

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CONSTANCE J. CLINE, Administratrix :	:	
of the Estate of Susan Marie Cline,	:	
Deceased,	:	
Plaintiff	:	
	:	
v.	:	No. 06-00,078
	:	CIVIL ACTION
ANDREW RITTER,	:	
Defendant	:	

OPINION and ORDER

Before this Honorable Court, is the Defendant’s May 22, 2007 Motion in Limine. Based upon the contentions in said Motion, this Court will also address the Defendant’s June 30, 2006 Preliminary Objections which, this Court deferred ruling on entirely pending the completion of the discovery deadline set at the October 2006 scheduling conference. For the following reasons, the Court hereby SUSTAINS the remainder of the Defendant’s June 30, 2006 Preliminary Objections and, although said ruling renders the Defendant’s May 22, 2007 Motion in Limine moot, the Court hereby GRANTS the Defendant’s May 22, 2007 Motion in Limine thereby DISMISSING the above-captioned matter in its entirety.

Background¹

The instant matter is a wrongful death/survival action arising from structure fire in the west end of the city and consequent death of the Plaintiff’s daughter. On March 6, 2005, the decedent was asleep in a second floor bedroom at the Defendant’s residence (which, in his August 4, 2006 Brief in Support of Preliminary Objections, the Defendant acknowledges he

¹ The details/facts as delineated in the instant Background section of this Opinion and Order are almost entirely derived from the Plaintiff’s June 8, 2006 Complaint. The Court, by setting forth these facts in this manner, is not necessarily accepting or denying said details/facts as true or false, but instead feels it necessary to briefly describe the foundation of the instant action in order for readers to better understand the Court’s ultimate disposition.

owns); the Defendant was, at the time, working in a detached garage on the property. The Plaintiff alleges that an unattended candle in the second floor bathroom ignited the bathtub and that the fire eventually spread to the remainder of the residence. Upon arriving at the residence, rescue personnel found the deceased, who was, by then, unconscious, in a second floor bedroom of the residence. Despite various attempts over the course of three days by staff at the Williamsport Hospital Emergency Department and the University of Pennsylvania Hospital Burn Unit, doctors were unable to reverse the damage the decedent suffered as a result of smoke inhalation from the fire and she expired on March 9, 2005.

On June 8, 2006, the Plaintiff filed the instant action alleging that the Defendant's negligence was the direct and proximate cause of her daughter's injuries and subsequent death. Specifically, the Plaintiff alleged that the Defendant was negligent in five respects: (1) leaving an unattended candle burning in his home; (2) failing to exercise due care in maintaining a safe premise for the decedent; (3) failing to exercise a proper lookout for a hazardous condition existing at his residence; (4) failing to summon assistance to his burning residence; and (5) failing to maintain a safe and hazard free environment for guests such as the decedent. On June 30, 2006, the Defendant filed Preliminary Objections to the Plaintiff's Complaint. In his Objections, the Defendant contended that (1) the Plaintiff failed, pursuant to Section 342 of the Restatement 2nd of Torts, to plead a cause of action upon which relief can be granted; (2) the Plaintiff was seeking to recover for causes of action not recognized by the law (specifically, failure to exercise a proper lookout for hazardous conditions and failure to summon assistance); and (3) the Plaintiff's complaint was violative of Pa.R.C.P. No. 1019(a) and the Rule of Law set forth in *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (Pa. 1983). On September 11, 2006, the Court sustained the Defendant's second Preliminary Objection (i.e. the

Objection regarding the Plaintiff's claim that the Defendant was negligent for failing to exercise a proper lookout for hazardous conditions and for failing to summon assistance) and consequently dismissed such allegations from the instant matter. As to the remainder of the Defendant's Objections, the Court ruled as follows: ". . . the Court DENIES the remainder of the Defendant's Preliminary Objections provided that, within thirty days (30) from the completion of discovery, the Plaintiff files a more specific amended complaint." At the time of the September 2006 Order, the Court had not yet issued a scheduling order establishing a discovery deadline; however, in a footnote, the Court identified that it was relying on the discovery deadline that would be established at the October 24, 2006 scheduling conference. The discovery deadline established at the October 2006 conference was June 11, 2007.² The Plaintiff failed to file an amended complaint before July 11, 2006 (thirty days from June 11, 2007) and has not, at the time of this writing, filed such a pleading.

On May 22, 2007, the Defendant filed a Motion in Limine seeking to preclude the Plaintiff from introducing any evidence at trial regarding the alleged absence of smoke detectors at the Defendant's residence because, the Defendant claims, such evidence raises a new negligence theory which is barred by the applicable statute of limitations.

Discussion

Pennsylvania is a fact pleading state. *Alpha Tau Omega Fraternity v. University of Pennsylvania*, 318 Pa. Super. 293, 298, 464 A.2d 1349, 1352 (Pa. Super. Ct. 1983); Pa.R.C.P. No. 1019(a). A complaint must contain "material facts on which a cause of action or defense is based stated in concise summary form" so as to "apprise the defendant of the claim being

² On April 13, 2007, this Court approved an Amended Scheduling Order submitted by the parties which extended the discovery deadline to February 5, 2008. This Order, nor any future Court Orders, addressed the Court's September 11, 2006 Order regarding the Plaintiff filing a more specific pleading by the discovery deadline established at the October 24, 2006 scheduling conference.

asserted, and summarize the essential facts to support that claim.” *Cardenas v. Schober*, 2001 Pa. Super. 253, P24, 783 A.2d 317, 325 (Pa. Super. Ct. 2001); Pa.R.C.P. No. 1019(a). Although the degree of requisite specificity is “incapable of precise measurement,” *Pike County Hotels v. Kiefer*, 262 Pa. Super. 126, 134, 396 A.2d 677, 681 (Pa. Super. Ct. 1978), the complainant must present enough facts so as to permit the Defendant to adequately defend the allegations contained in the complaint, *Weiss v. Equibank*, 313 Pa. Super. 446, 460 A.2d 271 (Pa. Super. Ct. 1983), and prevent the Plaintiff from asserting new causes of action and/or theories of liability after the statute of limitations has expired, *Connor v. Allegheny General Hospital*, 501 Pa. 306; 461 A.2d 600 (Pa. 1983).

Where the complainant, as in the case *sub judice*, alleges that the defendant’s negligence led to the decedent licensee’s death, the complainant must allege, at a minimum, facts which establish that the defendant owed a duty to the victim, that the defendant breached said duty, and that said breach was the cause of the victim’s injuries. Because it is clear that that the victim in the instant matter was a licensee of the Defendant, the applicable duty the Defendant owed to the victim is set forth in Section 342 of the Restatement 2nd of Torts:

1. the defendant knew or had reason to know of the alleged dangerous condition and should have realize that said condition involved an unreasonable risk of harm to the victim and the Defendant should expect that the victim would not have discovered or realized the alleged danger and
2. that the defendant failed to exercise reasonable care to make the alleged dangerous condition safe, or to warn the victim of the alleged dangerous condition and the risk involved and
3. that the victim did not know or have reason to know of the alleged dangerous condition and the risk involved.

RESTATEMENT (SECOND) OF TORTS § 342. Instantly, the Plaintiff’s June 8, 2007

Complaint does not allege facts sufficient to establish a cause of action under the aforecited

standard. In her Complaint, the Plaintiff avers that the Defendant's negligence consisted of³ (1) leaving a candle unattended, (2) failing to exercise due care in maintaining a safe premise for the decedent, and (3) failing to maintain a safe and hazard free environment for guests such as the decedent. The vague and broad aforesaid allegations do not comport with Pa.R.C.P. No. 1019(a), *Connor v. Allegheny General Hospital*, *Alumni Association v. Sullivan*, and the myriad of subsequent cases on this issue. For example, the Plaintiff's second and third contentions (i.e. failing to exercise due care in maintaining a safe premise for the decedent and failing to maintain a safe and hazard free environment for guests such as the decedent) can conceivably encompass a plethora of issues; specifically, as the Defendant alleges in his Motion in Limine, the alleged lack of a smoke detector in the home, which is an issue not raised in any pleading.

³ The Plaintiff's Complaint actually alleged that the Defendant was negligent in five respects; however, this Court dismissed two of those allegations in its Order of September 11, 2006.

ORDER

AND NOW, this _____ day of September 2007, the Court hereby **SUSTAINS** the Plaintiff's June 30, 2006 Preliminary Objections not previously addressed by this Court in its September 2006 Order. Accordingly, the Court hereby **DISMISSES** the instant matter in its entirety. Additionally, the Court, although the aforementioned decision renders it moot, hereby **GRANTS** the Defendant's May 22, 2007 Motion in Limine.

By the Court,

Nancy L. Butts, Judge

xc: Lori A. Rexroth, Esq.
 Bret J. Southard, Esq.
 Hon. Nancy L. Butts
 Judges
 Laura R. Burd, Esq. (Law Clerk)
 Eileen A. Dgien, DCA
 Gary L. Weber, Esq. (Lycoming Reporter)