LINDA SIGNORE, Individually and as Executrix/Administratrix of the Estate of PETER A. SIGNORE, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
vs.	:	NO. 02-01,303
SULLIVAN COUNTY RURAL ELECTRIC COOPERATIVE, INC., PA. RURAL ELECTRIC ASSOC., CHARLES J. McNAMEE and CAROL M. McNAMEE and JAMES P. McNAMEE, SR. and ANN M. McNAMEE, Defendants	:	PRELIMINARY OBJECTIONS

Date: March 18, 2003

OPINION and ORDER

Before the Court for determination is the Defendants', Charles J. McNamee, Carol M. McNamee, James P. McNamee, Sr. and Ann M. McNamee, (hereafter "McNamees") Preliminary Objection to Plaintiff's, Linda L. Signore, (hereafter "Signore") Complaint filed February 6, 2003. McNamees assert by demurrer that Signore cannot sustain a claim for negligence against them because McNamees did not owe a duty to Peter Signore. Thus, the central issue before the Court is whether a landowner owes any duty to the employee of an independent contractor who comes on to his property to cut down trees.

The following is a brief summary of the allegations made in the complaint. Peter Signore was an employee of Sullivan Rural Electric Cooperative, Inc. Sullivan Rural Electric Cooperative, Inc. is a company that provides electric power in Sullivan County. On July 31, 2000, Peter Signore was assigned to a two-man crew to perform a logging operation in Cascade Township, Lycoming County. Peter Signore and his co-employee entered the property

of McNamees and began cutting down trees. During the course of their work, Peter Signore and his co-employee encountered a ninety-foot maple tree. The maple had a hanger lodged in it from a tree about thirty-eight feet away from it. A hanger is a piece of tree that has broken away from one and has become lodged in another. Peter Signore and his co-employee began to cut down both trees, the maple and the one from which the hanger came, at the same time. As the two were cutting down the trees, the co-employee noticed that the hanger had been jarred loose and was falling. The co-employee yelled to Peter Signore to warn him, but Peter Signore could not hear the warning because of the running chainsaw and the ear protection he was wearing. The hanger struck Peter Signore in the head and killed him.

McNamees' demurrer contends that they owed no duty to Peter Signore. McNamees assert that while they may have had a duty as landowners to warn Signore of non-obvious dangerous conditions on the land, the hanger was an obvious condition. This claim is based on the fact that the hanger was roughly forty feet long and about ninety feet in the air. McNamees argue the complaint states that Peter Signore saw the hanger, appreciated the danger it posed, and proceeded to cut the trees down despite the danger of the hanger falling and injuring him. McNamees also assert that they owed no duty to Peter Signore because the complaint allegations make clear that the deceased Peter Signore was the employee of an independent contractor hired to cut down trees and it was his own act of cutting the tree down that caused the hanger to fall cause his death. McNamees assert that the danger posed by a falling branch is inherent in the cutting down of trees. Therefore, they assert that no duty was owed to Peter Signore to protect against the inherent dangers that arise from the cutting down of trees.

In response, Signore argues that McNamees did owe Peter Signore a duty. Signore contends that McNamees owed Peter Signore a duty to warn of the danger posed by the hanger and a duty to make the land safe for Peter Signore as an invitee. Signore asserts that it is inappropriate for the Court to determine, at this time whether the hanger was an obvious danger. Signore argues that Peter Signore appreciated the danger posed by the hanger and whether Peter Signore did in fact know about the hanger. Therefore, Signore argues that it is a question for the jury to decide. Therefore, Signore contends that granting a demurrer is inappropriate at this time.

To resolve the main issue of whether McNamees owed Peter Signore a duty, two sub-issues must be resolved. The first is whether the hanger was an obvious danger that the McNamees had no duty to warn Peter Signore about. The second is whether McNamees had a duty to protect Peter Signore form the dangers associated with the cutting of trees.

A preliminary objection, in the nature of a demurrer, should only be granted when it is clear from the facts that the party has failed to state a claim upon which relief can be granted. ***Sunbeam Corp. v. Liberty Mut. Ins. Co.***, 781 A.2d 1185, 1191 (Pa. 2001). The reviewing court in making such a determination "is confined to the content of the complaint." ***In re Adoption of S.P.T.***, 783 A.2d 779, 781 (Pa. Super. 2001). "The court may not consider factual matters; no testimony or other evidence outside the complaint may be adduced and the court may not address the merits of matter represented in the complaint." ***Ibid.*** The court must admit as true all well pleaded material, relevant facts and any inferences fairly deducible from those facts. ***Willet v. Pennsylvania Med. Catastrophe Loss Fund***, 702 A.2d 850, 853 (Pa. 1997). " 'If the facts as pleaded state a claim for which relief may be granted under any theory

of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.'" ***Ibid.***

In order to establish a negligence claim, a plaintiff must prove: "(1) a duty or obligation recognized by the law that requires an actor to conform his actions to a standard of conduct for the protection of others against unreasonable risks; (2) failure on the part of the defendant to conform to that standard conduct, i.e. a breach of duty; (3) a reasonably close causal connection between the breach of duty and the injury sustained; and (4) actual loss or damages that result from the breach." ***Gutteridge v. A.P. Green Servs., Inc.***, 804 A.2d 643, 654 (Pa. Super.2002). In a negligence suit, the issue of whether the defendant owed the plaintiff a duty is of primary significance. ***Id***. at 655. A duty is " 'the sum total of those considerations of policy which led the law to say that the particular plaintiff is entitled to protection from the harm suffered.'" ***Ibid.*** (quoting ***Althaus ex rel. Althaus v. Cohen***, 756 A.2d 1166, 1168-69 (Pa. 2000)).

Whether or not there is a duty is a question of law for the court to determine. ***Emerich v. Philadelphia Ctr. For Human Dev.***, 720 A.2d 1032, 1044 (Pa. 1998); ***Breen v. Eagle Valley Homes, Inc.***, 57 Pa. D. & C. 4th 301, 307 (Monroe Cty. 2002). The duty a landowners owes to one who enters his land depends on whether that individual is a trespasser, licensee, or invitee. ***Gutteridge***, 804 A.2d at 655. An employee of an independent contractor is an invitee. ***Ibid.*** As an invitee, a landowner owes the highest duty of care to an independent contractor ***Id***. at 656. Therefore, a landowner "'owes a duty to warn an unknowing independent contractor of existing dangerous conditions on the landowner's premises where such conditions are known or discoverable to the owner.'" ***Id***. at 657 (quoting ***Colloi v.***

Philadelphia Electric Co., 481 A.2d 616, 619 (Pa. Super. 1984)). "The landowner's 'duty to warn is owed irrespective of whether the independent contractor exercises full control over the work and premises entrusted to him.'" ***Ibid.*** (quoting ***Colloi***, 481 A.2d at 619-20.). "However, an owner of land who delivers temporary possession of a portion of the land to an independent contractor owes no duty to the employees of the independent contractor with respect to an obviously dangerous condition on that portion of the land in the possession of the contractor." ***Ibid.*** "The question of whether a landowner owes a duty to warn an independent contractor of dangerous conditions on the premises turns on whether the owner possesses 'superior knowledge' or information which places him in a better position to appreciate the risk posed to the contractor or his employees by the dangerous conditions." ***Id***. at 657-58.

Whether a condition was obvious is usually a fact question for the jury; however, the question may be decided by the court "where reasonable minds could not differ as to the conclusion." ***Carrender v. Fitterer***, 469 A.2d 120, 124 (Pa. 1983). A danger is deemed to be "'obvious' when 'both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of the visitor, exercising normal perception, intelligence, and judgment'" ***Id***. at 123-24 (quoting Restatement (Second) of Torts, §343A, comment b (1965)). "For a danger to be 'known,' it must 'not only be known to exist, but … also be recognized that it is dangerous and the probability and gravity of the threatened harm must be appreciated.'" ***Id***. at 124 (quoting Restatement, *supra*.).

The Court cannot conclude from the complaint's allegations that the hanger in the maple tree was an obvious danger and that McNamees had no duty to warn peter Signore of it. Based on the allegations in the complaint, reasonable minds could differ as to whether the

hanger was an obvious danger. The complaint alleges that Signore was assigned to a two man logging crew. Plaintiff's Complaint, at ¶8. Signore and his co-employee entered McNamees' land and began cutting trees. ***Id***. at ¶9. The complaint further alleges that Signore and his co-employee *"encountered* a large, hard maple tree about 90 feet tall that had a top hanger lodged in a tree about 38 feet adjacent to it. ***Id***. at ¶0. (emphasis added) According to the complaint, Peter Signore and his co-employee began to cut both trees down. ***Id***. at ¶11. The complaint then states that the co-employee "noticed that the process of cutting down both trees had jarred the hanger loose and said co-employee yelled a warning to Plaintiff's decedent, PETER A. SIGNORE, who couldn't hear it with his hearing protection on and chainsaw running." ***Id***. at ¶12.

The Complaint does not contain enough information that would allow the Court to conclude that the hanger was clearly an obvious danger. The complaint alleges that Peter Signore and his co-employee "encountered" the maple tree and the hanger. This would indicate that Peter Signore and his co-employee came upon the area where the hanger was located. It is unclear from this pleading whether Peter Signore actually saw the hanger before he and his co-employee started to cut the trees. It is also unclear if the hanger was clearly visible and obvious. Was the hanger located in amongst other trees and foliage that obscured the view? Or was the hanger located in the middle of a field in a barren tree with an unobstructed view? Without further information, this Court cannot conclude that reasonable minds could not differ as to whether the hanger was an obvious danger. Thus, the Court cannot determine that the hanger was an obvious danger. As such the Court cannot conclude that

McNamees did not have a duty to warn of the hanger. Therefore, the Court cannot say that Signore has failed to set forth a claim for negligence for that reason.

However, the Court can say that Signore has failed to set forth a claim for negligence against McNamees because a land owner does not have a duty to protect an independent contractor from dangers inherent in the work they are hired to perform "[T]he owner of property is under no duty to protect the employees of an independent contractor from the risks arising from or intimately connected with defects or hazards which the contractor has undertaken to repair or which are created by the job contracted." ***Colloi***, 481 A.2d at 620; *see also*, ***Palenscar v. Michael J. Bobb, Inc.***, 266 A.2d 478, 481 (Pa. 1970). It would be unjust to hold the landowner liable for an injury caused by a harm or condition the independent contractor was hired to remedy. *See*, ***Palenscar***, 266 A.2d at 481.

In ***Palenscar***, a lessee of a warehouse contacted an electrical contracting business to address problems it was having with the electrical system of the warehouse. 266 A.2d at 479. The electrical contractor was hired to locate and repair the problem that was rendering the warehouse's electrical system inoperative. ***Ibid.*** The electrical contractor sent a two-man team to the site consisting of a father and son. The father undertook the task of checking the circuitry on the east side of the warehouse. Prior to doing this, he had turned of the power to that side of the warehouse. ***Id***. at 479-80. The son was going to inspect the west side of the building. During the inspection, the son came to a circuit breaker he believed was the problem. The son began to remove the cover of the circuit breaker when there was a flash of light and an explosion. ***Id***. at 480. The explosion was caused by a short circuit in the box resulting from "a contact between two burned and disconnected wires." ***Ibid.*** Before

beginning his inspection, the son had failed to cut the power to the west side of the building. As a result of the explosion, the son suffered severe burns.

The Superior Court held that the lessee did not owe the independent contractor electrician a duty to protect him from the harm associated with the repair of the electrical system. ***Palenscar***, 266 A.2d at 480. The electrical system was faulty and malfunctioning. The electrician was hired to remedy this problem. The electrician had located the problem, but failed to take the appropriate precautions to protect himself from the inherent dangers of repairing a faulty electrical system. ***Ibid.***

Likewise, McNamees in the case *sub judice* have no duty to protect an independent contractor hired to fell trees from the risks associated with that task. Peter Signore was "assigned to a two man logging crew to perform a logging operation." Plaintiff's Complaint, at ¶8. Peter Signore and his co-employee entered the property owned by the McNamees and began cutting down trees. Id. at ¶9. Signore and his co-employee were on McNamees' property for the sole purpose of cutting down trees. An inherent risk in the felling of trees is the danger posed by the falling wood, be it the tree itself or an individual branch. The act of cutting down trees is inherent with the possibility that the worker could be struck with falling debris. It was up to the cutters to make sure that they took the proper precautions to limit the risk posed by these inherent dangers. There is no duty to protect an independent contractor hired to fell trees form the risks associated with the cutting of trees.

Thus, McNamees' preliminary objection will be granted. McNamees did not owe Signore a duty to protect him from the dangers arising from the feeling of trees. Since McNamees did not owe Signore a duty, Signore cannot sustain a negligence claim against McNamees.

O R D E R

It is hereby ORDERED that Defendants', Charles J. McNamee and Carol M. McNamee, James P. McNamee, Sr. and Ann M. McNamee, Preliminary Objection by demurrer to Plaintiff's, Linda L. Signore, Complaint filed February 6, 2003 is granted.

Plaintiff's negligence claim against McNamees is dismissed.

Plaintiff is granted a period of twenty days to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Richard J. Callahan, Esquire
Joseph R. Musto, Esquire
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)