

Plaintiff's Complaint contains three counts against the named Defendants.¹ Count I is a claim for breach of contract. Plaintiff asserts that he contracted with Defendants to pay them money in exchange for a "clean room suitable for lodging in without the risk of harm posed by the presence of insects and/or bed bugs," but Defendants breached that contract by failing to provide a suitable room.

Count II is a claim for a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). Plaintiff alleges that Defendants violated the UTPCPL by committing "unfair methods of competition and/or unfair or deceptive acts or practices," specifically violating the prohibition on "[r]epresenting that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another."² Plaintiff contends that Defendants represented that the motel room he was occupying would be clean and free from bed bugs, but failed to deliver such a room.

Count III is a negligence claim arising out of premises liability. Plaintiff asserts that he was a business invitee of Defendants, and therefore Defendants owed him a duty of care to "perform reasonable inspections of the premises... keep said premises in a reasonably safe condition for their guests... [and] warn [guests] of known dangers present on or within the premises...." Plaintiff avers that the bed bugs in the room he occupied constituted a dangerous condition of which

¹ The Complaint contains a fourth count, not at issue here, solely against the John Doe and ABC Business Entity Defendants. The remainder of this Opinion and Order will use "Defendants" to refer solely to the named Defendants.

² 73 P.S. § 201-2(4)(vii).

Defendants had either actual or constructive knowledge, and thus their failure to remedy or warn him of the situation constituted a breach of their duty to him as a business invitee. In support of his averment that Defendants had knowledge of the situation, Plaintiff cites two online reviews of the Budget Inn.³ The first review contains the statement “there were dead bugs in every corner,” and the second review states in part “[t]he only concern I had was that there was just so many bugs everywhere.” Plaintiff contends that these reviews gave Defendant “actual, constructive – or at the very least – inquiry knowledge of the potentially dangerous condition present upon the premises....”

In each of the three counts, Plaintiff seeks “general, compensatory, and... punitive damages, reasonable attorney’s fees and costs of suit with interest, and any further relief which the court may deem equitable and just.” Count II also seeks treble damages as statutorily authorized by the UTPCPL.⁴

PRELIMINARY OBJECTION

On July 15, 2022, Defendants filed a Preliminary Objection to the Complaint, seeking to strike Plaintiff’s prayer for punitive damages and attorney’s fees.⁵

Defendants note that under Pennsylvania law, “punitive damages will lie only in

³ The first review was dated June 2018. The website containing the second review indicated it was posted “about a year ago,” which suggests it dates from late 2020 or 2021.

⁴ 73 P.S. § 201-9.2 provides that “[t]he court may, in its discretion, award up to three times the actual damages sustained... costs and reasonable attorney fees” to a private party aggrieved by a UTPCPL violation.

⁵ Defendants cite Pa. R.C.P. 1028(a)(2) (“failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter”), (a)(3) (“insufficient specificity in a pleading”), and (a)(4) (“legal insufficiency of a pleading (demurrer)”) as each supporting their Preliminary Objection.

cases of outrageous behavior, where Defendant's egregious conduct shows either an evil motive or reckless indifference to the rights of others."⁶ The essence of Defendants' Preliminary Objection is that Plaintiff, by alleging only "negligent and careless actions/inactions" rather than "reckless, indifferent, willful, wanton, oppressive, or outrageous conduct," has failed to plead facts that satisfy this standard and support an award of punitive damages. Defendants also suggest that Plaintiff has not shown that any particular Defendant has acted outrageously, as the Complaint refers to all named Defendants collectively and "does not delineate specifically which of the seven different Defendant(s) acted or failed to act as to each allegation...." Finally, Defendants aver that "there are no factual averments [in the Complaint] that would support Plaintiff's entitlement to an award of attorney's fees...."

In response, Plaintiff agrees that to succeed on a claim of punitive damages a plaintiff "must adduce evidence which goes beyond a showing of negligence, evidence sufficient to establish that the defendant's acts amounted to intentional, willful, wanton or reckless conduct...."⁷ Plaintiff argues, however, that courts should generally not dismiss claims for punitive damages at the preliminary objection stage, as prior to discovery a plaintiff has not had an opportunity to "adduce evidence" to support punitive damages. Rather, Plaintiff suggests that the more appropriate time for a defendant to contest a claim for punitive damages is at the summary judgment

⁶ *Slappo v. J's Development Associates, Inc.*, 791 A.2d 409, 417 (Pa. Super. 2002).

⁷ *Hall v. Episcopal Long Term Care*, 54 A.3d 381, 395 (Pa. Super. 2012).

stage following discovery. Regarding attorney's fees, Plaintiff notes that the UTPCPL allows a Court to award a private party "costs and reasonable attorney fees" in addition to other available remedies.

ANALYSIS

A. Punitive Damages

In ruling on preliminary objections in the nature of a demurrer, the Court must determine whether "on the facts averred, the law says with certainty that no recovery is possible.... Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it."⁸ In deciding a demurrer, the Court must "accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts."⁹

Here, the parties agree on what is required to sustain an award of punitive damages: Plaintiff must show that Defendant's actions were not merely negligent, but instead constituted "intentional, willful, wanton or reckless conduct." Their disagreement concerns whether it is appropriate for a court to strike punitive damages claims prior to discovery.

"Pennsylvania is a fact-pleading state," which means "a complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but the complaint must also formulate the issues by summarizing those facts essential to support the claim."¹⁰ One of the "essential fact[s] needed to

⁸ *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208-09 (Pa. Super. 2012).

⁹ *Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020).

¹⁰ *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008).

support a claim for punitive damages is that the defendant's conduct must have been outrageous" or similarly intentional, willful, wanton or reckless.¹¹ Thus, Pennsylvania law requires a complaint seeking punitive damages to allege outrageous, intentional, willful, wanton or reckless conduct; in the absence of such allegations, the complaint is legally insufficient, and therefore subject to demurrer.

Plaintiff contends that claims for punitive damages should not be dismissed at the preliminary objections stage. Preliminary objections in the nature of a demurrer, however, are the sole means by which courts can enforce the requirement that a complaint contain sufficient allegations of fact to support that claim. A plaintiff ultimately needs to present sufficient evidence to a factfinder to succeed on *any* claim; this requirement is separate, however, from the pleading requirements in Rules 1017 through 1034 of the Pennsylvania Rules of Civil Procedure. If it were improper for a court to assess the adequacy of punitive damages claims prior to discovery, Pennsylvania's pleading requirements would effectively cease to apply to such claims. Plaintiff has provided no statutory or appellate authority supporting such an exception. Thus, the Court may appropriately consider whether the allegations of fact in the Complaint support Plaintiff's claim for punitive damages.

Turning to the sufficiency of the allegations, Plaintiff seeks punitive damages in all three counts. However, "[a]s a general rule, punitive damages are not recoverable in an action for breach of contract,"¹² and the UTCPL "does not confer

¹¹ *Smith v. Brown*, 423 A.2d 743, 745 (Pa. Super. 1980).

¹² *Rittenhouse Regency Affiliates v. Passen*, 482 A.2d 1042, 1043 (Pa. Super. 1984).

a right to impose punitive damages.”¹³ Therefore, punitive damages are unavailable under Counts I and II of the Complaint.

With respect to Count III, a claim for negligence arising out of premises liability, Plaintiff has not pled facts sufficient to support a conclusion that Defendants' conduct went beyond mere negligence. Proprietors of a business have a duty of reasonable care to uncover risks to business invitees and protect them from resulting danger, and Plaintiff has certainly pled that Defendants failed to exercise such reasonable care.¹⁴ As both parties acknowledge, however, punitive damages require something more: outrageous conduct, typically demonstrating an evil motive, an inexcusable failure to rectify a known risk, or at the very least a reckless disregard of the safety of others. An award of punitive damages for “reckless disregard of the safety of another” requires an action or intentional failure to act by one who “know[s] or [has] reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.”¹⁵

In order to demonstrate Defendants' culpability beyond mere negligence, Plaintiff refers to two reviews posted online: one from approximately three years

¹³ *Richards v. Ameriprise Financial, Inc.*, 152 A.3d 1027, 1035 (Pa. Super. 2016). The UTCPL does provide for the separate remedy of treble damages, which Plaintiff has appropriately pled.

¹⁴ See Restatement (Second) of Torts § 343; *Neve v. Insalaco's*, 771 A.2d 786, 790-91 (Pa. Super. 2001).

¹⁵ *Hutchinson ex rel. Hutchinson v. Luddy*, 870 A.2d 766, 771 (Pa. 2005) (quoting Restatement (Second) of Torts § 500).

prior to Plaintiff's stay mentioning "dead bugs," and one approximately one year prior to Plaintiff's stay mentioning "bugs everywhere." There is no allegation, however, that these reviews referred to the same room in which Plaintiff stayed. There is no suggestion that the "bugs" in these reviews were bedbugs, or any sort of insect capable of inflicting harm beyond annoyance or disgust. There is no allegation that an insect infestation continued unabated between the reviewers' stays and Plaintiff's stay, and there is no allegation that Defendants actually read the reviews or were aware of their contents.

The facts pled are plainly insufficient to establish that Defendants had *actual* knowledge of bugs in Plaintiff's room and failed to warn him. In a light most favorable to Plaintiff, the allegations could establish that Defendants had notice that guests at the Budget Inn had observed a large number of insects in the past, and therefore Defendants had a continuing duty to attempt to discover, mitigate, and prevent infestations in the future, lest those infestations cause harm to guests. This duty, however, is a duty Defendants already owed to their guests as proprietors of a motel. Plaintiff has satisfactorily pled that Defendants negligently failed to ensure their premises were safe. However, two reviews vaguely mentioning "bugs," remote in time and of uncertain similarity to the situation that Plaintiff allegedly encountered, are insufficient as a matter of law to conclude that Defendants went beyond mere negligence and recklessly disregarded an obvious risk to Plaintiff's personal safety.

For these reasons, the Court will sustain Defendants' preliminary objection as it relates to punitive damages.¹⁶

B. Attorney's Fees

Pennsylvania adheres to the "American Rule," which states that "a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception."¹⁷ Here, Plaintiff cites the UTPCPL as supporting an award of attorney's fees. The UTPCPL provides that "[t]he court may award to the plaintiff" succeeding on a private UTPCPL claim "costs and reasonable attorney fees."¹⁸

The UTPCPL plainly provides "express statutory authorization" sufficient to overcome the general presumption of the American Rule and allow this Court to award attorney's fees should Plaintiff prevail on that claim. However, Counts I and III also seek an award of attorney's fees; Plaintiff has provided no grounds for an award of attorney's fees under his breach of contract or premises liability claims. Plaintiff can only obtain attorney's fees from the named Defendants if he prevails on his UTPCPL claim. Thus, the Court will overrule the preliminary objection as it relates to the claim for attorney's fees in Count II, and sustain the preliminary objection as it relates to that claim in Counts I and III.

¹⁶ As the parties alluded to, Plaintiff may seek leave to amend his Complaint should discovery reveal additional evidence demonstrating that Defendants knew of or recklessly disregarded the risk of harm to guests caused by biting insects.

¹⁷ *Trizechahn Gateway, LLC v. Titus*, 976 A.2d 474, 482-83 (Pa. 2009).

¹⁸ 73 P.S. § 201-9.2

ORDER

AND NOW, for the foregoing reasons, the Court hereby ORDERS as follows:

- Defendants' preliminary objection is SUSTAINED as to Plaintiff's claims for punitive damages. All claims for punitive damages shall be STRICKEN from Plaintiff's Complaint.
- Defendants' preliminary objection is SUSTAINED IN PART and OVERRULED IN PART as to Plaintiff's claims for attorney's fees. Plaintiff's demand for attorney's fees shall be STRICKEN from Counts I and III of Plaintiff's Complaint. Plaintiff's demand for attorney's fees in Count II shall remain.
- Defendants shall file an ANSWER to Plaintiff's Complaint within twenty (20) days of the date of this Order.

IT IS SO ORDERED this 19th day of December 2022.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

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