

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TRYPHINE STROTHERS,	:	NO. 20-0776
Plaintiff,	:	
vs.	:	
	:	
	:	
	:	CIVIL ACTION
JOLANDA CRUZ; KEVIN BORGESS;	:	
BETH BORGESS; and THE CITY OF	:	
WILLIAMSPORT,	:	
Defendants.	:	<i>Preliminary Objections</i>

ORDER

AND NOW, following argument held December 1, 2020, on Preliminary Objections filed by Defendant The City of Williamsport to the Complaint, the Court hereby issues the following ORDER.

Background

Plaintiff Tryphine Strothers (“Ms. Strothers” or “Plaintiff”) initiated the foregoing action on August 4, 2020, by the filing of a Complaint. Pursuant to the allegations within the Complaint, on March 20, 2019, at approximately 5:21 a.m., Ms. Strothers was driving east bound on High Street, near its intersection with Campbell Street, in Williamsport, Pennsylvania, when the side of her vehicle was struck by another vehicle owned and operated by Defendant Jolanda Cruz (“Ms. Cruz”). Ms. Strothers sustained various injuries as a result of the collision, including a compound leg fracture, a concussion, and a traumatic brain injury.

Count I of the Complaint raises a claim of Negligence against Ms. Cruz for her allegedly negligent operation of the vehicle involved in the collision. Count II of the Complaint raises a claim of Negligence against Defendants Kevin Borgess and Beth Borgess (“the Borgesses”). The Complaint avers that the Borgesses had negligently allowed shrubbery on the corner of their property to overgrow, and this

overgrown shrubbery obstructed the view of drivers on Campbell Street approaching the intersection of High Street. Count III of the Complaint raises a claim of Negligence against Defendant The City of Williamsport (“The City”). The Complaint avers that lights at the intersection of High Street and Campbell Street were blinking yellow and red at the time of the accident. Maintenance of these lights fell within the jurisdiction of The City.

The City filed Preliminary Objections to the Complaint on September 1, 2020. The Court issued a Non-Compliance Order on September 10, 2020, for The City’s failure to attach a Motion Cover Sheet as required by local rule. The City thereafter provided an appropriate cover sheet, and the Court issued a Scheduling Order on October 8, 2020, scheduling argument and setting a briefing schedule. Plaintiff filed an Answer identified as a “Response in Opposition” to the Preliminary Objections on October 13, 2020. The City filed a Brief in Support of the Preliminary Objections on October 27, 2020. Plaintiff filed a Brief in Opposition to the Preliminary Objections on November 20, 2020.

The City’s First Preliminary Objection in the nature of a demurrer objects that the Complaint “only generically and vaguely identifies any dangerous condition(s) that contributed to and/or caused the subject accident[.]”¹ and asserts that Plaintiff has therefore failed to state a claim.² “In disposing of a demurrer every well-pleaded, material, relevant fact set forth in the pleading to which it is filed, together with all reasonable inferences therefrom, is admitted as true.”³ “A demurrer will only be sustained where a complaint or pleading shows with certainty that upon the facts averred therein, the law will not permit the plaintiff or pleading party to recover.”⁴

The Court cannot find that the Complaint has failed to plead a cause of action

¹ Preliminary Objections to the Plaintiff’s Complaint ¶ 11 (Sept. 1, 2020) (“Preliminary Objections”).

² See Pa.R.C.P. No. 1028(4) (allowing objections as to the legal insufficiency of a pleading).

³ *Del Boring Tire Serv., Inc. v. Barr Mach., Inc.*, 426 A.2d 1143, 1146 (Pa. Super. 1981) (citing *Eden Roc Country Club v. Mullhauser*, 204 A.2d 465 (Pa. 1964)).

⁴ *Id.* (citing *Int’l Union of Operating Engineers v. Linesville Construction Co.*, 322 A.2d 353 (Pa. 1974); *Buchanan v. Brentwood Fed. Savings and Loan Ass’n.*, 320 A.2d 117 (Pa. 1974)).

against The City. It is clear from the well-pled facts that The City had a duty to maintain traffic lights, or to provide other means of safely directing traffic in the event the lights malfunctioned, and in failing in that duty, contributed to the accident.⁵ Therefore, The City's First Preliminary Objection is OVERRULED.

The City's Second Preliminary Objection alternately objects that the Complaint contains various general allegations that The City breached various duties regarding "the design, maintenance, control, care, custody and operation of its real property, sidewalk, streets, traffic signs and other traffic controls[,]"⁶ without providing sufficient specificity regarding the dangerous conditions causing the accident.⁷ The City specifically objects to paragraphs 34, 35, 36, and 37 subparagraphs (a) through (j) as being overbroad. Examples of the language in these paragraphs include the allegation in paragraph 35 that:

[The City's] design, maintenance, control, care, custody and operation of its real property, sidewalk, streets, traffic signs and other traffic controls, including but not limited to, [those] which were located near the intersection of High and Campbell [and that] existed in March of 2019 gave rise to a dangerous condition which created a reasonably foreseeable risk of the kind of injury which was sustained by Ms. Strothers.

The Complaint also alleges that The City was "negligent" for the "improper design, placement, and location of streets, sidewalks, crosswalks, pathways, and traffic signals[,] and for "maintaining a hazardous condition of streets for the intersection of High and Campbell Streets[.]"⁸ Plaintiff asserts in her Brief in Opposition that the Complaint is not required to plead evidence, and that additional details may properly be obtained through discovery.⁹

⁵ That The City may be liable for malfunctioning traffic control signals within its care, custody or control is established under 42 Pa.C.S.A. § 8542(b)(4).

⁶ Preliminary Objections ¶ 17.

⁷ See Pa.R.C.P. No. 1028(3) (allowing objections as insufficient specificity).

⁸ Preliminary Objections ¶ 37(a),(i).

⁹ See Plaintiff's Memorandum of Law in Opposition to Preliminary Objections of Defendant City of Williamsport at 3 (Nov. 20, 2020) (Brief in Opposition") (citing *Com. ex. rel. Milk Marketing Bd. v.*

However, while Plaintiff will not be required to plead evidence, Pennsylvania remains a fact-pleading state, and there are no facts alleged in the Complaint suggesting, for example, improper design of streets, crosswalks, pathways, or traffic signals. Most of the allegations cited are so overbroad as to divest The City a reasonable opportunity to respond.¹⁰ Further, pursuant to the Pennsylvania Supreme Courts' ruling in *Connor v. Allegheny General Hospital*, a defendant who fails to move to strike a vague allegation risks amplification of a claim beyond the statute of limitations.¹¹

Of the provisions objected to, the Court finds only two sufficiently specific: the allegation that The City was negligent for "having blinking traffic signals at this intersection[.]"¹² and for "failing to provide adequate personnel to direct[,] supervise and control vehicle traffic on and across the streets, sidewalks, crosswalks and pathways[.]"¹³ The Court otherwise SUSTAINS The City's Second Preliminary Objection as to paragraphs 34, 35, 36, and 37 subparagraphs (a), and (d) through (j).

The City's Third Preliminary Objection similarly objects to insufficient specificity in the inclusion of the "boilerplate" phrase "including but not limited to..." in paragraph 35 of the Complaint. The Court has generally held that phrases such as "including but not limited to" and "*inter alia*" are objectionable on the basis of lack of specificity and potential for future amplification.¹⁴ Therefore, The City's Third Preliminary Objection is SUSTAINED.

Sunnybrook Dairies, Inc., 370 A.2d 765, 768 (Pa. Commw. 1977); *Wicks v. Milzoco Builders, Inc.*, 470 A.2d 86, 90 (Pa. 1983)).

¹⁰ See *Foster v. UPMC S. Side Hosp.*, 2 A.3d 655, 666 (Pa. Super. 2010) (quoting *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008)) ("[A] complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but. . . must also formulate the issues by summarizing those facts essential to support the claim.").

¹¹ See *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600 (Pa. 1983).

¹² Preliminary Objections ¶ 37(b).

¹³ Preliminary Objections ¶ 37(c).

¹⁴ See e.g., *Fausnaught v. UPMC Susquehanna (Formerly Susquehanna Health)*, No. 19 - 1047, 2020 WL 3410873, at *8 (Lyco. Cty. Jan. 06, 2020).

The City's Fourth Preliminary Objection objects that under the Political Subdivision Tort Claims Act,¹⁵ any claim for non-medical, "incidental expenses" against The City is barred and therefore should be stricken from the Complaint.¹⁶ Plaintiff has conceded this issue. Therefore, The City's Fourth Preliminary Objection is SUSTAINED.

Conclusion

Pursuant to the foregoing, The City's First Preliminary Objection is OVERRULED. The City's Second, Third, and Fourth Preliminary Objections are SUSTAINED. Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint addressing the deficiencies in the Complaint. Any Defendant that has already filed an Answer to the initial Complaint shall not be required to file an Amended Answer, but may do so at his or her discretion.

IT IS SO ORDERED this 14th day of December 2020.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

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¹⁵ See 42 Pa.C.S.A. §§ 8542, *et seq.*

¹⁶ See 42 Pa.C.S.A. § 8553(c) (limiting the scope of damages recoverable against political subdivisions in a tort action).