IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BERNADETTE KEMMERER, Plaintiff	:	NO. 12 – 01,703
vs.	:	CIVIL ACTION - LAW
DOLLAR GENERAL CORPORATION, DOLGENCORP, LLC and BUCHERT REALTY, LLC, Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections filed by all defendants, by Buchert Realty ("Buchert") on August 30, 2012, and jointly by Dollar General Corporation ("Dollar General") and Dolgencorp, LLC ("Dolgencorp") on September 14, 2012. Argument was heard November 26, 2012.

In her Complaint, Plaintiff contends that while exiting the store owned and/or operated by the defendants on January 26, 2012, she hit her head on the metal frame of the door when the door closed unexpectedly, and was knocked down by the impact, suffering various injuries as a result. She has brought three counts of negligence, one against each defendant. In addition to alleging negligence in the maintenance and operation of the door, Plaintiff also contends Dolgencorp was negligent in failing to assist her in exiting the store, failing to assist her in conveying her purchases safely to her vehicle, failing to use due care to not exacerbate any injury by movement, failing to summon a first responder team or ambulance, and failing to follow established protocols for treating and responding to injuries to customers. The preliminary objections raise various issues and will therefore be addressed seriatim.

Buchert raises three issues. First, it objects to the lack of specificity in the allegation of Paragraph 44(c) that Buchert negligently "[f]ailed to construct and maintain the door, doorway and door opening and closing mechanisms and systems at the premises in conformity with applicable statutes, ordinances, codes and industry standards." The court agrees with Buchert that Plaintiff must allege which statutes, ordinances, codes or industry standards she believes are applicable, and therefore will require Plaintiff to re-plead this allegation. Second, Buchert objects to the demand for attorney's fees as having no legal basis. Again, the court agrees;

Plaintiff has failed to allege any basis to support her request for attorney's fees. While at argument she offered that the request was modified by the words "as may be appropriate", since she has alleged no facts which would make such an award "appropriate", the request will be stricken. Finally, Buchert contends that although Plaintiff referred to a lease between the defendants and stated that such was attached to the Complaint as Exhibit 1, nothing was attached to the copy of the Complaint which was served on Buchert. Inasmuch as a copy of the lease *is* attached to the original Complaint, and a copy of such has been provided to counsel for Buchert, this objection will be overruled as moot.

In their objections, Dollar General first asserts that Plaintiff has failed to state a claim against it as the only duty alleged is a contractual duty to Dolgencorp to guarantee the lease payment. Dollar General further contends that Plaintiff "does not allege that Dollar General Corporation owned, possessed, or in any way controlled the retail location", and that no duty to Dolgencorp's patrons is alleged. The court does not agree. In paragraph 30, Plaintiff alleges that Dollar General undertakes centralized maintenance responsibility for its stores, and in paragraph 65, Plaintiff alleges that through its centralized maintenance program, or otherwise, Dollar General undertook to provide safe entry and exit doors at its stores. Plaintiff also alleges, in paragraphs 26 and 27, quoted in their entirety below, that Dollar General has established a Risk Management Unit to oversee the corporate response to personal injury claims. The court believes these assertions are sufficient to allege a duty to Plaintiff.

Next, both Dollar General and Dolgencorp object to the lack of specificity in the allegations of Paragraphs 51, 62(c), 68 and 80(c) that they had a duty but failed to "construct and maintain the door, doorway and door opening and closing mechanisms and systems at the premises in conformity with applicable statutes, ordinances, codes and industry standards." Like the allegation against Buchert, these allegations are not sufficiently specific and Plaintiff will therefore be required to re-plead them to allege which statutes, ordinances, codes or industry standards she believes are applicable.

Next, both Dollar General and Dolgencorp object to paragraphs 24, 25, 26, 27 and 28 as "impertinent" on the basis that they are irrelevant to the claims against them. Those paragraphs read as follows:

24. The doorway through which BK[1] attempted to exit the showroom into the vestibule is constantly monitored by a surveillance camera, attached to a continuous videotape recorder.
25. On information and belief, the entire incident involving BK being struck by the door, her subsequent fall, and DG and/or DG LLC personnel's subsequent actions in pulling BK to a seated position on a chair was recorded by DG and/or DG LLC's surveillance system.
26. DG, on behalf of itself and its affiliates, including DG, LLC, oversees the corporate response to potential and actual personal injury claims against itself and its affiliates, through its Risk Management Unit (hereinafter "RMU").
27. In compliance with DG's RMU procedures, the Jersey Shore store manager notified the RMU, in writing, of the incident causing BK's injuries, as more specifically described below, within 24 hours of the occurrence.
28. Notwithstanding such notice, DG and/or DG, LLC employees caused or allowed the video surveillance tape depicting BK being struck by the door, and her subsequent handling by DG and/or DG, LLC employees to be erased or overwritten, effectively destroying the only objective visual evidence which would have corroborated BK's description of the incident.

Plaintiff contends these paragraphs are relevant to her anticipated request for a jury instruction on spoliation of evidence. While that may be so, and while the facts as developed may support such an instruction, the court agrees with defendants that the allegations of paragraphs 24, 25 and 28 do not support the negligence claims[2] and are thus not relevant. Therefore, they will be stricken.

Next, both Dollar General and Dolgencorp object to Plaintiff's claims that they breached their duties (1) "not to exacerbate by forcible movement, the known or probable head and back injuries of its customer", (2) to "summon a first responder team or ambulance to assist

[1] In her Complaint, Plaintiff refers to herself as BK, to Dollar General as DG, and to Dolgencorp, LLC as DG LLC.
[2] As noted above, the allegations of paragraphs 26 and 27 are relevant to Plaintiff's claims against Dollar General.

its customer", and (3) to "follow established DG or DG, LLC protocols for treating and responding to injuries to DG customers". Defendants argue that there is no duty by a business proprietor to render aid to or obtain medical care for an injured patron, merely a duty to exercise reasonable care when rendering aid and not undertake actions which worsen the person's injuries, and that Plaintiff has not alleged that defendants volunteered to render aid to Plaintiff and then ceased doing so, or that defendants' actions worsened Plaintiff's alleged injuries. The court does not agree that Plaintiff has not alleged that defendants volunteered to render aid to Plaintiff, however. In paragraph 21 she alleges that she was pulled from the floor by employees and seated in a chair, and in paragraph 23, she alleges that employees called her daughter to come pick her up. These allegations are sufficient to bring the matter under the purview of the duty to exercise reasonable care when rendering aid and not undertake actions which worsen the person's injuries. While the facts may play out to show that defendants did not act unreasonably under the circumstances, at this stage of the case the court is not prepared to say that Plaintiff cannot recover as a matter of law.

Finally, both Dollar General and Dolgencorp object to Plaintiff's claims they breached their duties to (1) "assist its elderly, overburdened[3] customer, BK, to safely exit the premises" and (2) "assist its elderly, overburdened customer, BK, to convey her purchases safely to her vehicle". Defendants contend there are no such duties recognized in Pennsylvania. In response, Plaintiff cites LeGrand v. Lincoln Lines, Inc., 384 A.2d 955 (Pa. Super. 1978), for the proposition that there is a recognized duty to assist elderly patrons. In LeGrand, the duty at issue was that of a common carrier to its passengers. The Court noted that a common carrier owed the "highest" duty of care to its passengers and that "a carrier which accepts as a passenger a person known to be affected by either a physical or mental disability which increased the hazards of travel must exercise a greater degree of care for that passenger than is ordinarily required." Id. at 956. There, the passenger was a woman about 70 years old who wore an eye patch and she was thrown backwards when the bus driver started out immediately after she boarded the bus without waiting for her to proceed down the aisle and be seated. The court does not believe LeGrand can be read as broadly as Plaintiff contends, however, as the

Court did not focus on the plaintiff's age, but rather, her partial blindness, and in any event, the court does not believe the relationship between a common carrier and its passengers to be sufficiently similar to the relationship between a store owner and its customers as to warrant extension of any higher duty to the latter situation. The court therefore agrees with defendants that Plaintiffs have failed to state a claim based on these two alleged duties.

Accordingly, for the foregoing reasons, the court will enter the following:

ORDER

AND NOW, this 30th day of November 2012, the preliminary objections are hereby sustained in part and overruled in part, and it is ordered and directed as follows:

1. Within twenty (20) days of this date, Plaintiff shall file an Amended Complaint in order to re-plead the allegations of paragraphs 44(c), 51, 62(c), 68 and 80(c) to allege which statutes, ordinances, codes or industry standards she believes are applicable.[4]
2. The words "and attorney's fees, as may be appropriate" are hereby stricken from the wherefore clause of Count I.
3. Paragraphs 24, 25 and 28 are hereby stricken.
4. Paragraphs 57, 58, 62(h), 62(i), 74, 75, 80 (h) and 80(i) are hereby stricken.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Mark Criss, Esq.
501 Smith Drive, Suite 5, Cranberry Township, PA 16066
Christopher Reeser, Esq., 4200 Crums Mill Road, Suite B, Harrisburg, PA 17112
Joseph Musto, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

[3] Plaintiff alleges that she was carrying four bags and that she had "difficulty in managing her extensive and awkward purchases". *See* Complaint at paragraphs 12 and 13.

[4] Although Buchert did not object to paragraph 38, and therefore the court will not mandate that Plaintiff amend it, as it contains the identical language of paragraph 44(c) Plaintiff should consider amending it as well in conformity with any amendment to paragraph 44(c).