

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SELENA R. STETTS, Administratrix for the: Estate of GARY E. STETTS, deceased,	: NO. 16-0983
	:
Plaintiff,	:
	:
vs.	: CIVIL ACTION
	:
HCR MANORCARE, LLC; MANOR CARE OF WILLIAMSPORT PA (NORTH), LLC d/b/a MANORCARE HEALTH SERVICES – WILLIAMSPORT NORTH; <i>et al.</i> ,	:
	:
Defendants.	: Six : <i>Preliminary Objections</i>

OPINION & ORDER

AND NOW, after the March 8, 2019 hearing was held on *Defendants' Preliminary Objections* to Plaintiff's complaint, the Court finds the following:

1. *Preliminary Objection One* is **OVERRULED**. Defendants argued that Plaintiff's claims should be submitted to arbitration as per the *Voluntary Arbitration Agreement* she signed when Mr. Stetts was admitted into the Defendant facility. Defendants assert that Plaintiff was acting as Mr. Stetts' agent at this time, as she admitted in her deposition to being his primary caretaker who handled all his paperwork. Precedent is clear. The Pennsylvania Superior Court requires that a husband "authorize[]" his wife to act as his agent in similar circumstances; facts that the wife "previously acted on her husband's behalf" were insufficient.¹ Here, Plaintiff's deposition only indicates that she was the "manager of the household" and would pay bills or handle finances; however, there is no testimony that Mr. Stetts authorized her to act as his agent in waiving

¹ See *Washburn v. N. Health Facilities, Inc.*, 121 A.3d 1008, 1014-15 (Pa. Super. Ct. 2015) ("The flaw in Tremont's position is that while there is evidence that Mrs. Washburn previously acted on her husband's behalf, the record is devoid of evidence that Mr. Washburn ever authorized his wife to do so.").

important constitutional rights. Further, counsel's line of questioning regarding whom Mr. Stetts' would indicate could sign on his behalf is irrelevant. Plaintiff's subjective belief that she is Mr. Stetts' agent is insufficient to establish a principal-agent relationship.

2. *Preliminary Objection Two* is **OVERRULED**. Defendants argue that, pursuant to Pa.R.C.P. 1028(a)(2), Plaintiff's claims in ¶¶55-56, 64-65 regarding Defendants' decision to "maximize profits at the expense of the care required to be provided to their residents" should be stricken as impertinent or scandalous. Defendants further argue Plaintiff has failed to allege sufficient facts to support these claims.² Plaintiff's claim of profit maximization is not scandalous and is relevant to Plaintiff's claim of corporate negligence which was sufficiently pled.

3. *Preliminary Objection Three* is **OVERRULED**. Defendants argue that Plaintiff's claims under Count I regarding negligence *per se* pursuant to 18 Pa.C.S.A. § 2713 ("Neglect of care-dependent person") should be stricken since § 2713 does not apply to the conduct alleged and the statute fails to provide for a private cause of action. Defendants also claim that § 2713 does not provide "particular acts" that are prohibited and, thus, it cannot form a basis for a negligence *per se* claim. "In order to prove a claim based on negligence *per se*, the following four requirements must be met: (1) [t]he purpose of the statute must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally; (2) [t]he statute or regulation must clearly apply to the conduct of the defendant; (3) [t]he defendant must violate the statute or regulation; and (4) [t]he violation of the statute or regulation must be the proximate

² Defendants' Preliminary Objections at 7, ¶22 (Mar. 7, 2018) (hereinafter "Defendants' Objections").

cause of the plaintiff's injuries.”³ Defendants’ objection is unpersuasive. Section 2713 is clearly applicable,⁴ a private cause of action is not required for negligence *per se*,⁵ and the statute is sufficiently specific for negligence *per se*.⁶

4. *Preliminary Objection Four* is **SUSTAINED IN PART**. Defendants argue that Plaintiff’s claims under Count I regarding negligence *per se* pursuant to 35 P.S. §10225.101 *et seq.* (“Older Adults Protective Services Act”) should be stricken for the same reasons as expressed under their third preliminary objection. Alternatively, Defendants assert it should be stricken for lack of specificity. The Court agrees that Plaintiff cannot generally cite to the Act and claim pleading specificity. Therefore, Plaintiff will be granted twenty (20) days to amend her complaint, stating the particular statutes applicable to her claims.

5. *Preliminary Objection Five* is **OVERRULED**. Defendants claim that Plaintiff cannot claim a breach of fiduciary duty—or the concurrently pled aiding and abetting claim—between a nursing home and its patient. Alternatively, Defendants claim that the

³ *Ramalingam v. Keller Williams Realty Grp., Inc.*, 121 A.3d 1034, 1042–43 (Pa. Super. Ct. 2015) (quoting *Schemberg v. Smicherko*, 85 A.3d 1071, 1073–74 (Pa. Super. Ct. 2014)).

⁴ See *McMullen v. Genesis Healthcare, Inc.*, No. 15-2308, Opinion & Order: Preliminary Objections, at 10 (Lyco. Com. Pl. Feb. 27, 2017).

⁵ Defendants rely on *Wagner v. Anzon, Inc.*, 684 A.2d 570, 574 (Pa. Super. Ct. 1996) for the proposition that a private cause of action is required for negligence *per se*. Defendants’ Objections at 8, ¶¶27-30. However, *Wagner* simply states that the lack of a private cause of action is an “indicator” that the purpose of the statute was not to protect said individuals. *Wagner*, 684 A.2d at 675. In addition, *Wagner* concerned a negligence *per se* claim of a law meant to protect the “‘atmosphere’” over Philadelphia. *Id.* at 674-75. Indeed, the Pennsylvania Superior Court has found negligence *per se* based on a statute that did not provide a private cause of action. See *Cabiroy v. Scipione*, 767 A.2d 1078, 1081 (Pa. Super. Ct. 2001) (“although no private cause of action is set forth in the Act, it was certainly designed to protect a particular class of individuals—those such as Appellee who may be receiving some type of drug or devices”). The Superior Court reasoned that a private claim is not necessary because negligence *per se* does not create its own basis for tort liability, but instead denotes the appropriate standard of care. *Id.* at 1082 (citing *In re Orthopedic Bone Screw Prods. Liability Litigation*, 193 F.3d 781, 790 (3d Cir.1999)).

⁶ Defendants’ Objections at 9, ¶31. Defendants cite *Shamnoski v. PG Energy*, 858 A.2d 589, 602 (Pa. 2004) for the proposition that the statute must concern “specific acts.” However, *Shamnoski* is distinguishable. The statute at issue in that case, 32 P.S. § 693.13, concerned the monitoring and inspection of dams and the statute was found to set forth a “general standard.” *PG Energy*, 858 A.2d at

fiduciary duty claim should be stricken based on the gist of the action doctrine as the fiduciary duty claim is merely a masked contract claim.⁷ While a fiduciary relationship often occurs amidst financial woes, a fiduciary duty also arises in the context of a “special relationship” where a disproportionate power dynamic exists and a “special trust” lies.⁸ Such qualifiers certainly apply in the relationship between a nursing home and its patient where the patient is totally dependent on the nursing home for his care.⁹ The Court finds that Plaintiff has properly alleged such a dependent relationship and, therefore, her claim survives demurrer.¹⁰

6. *Preliminary Objection Six* is **OVERRULED**. Defendants argue that Plaintiff’s claims for punitive damages should be stricken because she failed to allege sufficient facts to support that “outrageous conduct” occurred.¹¹ Plaintiff argues paragraphs 55 through 62—which claim intentional widespread understaffing despite the facility’s knowledge that such staffing produced recklessly high resident to staff ratios and prevented timely and necessary care to the patients—support her claim for punitive

602. The statute in this case, § 2713, does not set forth a general standard, but denotes particularly acts that cannot be performed, such as “physical restraint or chemical restraint.” 18 Pa.C.S. § 2713.

⁷ Because the breach of a fiduciary duty is a tort claim, the gist of the action doctrine is not applicable.

⁸ *Siematic Mobelwerke GmbH & Co. KG v. Siematic Corp.*, No. 06-CV-5165, 2009 WL 2526436, at *4 (E.D. Pa. Aug. 12, 2009) (internal citations omitted) (“In order to state a claim for breach of fiduciary duty, SMC must allege: (1) the existence of a confidential relationship; (2) the defendant’s failure to act in good faith and solely for the benefit of the plaintiff with respect to matters within the scope of the confidential or fiduciary relationship; and (3) an injury to the plaintiff proximately caused by the defendant’s failure to act. A fiduciary duty exists when there is a ‘special relationship,’ which is one ‘involving confidentiality, the repose of special trust or fiduciary responsibilities.’ A confidential relationship ‘generally involves a situation where by virtue of the respective strength and weakness of the parties, one has the power to take advantage of or exercise undue influence over the other.’ In the business context, a confidential relationship is formed ‘only if one party surrenders substantial control over some portion of his affairs to the other.’”).

⁹ See, e.g., *Zaborowski v. Hosp. Care Ctr. of Hermitage, Inc.*, 60 Pa. D. & C.4th 474, 489, 2002 WL 32129508 (Mercer Com. Pl. 2002) (noting a nursing home that exhibits “overmastering dominance” over a patient will be found to have a fiduciary duty to the patient).

¹⁰ Plaintiff’s Complaint at 21-22, ¶¶74-79 (Feb. 16, 2018).

¹¹ *SHV Coal, Inc. v. Cont’l Grain Co.*, 587 A.2d 702, 704 (Pa. 1991) (“punitive damages are proper when a person’s actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct. . .”).

damages. Pennsylvania is a fact-pleading state; however, conditions of the mind underlying punitive damages can be averred generally.¹² As this Court expressed in *McMullen v. Genesis Healthcare, Inc.*, claims of “deliberately chronic understaffing” that led to the improper care of patients survive the preliminary objection stage.¹³

IT IS SO ORDERED this 15th day of March 2019.

BY THE COURT,

Eric R. Linhardt, J.

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¹² See *Lutz v. The Williamsport Hospital*, No. 18-0384, Opinion & Order: Defendant’s Preliminary Objections, at 8 (Lyco. Com. Pl. Sept. 26, 2018).

¹³ See *McMullen*, No. 15-2308, at 9-10.