adequate security measures could limit this risk.

Plaintiffs have sufficiently pleaded that, but for T-Mobile Defendants' failure to implement adequate security measures at the Store, the injury to Leslie would not have occurred. Hence, Plaintiffs' negligence claim does not lack a sufficient demonstration of proximate causation.

B. The Cell Talk Motion

In the third-party complaint, JIP demands indemnification from Cell Talk. JIP asserts that Cell Talk agreed to indemnify JIP for Cell Talk's negligence and was obligated to, but failed to name JIP as an insured under its public liability insurance policy.³⁷ In its motion to dismiss, Cell Talk argues that JIP's third-party complaint should be dismissed because, pursuant to the Workers' Compensation Act, Cell Talk cannot be held liable as a tortfeasor in Plaintiffs' action against Defendants. Cell Talk also asserts that its conduct did not breach the Lease Agreement.³⁸ JIP

³⁷ Third-Party Compl. JIP also alleges that Cell Talk breached the Lease Agreement by failing to perform its obligations in a workmanlike manner. *Id.*

³⁸ Cell Talk Mot.

maintains that Cell Talk is obligated to indemnify JIP, both contractually and under an implied indemnification theory.³⁹

The Delaware Workers' Compensation Act is generally "the exclusive remedy for an employee injured or killed in the course of his employment, regardless of questions of negligence."⁴⁰ In effect, the exclusivity provision of the Workers' Compensation Act "precludes the imposition of joint tort liability upon an employer in a suit brought by an injured employee against a third party."⁴¹ This also means that the employer "is not obligated to provide contribution to the third party."⁴²

An exception to the exclusivity provision applies when a third-party tortfeasor asserts "a claim for indemnification against the injured party's employer," alleging that the employer breached a contractual duty "to perform [work] in a careful and prudent manner" for the employee.⁴³ For this exception to apply, the employer's

³⁹ JIP's Resp.

⁴⁰ *Lovett v. Cheney*, 2007 WL 687228, at *2 (Del. Super. Mar. 2, 2007). An injury is compensable under the Workers' Compensation Act if it arose "out of and in the course of employment." *Id.* The Workers' Compensation Act states that workers' compensation is the exclusive remedy for such deaths "to the exclusion of all other rights and remedies." 19 *Del. C.* § 2304.

⁴¹ *O'Neal v. Mercantile Press*, 2009 WL 3327228, at *1 (Del. Super. Oct. 8, 2009). The exclusivity provision "precludes a suit for negligence under the common law, even if the injury was caused by the gross, wanton, willful, deliberate, reckless, culpable or malicious negligence, or other misconduct of the employer." *Stigler v. Jackson*, 2015 WL 36713716, at *1 (Del. Super. June 4, 2015).

⁴² *O'Neal*, 2009 WL 3327228, at *1.

⁴³ *SW (Del.), Inc. v. Am. Consumers Indus., Inc.*, 450 A.2d 887, 888-89 (Del. 1982).

alleged breach of this duty of performance must be “the actual cause of its employee’s injury.”⁴⁴

Specifically, an employer subject to the Workers’ Compensation Act “can be held contractually liable to a third party where a contract between the employer and third party contains provisions requiring the employer to: (i) perform work in a workmanlike manner; and (ii) indemnify the third-party-indemnitee for any claims arising from the employer-indemnitor’s own negligence.”⁴⁵ These two requirements must be satisfied. First, the underlying contract must provide that the employer “agreed to perform services in a workmanlike manner.”⁴⁶ When the employer did not promise to provide any services to the third party, it logically follows that there was no promise to provide services in a workmanlike manner.⁴⁷ Second, the third party must allege that the employer acted with negligence.⁴⁸ An employer “cannot

⁴⁴ *Id.* This exception requires “sufficient evidence of either an implied obligation or an independent duty” that is separate from the employment relationship. *Id.* at 889. But this Court subsequently noted that the *American Consumers Industries* Court did not create a new implied duty based on the sort of special relationship described in that case. *Karcher v. Restoration Guys, LLC*, 2022 WL 2720887, at *3-4 (Del. Super. July 14, 2022).

⁴⁵ *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 407 (Del. 1995). The second element requires the intention to indemnify to “clearly appear in the terms of the [governing] agreement.” *Hindinger v. J & M Temp, LLC*, 2023 WL 2292489, at *5 (Del. Super. Feb. 28, 2023).

⁴⁶ *Hindinger*, 2023 WL 2292489, at *4.

⁴⁷ *Laugelle v. Bell Helicopter Textron, Inc.*, 88 A.3d 110, 120 (Del. Super. 2014). For instance, in *Hindinger*, this Court dismissed a third-party claim for indemnification against an employer because the contract did “not expressly obligate [the employer] to work in a workmanlike manner.” 2023 WL 2292489, at *4.

⁴⁸ *Precision Air*, 654 A.2d at 408.

be held liable for indemnification . . . where there is no allegation that the employer acted improperly.”⁴⁹

Further, a third-party plaintiff’s claim against a third-party defendant that does not arise “from the same or related factual situations as the plaintiffs’ claims against the defendants” should be brought as a separate action.⁵⁰ “Separate and independent claims cannot be the basis for joining third party defendants.”⁵¹

Here, dismissal of JIP’s third-party complaint against Cell Talk is appropriate because the Workers’ Compensation Act exempts Cell Talk from common law tort liability in this case. Plaintiffs’ injury for Leslie’s death is governed by the Workers’ Compensation Act because Leslie was killed during the course of her work shift at Cell Talk, which means that the injury occurred in the course of her employment. Accordingly, unless the exception is satisfied, the exclusivity provision of the Workers’ Compensation Act bars civil liability against Cell Talk on Plaintiffs’ negligence claim. And Cell Talk is not obligated to indemnify Defendants.⁵²

Based on the pleading record before the Court, JIP has failed to demonstrate that the third-party claim against Cell Talk falls within an exception to the exclusivity

⁴⁹ *Id.*

⁵⁰ *Two Farms, Inc. v. Davis, Bowen & Friedel, Inc.*, 2018 WL 6721379, at *3 (Del. Super. Dec. 19, 2018).

⁵¹ *Id.* (quoting *Sinex v. Bishop*, 2005 WL 3007805, at *3 (Del. Super. Oct. 27, 2005)).

⁵² Plaintiffs’ wrongful death and survival claims against Defendants are derivative of Plaintiffs’ negligence claim. Accordingly, a failure of JIP’s arguments in favor of indemnification from Cell Talk as to negligence constitutes a failure of JIP’s arguments in favor of indemnification as to wrongful death and survival.

provision of the Workers' Compensation Act. JIP and Cell Talk are parties to the Lease Agreement, by which Cell Talk leased retail space from JIP to operate the Store. The Lease Agreement includes an indemnification provision that obligates Cell Talk to indemnify JIP for any claims that arise from Cell Talk's own negligence.⁵³ Notably, the Lease Agreement does not require Cell Talk to provide any services to JIP in a workmanlike manner. Indeed, the Lease Agreement is not a contract for services at all, and Cell Talk does not promise to provide any services to JIP therein.⁵⁴ Even if the Court accepts the well-pleaded allegations in the third-party complaint as true, JIP has not shown that Leslie's death was the result of Cell Talk's failure to perform any obligations under the Lease Agreement.

⁵³ The Lease Agreement provides, in pertinent part, that: "[Cell Talk] agrees to save [JIP] harmless from, and indemnify [JIP] against, to the extent permitted by law, all injury, loss or damage and any and all claims for injury, loss or damage of whatever nature (i) caused by or resulting from, or claimed to have been caused by or to have resulted from any act, omission or negligence of [Cell Talk] or anyone claiming under [Cell Talk] (including, but without limitation, employees and contractors of [Cell Talk]), no matter where occurring or (ii) occurring upon or about the demised premises, no matter how caused. . . . In no event shall [JIP] be liable for any damage or injury to [Cell Talk] or any agent or employee of [Cell Talk], or to any person or persons, coming upon the demised premises in connection with the occupancy by [Cell Talk] or otherwise, or to any other person or persons which may during the term of this lease be located in the demised premises, caused or contributed to by water, rain, snow, breakage of pipes, leakage or by any other cause except the willful negligence of [JIP], its agents or employees." Lease Agreement § 12(a).

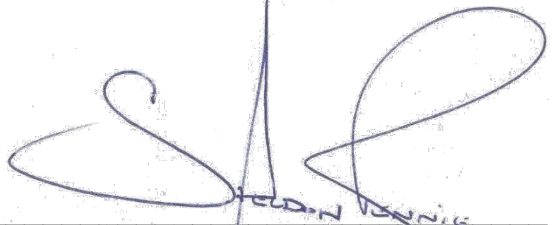
⁵⁴ The provision that comes closest to satisfying this requirement, but still fails, is Lease Agreement § 11(e), in which Cell Talk "agrees that all repairs, installations, alterations, improvements and removals done by it or anyone claiming under it shall be done in a good and workmanlike manner." This provision does not create an obligation to provide services, only a condition on services that *could* be performed during the term of the lease. In any event, JIP has not asserted that Cell Talk's failure to repair, install, alter, improve, or remove something in the leased retail space caused Leslie's death.

In addition, JIP's claim that Cell Talk breached the Lease Agreement by failing to name JIP as an insured for its public liability insurance policy arises from a separate factual situation from Plaintiffs' claims against Defendants in this action. Even if Cell Talk had conceded JIP's argument on this claim, the claim does not present grounds for Cell Talk to indemnify JIP for liability incurred due to Plaintiffs' claims in this case. Hence, for all of these reasons, Cell Talk has established that JIP failed to state a claim for which relief may be granted in the third-party complaint.

CONCLUSION

For the foregoing reasons, T-Mobile Defendants' motion to dismiss the complaint is **DENIED** and Cell Talk's motion to dismiss the third-party complaint is **GRANTED**.

IT IS SO ORDERED, this 31st day of May, 2024.



Sheldon K. Rennie, Judge